

Minutes of Meeting  
Grafton Planning Board  
August 10, 2009

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A regular meeting of the Grafton Planning Board was held on Monday, August 10, 2009 in Conference Room A at the Grafton Municipal Center, 30 Providence Road, Grafton, MA. Present for the meeting were Chairman Bruce W. Spinney III, Vice-Chairman, Robert Hassinger, Clerk Peter Parsons, Heath Christensen and Stephen Qualey. Staff present was Town Planner, Stephen Bishop and Assistant Planner Ann Morgan.

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

There were no Action Items on the agenda.

**DISCUSSION ITEM 2-A – “HILLTOP PLAZA” DRAFT DECISION**

Mr. Bishop informed the Board that they had received the first draft of the decision for “Hilltop Plaza” in their mailboxes, specifically including an overview of the uses allowed by right in an OLI district, uses allowed by Special Permit in an OLI district, and uses not allowed in an OLI district. Mr. Bishop added that he had spoken with Town Counsel regarding the Use Regulation Schedule and the consensus reached was that of not being overly broad on the types of uses allowed. Mr. Bishop noted that Town Counsel had stated that a Special Permit generally is for a specific request, allowing the Board to request more specifics on the uses and condition the impact. Mr. Bishop compared the Brookmeadow Village, LLC commercial building permitting, which was a broad granting, but with some restrictions.

The Board discussed concerns of not being comfortable with the broad granting of uses, and Mr. Bishop pointed out Section 1.5.5 of the Zoning By-Law, which clarifies the Boards conditions for granting or denying special permits, particularly under the categories of nuisance, hazard and congestion.

The Board continued to discuss the draft findings and conditions, reviewing all of the information and testimony received throughout the hearings.

**“GLENWOOD ESTATES I” SUBDIVISION – ABU CONSTRUCTION, INC. (PETITIONER) – COMPLIANCE WITH CONDITION #2 OF PLANNING BOARD MODIFICATION OF DEFINITIVE PLAN APPROVAL DECISION**

Mr. Parsons read the legal notice and Chairman Spinney opened the public hearing. Present for the hearing was Carl Hultgren of Quinn Engineering.

Mr. Hultgren reviewed the status of the subdivision for the Board, noting many of the items on the punch list had been cleaned up, but the top course roadway binder and street trees still need to be completed. Mr. Hultgren noted Jeff Walsh of Graves Engineering

has been out of town on vacation and he was unable to obtain a review update for tonight's hearing.

Mr. Bishop informed the Board that with regard to the condition of the site, he had walked the subdivision with Jeff Walsh and Tony Abu and that a good faith effort has been made on the developer's part to complete the subdivision. Mr. Bishop noted he is still working with Bob Gleason on the resident's options for street trees.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Qualey, to close the public hearing.  
**MOTION** carried unanimously 5 to 0.

**“OAKMONT FARMS” SUBDIVISION – OAKMONT FARMS, LLC – POSSIBLE DEFAULT**

Mr. Parsons read the legal notice and Chairman Spinney opened the public hearing.

Mr. Bishop stated the hearing had been posted at the Planning Board's request, the developer notified by certified and regular first class mail, and there has been no communication from John Callahan & Sons or Oakmont Farms, LLC. Mr. Bishop added that there has been a level of communication between Town Counsel and the Bonding company for Oakmont Farms. Mr. Bishop stated there are really two main issues to be resolved; that of encumbrances on easements, which the Planning Board has refused to accept, and an offsite sewer provision for the sewer line, which Condition #9 of the Definitive Plan decision states is to be provided at the developer's expense. Mr. Bishop noted there are also smaller issues with the Water District hydrant fees and a subdivision review punch list still to be determined.

Mr. Bishop remarked that the Board has also received a petition from the residents of the subdivision requesting the Planning Board to call the Surety bond being held for the “Oakmont Farms” Subdivision and any other bonds which may be held for the development.

Chairman Spinney asked if there was anyone present representing Mr. Callahan and Attorney Scott Aftuck of Rubin & Rudman, LLP came forward stating he was present representing Tim Callahan. The Board expressed concerns of why Mr. Callahan was not present himself to speak to the possible default finding. Attorney Aftuck informed the Board that Mr. Callahan was experiencing a level of frustration in completing the subdivision, adding that the Callahan Company would like to try to work things out without the Board calling the Bond.

Chairman Spinney remarked that the Town has been put in a precarious situation and has had no response from the developer. Attorney Aftuck pointed out that Graves Engineering had made a determination that most of the work was complete, with the exception of 4 fence and 1 shed encumbrance on the Town's easements, which are one private property and unable to be removed by Mr. Callahan.

Mr. Hassinger stated the easements were still in the possession of Mr. Callahan and he had a legal right to remove any encumbrances on those easements. Mr. Hassinger noted these encumbrances cannot be left for the Town to deal with. Mr. Hassinger again expressed concerns that Mr. Callahan was not here himself to answer the Board's questions.

Cristy Rosenhahn of 2 Seaver Farm Lane informed the Board that she had to retain an attorney previously in dealings with Mr. Callahan regarding miscalculations of the roadway and drainage easements, noting that the developer had not done due diligence regarding their construction work. Ms. Rosenhahn also added that a light that had been damaged from an accident had not yet been replaced by Mr. Callahan even though the electric company had stated the light belonged to the developer. Ms. Rosenhahn remarked that the fact of Mr. Callahan not being present tonight is evidence that he intends to walk away from the subdivision and requested the Board call the Bond this evening.

Chairman Spinney asked Ms. Rosenhahn to read the petition aloud for the benefit of those who were not aware of the contents and asked if there was anything new to be presented from the audience.

Chairman Spinney explained to the homeowners that the taking of a bond is a long and arduous process, requiring much effort on the part of Town Staff and resources.

Michael Langford II of 7 Eagle Rock Terrace expressed concerns of safety of the streets, specifically children on bicycles, due to no street sweeping. Mr. Langford also stated he did not feel well served as a taxpayer for the lack of services within the subdivision.

Janice Kocis of 1 Eagle Rock Terrace informed the Board that she was asked to remove her fence encroachment on the easement two years ago, which she did immediately, and the easement issue is still not settled.

Chairman Spinney stated that the safety issues were of immediate concern to the Planning Board, and that some of the issues are beyond the scope of the Board to address.

Attorney Aftuck stated Mr. Callahan sees only the issues of the 3 remaining fence encroachments and 1 shed encroachment and needs the cooperation of the landowners to complete this task. Attorney Aftuck noted Mr. Callahan had tried to have the Town accept the easements.

Chairman Spinney stated a minor problem does not extend for two years down the road, leaving the Board to believe there are other more complicated issues to tend to.

Mr. Hassinger noted the developer should be able to exercise his rights to clear any encroachments as owner of the easements and added that Mr. Callahan should not be

putting the Town in a position to deal with this problem, as he has not worked with the Planning Board or the Town to solve these issues.

Chairman Spinney stated to Attorney Aftuck that Mr. Callahan is not here and has sent you with no answers for the Planning Board or prepared to work with the Board in solving the problems associated with the subdivision.

Chairman Spinney received unanimous consent that the situation is seen as a failure on Mr. Callahan's part and the Board is not convinced that they should grant the request for more time to bring the subdivision to completion.

Anuja Gokhale of 35 Seaver Farm Lane informed the Board that she had spoken to the neighbors who own the fences on the easements and they state that they have not heard from anyone on what to do.

Christy Rosenhahn informed the Board that they had hired an attorney to handle questions on what to do with regard to easements on property, so that their property and rights were protected. Ms. Rosenhahn stated she did not know why the homeowners with easements had not done their due diligence on what to do for an easement on their property.

Attorney Eric Loeffler of Hinshaw & Culbertson, LLP, Boston, representing United States Fidelity & Guaranty Bond Company was here to observe and learn where Mr. Callahan stands with the Planning Board at this time. Attorney Loeffler stated he had called Town Counsel to set up a meeting with the Town Planner to try to facilitate some resolution to the issues before the Board actually formally demands the bond.

Mr. Bishop noted that this does not foreclose the opportunity for the Planning Board to move forward to call the Bond. Mr. Bishop added that there is a process to go through and it is possible to leave the door open for discussion and may force the developer to move forward. Mr. Bishop recommended the Planning Board to find the developer in default.

Mary Ann Cotton of 40 Pleasant Street, speaking on behalf of the Board of Selectmen, urged the Planning Board to take action as suggested by Mr. Bishop to ensure the Town will get the resolution it needs and will move the process forward.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Parsons, to close the public hearing. **MOTION** carried unanimously 5 to 0.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Parsons, to find the "Oakmont Farms" Subdivision in default. **MOTION** carried unanimously 5 to 0.

**DISCUSSION:** Chairman Spinney asked Mr. Bishop if he foresees any problems in taking this action immediately. Mr. Bishop stated that this action does ensure there will

be resolution to that end. Mr. Hassinger noted that the developer can present a solution to the problem, but the Board needs the assurance of a default declaration. Mr. Bishop added that this action by the Planning Board sets the course and the vote places the action to be overseen through the Planning Office. Mr. Parsons added as a point for thought that whether the developer or the Town comes forward, if the homeowners would remove their encumbrances without any prompting, it will be a very welcome.

Mr. Spinney wished to express that the Planning Board is very approachable and these concerns should have been dealt with long before this point.

**MOTION** carried unanimously 5 to 0.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Parsons, to put a demand on the performance guarantee and any other bonds the Town may be holding. **MOTION** carried unanimously 5 to 0.

### **MINUTES OF PREVIOUS MEETINGS**

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Parsons, to approve the open session minutes of July 27, 2009 as drafted. **MOTION** carried unanimously 5 to 0.

### **STAFF REPORT**

Mr. Bishop reminded the Board of the scheduled joint meeting with the Board of Selectmen at 7:00 p.m. on August 11, 2009 for the appointment of Sadie Miller to the Associate Member position on the Planning Board.

Mr. Bishop informed the Board that he had met with Michael Martin, Construction Engineering Services for Travelers Bond & Financial, and he seemed pleased with the overall condition of the “Cortland Manor” Subdivision. Mr. Martin noted there were no huge items to be completed and agreed to work with Graves Engineering to establish a list of outstanding items. Mr. Bishop added that he hoped the work would move forward and was encouraged with the suggestion of finding another developer to complete the unfinished lots within the subdivision.

Mr. Hassinger expressed concerns of endangering the bonding or the Chapter 7 Bankruptcy filing.

Mr. Bishop stated that his preference was to come to an agreement with the Bond Company and have them handle the completion of the subdivision work, rather than transferring the remaining bond amount to the Town. Mr. Bishop added that he would need to have a discussion with the Bond Company’s Counsel with regard to this matter.

Mr. Hassinger suggested reviewing the language contained in the Bond Agreements with the developers to better deal with encumbrances and easements in the future. Mr.

Hassinger added that in going forward, it should be asked if current rules can be changed for future issues, specifically for arrangements for a provision for the transfer of an easement.

Mr. Bishop recommended the Board skip the next Planning Board meeting scheduled for August 24, 2009, due to summer vacations and a lack of agenda items and no public hearings scheduled or continued for that particular date.

**MOTION** by Mr. Parsons, **SECOND** by Mr. Qualey, to skip the Planning Board meeting scheduled for August 24, 2009 for the reasons stated.

**DISCUSSION:** Mr. Hassinger noted that if any action or submission arose having a short filing window, accommodating arrangements would have to be made.

**MOTION** carried unanimously 5 to 0.

Mr. Qualey stated he wished to correct an omission of acknowledging Operation Friendship for their hosting of the Swedish delegates and to thank Representative George Peterson and his Staff for the meet & greet session in the House of Representatives in Boston on July 24, 2009.

Mr. Bishop also introduced Sadie Miller, who will be appointed to the Associate Member position by the Board of Selectmen on August 11, 2009. Ms. Miller gave a brief overview of herself and answered the Board's questions concerning the position.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Parsons, to adjourn the meeting. The meeting was adjourned at 8:55 p.m. **MOTION** carried unanimously 5 to 0.



Peter Parsons, Clerk