

Minutes of Meeting  
Grafton Planning Board  
April 26, 2010

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GRAFTON, MA.

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A regular meeting of the Grafton Planning Board was held on Monday, April 26, 2010 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, Heath Christensen, Stephen Qualey. Absent from the meeting were Clerk Peter Parsons and Associate Member Sadie Miller. Staff present was Town Planner, Stephen Bishop and Assistant Planner Ann Morgan.

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

**ACTION ITEM 1-A – REQUEST FOR PLANNING BOARD DETERMINATION FOR MODIFICATION OF SPECIAL PERMIT SP 2008-18 VERIZON WIRELESS – 160 & 160R UPTON STREET – JAMES VALERIANI, ESQ. (PETITIONER)**

Attorney Valeriani, representing Verizon Wireless, informed the Board his client was now in the process of implementing its Fourth-Generation Data Network, using Long Term Evolution “LTE” technology. Attorney Valeriani stated they would be removing one 4-foot section from each of three antenna sectors and replacing it with one 6-foot section. Attorney Valeriani requested the Board approve this change as a minor modification to the existing special permit, since there had been no abutter concern with the previously approved co-location. The Board expressed concerns that no modification information had been submitted with the request and suggested Attorney Valeriani contact the Planning Office for direction on submission of modification information for the Board’s review and consideration for the May 24, 2010 Planning Board meeting.

**REQUEST FOR RELEASE OF COVENANT – FOREST HILLS – PHASE VII – DEBORAH SARKISIAN, ESQ. (PETITIONER)**

Mr. Bishop informed the Board that Attorney Sarkisian had contacted him concerning the need for the release of the Covenant for property in the Forest Hills, Phase VII development.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Christensen, to grant the petitioner’s written request to sign the Release of Covenant. **MOTION** carried unanimously 4 to 0.

**REQUEST FOR DETERMINATION OF COMPLETENESS – “MAGNOLIA FARMS” SUBDIVISION – MAGNOLIA LANE – WEBSTER BANK, N.A., (PETITIONER)**

Mr. Bishop informed the Board that since all outstanding items have been signed off by all Town Departments, including the Town Engineer and also Graves Engineering, he recommends a positive determination for the “Magnolia Farms” subdivision.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Qualey, to recommend a Determination of Completeness for the “Magnolia Farms” subdivision. **MOTION** carried unanimously 4 to 0.

**REQUEST FOR DETERMINATION OF COMPLETENESS – “NORTH GRAFTON ESTATES I” (A/K/A “BRIDLE RIDGE”) AND “NORTH GRAFTON ESTATES II” SUBDIVISIONS – MARK KABLACK, ESQ., (PETITIONER)**

Mr. Bishop informed the Board that he had received a late email from the Fire Department signing off on the remediation of the two fire cisterns and a punch list of remaining items concerning the catch basins and crack sealing from Acting Town Engineer Brian Szczerko.

The Board informed Attorney Kablack that from their standpoint these are considered outstanding items still to be addressed and with the 45 day deadline approaching for May 3<sup>rd</sup>, they need to make a determination.

Mr. Szczerko noted that he and Dave Crouse of the DPW visited the subdivisions to confirm that all issues had been resolved as claimed by the developer at the last Planning Board meeting. The punch list submitted evolved from the visit and he also added he would like to make a determination on the origin of some of the runoff and drainage.

Attorney Kablack, representing Toll Brothers, Inc. and Huckins Farm, Limited Partnership, reminded the Board that after the lengthy discussions at the last hearing, he was here to close out his request for a Determination of Completeness and a Bond Reduction for the subdivisions. Attorney Kablack noted that this was the first time he had been informed of this outstanding punch list and that his client would need to be afforded some time to complete these items, as such.

Mr. Bishop informed the Board that since there is no declarative language allowing relief from the 45 day time frame, he would prefer to advise on the side of caution and recommend the Board make a determination.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Christensen, to issue a Determination of Incompleteness for the “North Grafton I” (a/k/a “Bridle Ridge”) and “North Grafton Estates II” subdivisions, due to outstanding items and final sign off from the Superintendent of Streets as submitted. **MOTION** carried unanimously 4 to 0.

Attorney Kablack requested to return before the Planning Board at the May 24<sup>th</sup> Planning Board meeting for consideration of all outstanding items resolved. The Board reminded

Attorney Kablack that the construction deadline for these subdivisions expires on June 18, 2010.

**CONSIDER PLANNING BOARD REPORT FOR RZN 2010-1 109 CREEPER HILL ROAD – (TROIANO)**

**MOTION** by Mr. Christensen, **SECOND** by Mr. Hassinger, to approve the Planning Board Report recommendation as drafted. **MOTION** carried unanimously 4 to 0.

**SP 2010-3 KATIE MAGEE & JOSE ALVAREZ (APPLICANTS/OWNERS) – 172 BRIGHAM HILL ROAD – 10 HORSES**

Mr. Qualey read the legal notice and Chairman Spinney opened the public hearing. Present for the hearing were Applicants/Owners Katie Magee & Jose Alvarez.

Mr. Bishop gave the Board a brief review of the issues associated with the application, specifically the Building Inspector/Zoning Enforcement Officer's Cease & Desist order on the property. Mr. Bishop noted that the only issue before the Board is the number of horses, as there is an existing special permit allowing 2 horses on the property.

Ms. Magee informed the Board that she had received all of her State approvals and licenses, but was unaware that she was required to meet local zoning approvals. Ms. Magee stated she wanted some direction from the Board on the way she would be able to manage the 10 horses as presented in the special permit/site plan application. Ms. Magee also noted that she has sufficient background to provide and maintain professionalism in management and care of the horses.

Mr. Hassinger stated the Board had been made aware of many concerns, including the Board of Selectmen and Board of Health, of too many animals for the size of the parcel.

Chairman Spinney informed Ms. Magee of his concerns of the manure problem getting ahead of her control efforts, especially being in an R-40 district and such close proximity to neighbors. Ms. Magee stated that she was spreading the manure at the far rear end of her parcel, which is composting well and keeping the odor minimal.

Mr. Hassinger suggested to Ms. Magee that she request the permit for a lesser amount of horses, since there probably isn't the need for 10 horses without the riding business. Ms. Magee insisted she wished to retain all 10 horses on the property and would follow the guidelines set by the Board to maintain them on the property.

Robert Berger, Grafton Zoning Enforcement Officer, informed the Board that he had ordered the Cease & Desist orders since there was no possible avenue for Ms. Magee to maintain the riding school, including the advertising for the riding camp during the summer months. Mr. Berger added that the second Cease & Desist was ordered due to

the unauthorized keeping of 10 horses on property permitted for 2 horses, for which he has had several complaints filed already.

Kenneth Webb of 103 Elmwood Street, representing the Grafton Land Trust, informed the Board that the Land Trust has abutting property at 180 Brigham Hill Road, designated as Conservation land listed as “Williams Woods” behind Ms. Magee’s property. Mr. Webb stated that after inspecting their property, there appears to be evidence of possibly damaging erosion of manure and sand from the riding ring area into the Land Trust property due to the downward sloping land.

Richard Dion of 170 Brigham Hill Road submitted a letter from Raymond & Jeanette Leger of 166 Brigham Hill Road who could not be present for the hearing. Mr. Dion expressed empathy for Ms. Magee’s situation, but felt he needed to make the Planning Board aware of his situation as an abutter. Mr. Dion informed the Board that due to his bone marrow transplant for Cancer and compromised immune system, he has immediate concerns for infectious situations, specifically noting his shallow well only 100 feet from the paddock, possible contamination from horse manure and urine, and even possibly through the continuous dust and scent from so many animals. Mr. Dion also submitted to the Board information on the effects of horse manure and urine and photos of the encroachment onto his property lines, specifically with the spreading of the horse manure. In conclusion, Mr. Dion requested the Board take action on his behalf in considering this special permit.

Chairman Spinney read aloud the letter from Raymond & Jeanette Leger, also opposed to the special permit.

Alexander Molnar of 168 Brigham Hill Road expressed his opposition to the special permit, noting equine recommendations state allowing 2 acres for one horse, and 1 acre per additional horse; an odor from the area; and witnessed trucks hauling manure from the property.

Chairman Spinney wished to note that after private research, he found that many horses are kept in this type of environment and that it is not too much for the land, but a definite nuisance to abutters.

Karen Fleming-Brooks of 44 East Street stated that there is literature on housekeeping on small acreage, but that the horse owner must haul the manure away, the bylaws require a stable permit, and there are specific guidelines on waste and animal management.

Ms. Magee also submitted letters from abutters who are not opposed to the allowance of horses on the property.

Katrina Koshivos of 4 Brielle Road stated that she lived directly across the street 2 lots in and there was definitely a very strong manure odor and that the horses had escaped out onto Brigham Hill Road at one point where there was no fence.

Jeff McCarrick of 6 Brielle Road urged the Board to consider all that has been said about Health considerations, specifically Dick Dion, the concerns of a residential district having a commercial enterprise and to avoid setting any precedent to change the zoning.

Matthew Cahill of 3 Brielle Road commented on the difficulty of horse trailers maneuvering through the narrow roadway and blind spot at this point in the roadway and stated he wished to go on record in opposition to the permit noting this dangerous potential for a serious accident and for the definite presence of the odor.

The Board unanimously agreed that it was an unfortunate situation, but also stated that the number of horses needed to be reduced. The Board requested Ms. Magee to consider reducing the number of horses on the property.

Ms. Magee pleaded with the Board for the 10 horses to be kept as they are, adding she is willing to manage them as the Board conditions.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Christensen, to close the public hearing. **MOTION** carried unanimously 4 to 0.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Christensen, to direct Staff to draft a decision, taking into consideration all the information received and the findings and conditions discussed.

**DISCUSSION:** The Board discussed if the Mullin rule could be invoked by Peter Parsons and Sadie Miller. The Board asked Staff to make the DVD of the meeting available to Ms. Miller.

**MOTION** carried unanimously 4 to 0.

Mr. Berger clarified the applicant's position with regard to the Cease & Desist orders, stating that since the Board will not consider the decision until their next meeting on May 24, 2010, they will have till that date to comply, but that the Riding school must cease immediately.

**MRSP 2009-12 D & F AFONSO BUILDERS, INC., (APPLICANT/OWNER) –  
“VILLAGE AT INSTITUTE ROAD” – OFF INSTITUTE ROAD AND  
WESTBORO ROAD**

Chairman Spinney opened the public hearing. Present for the hearing were owner/applicant Dominic Afonso, his attorney Suzette Ferreira, and Normand Gamache of Guerriere & Halnon, Inc.

Mr. Bishop informed the Board that they had correspondence in their mailboxes from Attorney Ferreira regarding their position considering Institute Road a public way and

Town Counsel's concurring response to that position. Mr. Gamache gave the Board a brief review of the project.

Attorney Ferreira expressed concerns to the Board regarding the number of participating Planning Board members who will be available to vote on the special permit decision. The Board noted that Ms. Miller would be available until June 1, 2010. Attorney Ferreira reviewed their position on Institute Road as a public way stating that under Massachusetts law, an existing way is not public unless it has become public in one of three ways: a laying out by public authority prescribed by public statute, by prescription, and prior to 1846 a dedication by the owner to public use. Attorney Ferreira pointed out that Institute Road clearly falls into the second and third category, and that Town Counsel concurs with that finding, specifically by prescription.

Mr. Hassinger asked if there has been any evidence of Town Meeting acceptance yet. Attorney Ferreira stated that she has not checked public records yet, but noted that when all the information is taken together and looked at as a whole, determination can be made that Institute Road is a public way. Chairman Spinney added that evidence will be needed that the roadway was being plowed by the Town 20 years ago. Mr. Hassinger remarked that the Planning Board does not have the power to declare a private roadway as being public; however the Board of Selectmen has the power to recognize it as a public way. Attorney Ferreira suggested Town Counsel attend a Planning Board meeting. Mr. Hassinger added that Town Counsel does not have the power to declare a roadway public either. Attorney Ferreira again suggested that either the Board of Selectmen make a declaration or they request the Town Clerk to make a declaration.

Chairman Spinney noted that the Board can make a decision on the information submitted, which does not include any proof of declaration that Institute Road is a public way. Attorney Ferreira suggested they ask for a continuance in order to obtain the additional information declaring all of Institute Road as a public way.

Mr. Bishop added that the Board of Selectmen would be the only body who can make that determination with which the Planning Board can concur and that the burden is on the applicant to obtain this information.

Mr. Christensen asked Mr. Gamache if there were any road improvements planned with regard to the steep hill slope and blind corner currently existing on the roadway. Mr. Gamache stated they have had discussions with the Grafton Water District concerning re-grading of the water line and with Graves Engineering on sidewalks and general roadway improvements. Chairman Spinney requested Mr. Gamache provide the Board with more information regarding the profile of the roadway and the applicant's intentions to remedy and improve the problems and issues discussed.

Robert Carroll of 72 East Street asked about the walking trails within the subdivision area and their connection with the trails in the area, specifically about accommodations for the persons who will be walking to the train station especially with snow accumulation, as

there are currently no sidewalks. Mr. Gamache reviewed the trails in the subdivision and stated they would be installing some sidewalks and that there will snow easements at the end of the cul-de-sacs.

**MOTION** by Mr. Qualey, **SECOND** by Mr. Hassinger, to grant the applicant's written request to continue the public hearing to May 24, 2010 at 7:30 p.m. **MOTION** carried unanimously 4 to 0.

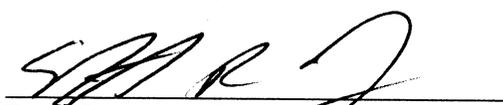
**MINUTES OF PREVIOUS MEETINGS**

**MOTION** by Mr. Qualey, **SECOND** by Mr. Christensen, to approve the open session minutes of April 26, 2010 as drafted. **MOTION** carried unanimously 4 to 0.

Mr. Qualey reminded all of the Founders Day Ball on May 15, 2010.

**MOTION** by Mr. Christensen, **SECOND** by Mr. Qualey, to adjourn the meeting. **MOTION** carried unanimously 4 to 0.

The meeting was adjourned at 9:54 p.m.

  
Peter Parsons, Clerk

Stephen Qualey (Reorganization)

