

Minutes of Meeting  
Grafton Planning Board  
November 22, 2010

RECEIVED  
GRADUATE CLERK  
DEC 16 3 54 PM '10

A regular meeting of the Grafton Planning Board was held on Monday, November 22, 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, Clerk Stephen Qualey, Heath Christensen, David Robbins and Associate Member James Walsh III. 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 – CONSIDER DECISION – SP 2010-7 JUSTIN COMPTON – 13 WHEELER ROAD – KEEPING OF LIVESTOCK (CHICKENS) UNDER 5 ACRES OF LAND**

Mr. Bishop informed the Board that this draft decision is consistent with all previous decisions for this use.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Christensen, to make favorable Findings for F-1 through F-26. **MOTION** carried 4 to 0 with Mr. Robbins not eligible to vote.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Qualey, to make favorable Findings for F-27 through F-30. **MOTION** carried 4 to 0 with Mr. Robbins not eligible to vote.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Qualey, to grant the waiver request as drafted.

**DISCUSSION:** Chairman Spinney commented he wished to make it clear that if an applicant is requesting a waiver from the fee for this type of application regarding the keeping of chickens, the request must come at the time of the application filing and not when the Board is considering the draft decision.

**MOTION** carried 4 to 0 with Mr. Robbins not eligible to vote.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Qualey, to grant the special permit/site plan approval with the findings and conditions as discussed and amended. **MOTION** carried 4 to 0 with Mr. Robbins not eligible to vote.

**DISCUSSION ITEM 2-A - DISCUSS STATUS OF BRIELLE ROAD / "BRIGHAM HILL ESTATES" SUBDIVISION**

Chairman Spinney recused himself to the audience due to a conflict of interest and Vice Chair Hassinger assumed Chairman status for the discussion.

Mr. Bishop informed the Board that they had correspondence from Town Counsel summarizing the status of Brielle Road, including its developer default status back in the 90's as it relates to the "Brigham Hill Estates" Subdivision. Mr. Bishop quickly reviewed the steps leading up to the

Brielle Road issue now facing Toll Brothers as they begin to commence the Definitive Plan work for “Brigham Hill Estates”. Mr. Bishop stated that he did not know how the subdivision had received its Definitive approval, since he was not the Town Planner at that time. Mr. Bishop added that Toll Brothers has stated they have no interest in participating in the completion of Brielle Road, but requested a road opening permit from the Town to enable water and sewer connections for their subdivision work. Attorney Kablack, representing Toll Brothers, Inc., submitted correspondence as to how this issue can be done even though the roadway is not recorded as a Town-owned road and the street opening permit was not issued by the DPW because Brielle Road is not a public way.

Mr. Bishop stated he believed the Planning Board needs to address the issue at this time and suggested the Board has the option of taking action on the issue under Chapter 81 W, with the power to modify, amend or rescind approval.

Mr. Hassinger noted that the issue is subject to the Board’s regulation, as Brielle Road was not a public way at the time of the Definitive decision approval. Mr. Hassinger added that he believes the Board was unable to obtain Town Counsel assistance at the time and it was the understanding of the Board that the roadway would be completed within the process of establishing the subdivision. Mr. Hassinger also pointed out that it is clear in correspondence from Toll Brothers that they were aware of the Brielle Road status and how it related to the subdivision development.

The Board discussed the issues and their options to resolve them with the objective to have this subdivision meet the Subdivision Rules & Regulations. Mr. Hassinger wished to note that nothing should go into the ground until the issue is resolved to the Planning Board’s satisfaction. Mr. Hassinger also stated that he does not currently foresee Brielle Road being made public by the Town, since there are not enough funds to complete the work.

**MOTION** by Mr. Robbins, **SECOND** by Mr. Christensen, to direct Staff to initiate the process in accordance with the provisions of Mass General Laws, Chapter 41, Section 81W, with respect to potentially modify, amend or rescind the Definitive Plan approval of January 28, 2009 for the “Brigham Hill Estates” subdivision. **MOTION** carried 4 to 0, with Chairman Spinney recused.

Chairman Spinney returned to the Board.

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

Chairman Spinney opened the public hearing. Present for the applicant was Attorney Suzette Ferreira of Consigli and Brucato pc.

Attorney Ferreira informed the Board that she had performed quite a bit of discovery through many channels, but had not found any paperwork directly declaring Institute Road a public way as yet. Attorney Ferreira stated they would continue to collect all the information for a Summary Judgment and if the court could not make the declaration on the information submitted, then the case will be decided by trial, with a date possibly as far ahead as May, 2013 for the case.

Attorney Ferreira noted that the Planning Board has the option to deny the application or continue the hearing until the applicant completes the court proceedings.

Mr. Bishop informed the Board they had two choices of either continuing the hearing without a definite end point or close the hearing. Mr. Hassinger stated there were currently only 4 members eligible to vote on the application, all of which are needed for an approval, but if the applicant was to come back with a new application there would be at least 5 members able to vote, and needing only 4 of the 5 for an approval. Mr. Hassinger also pointed out that most of the hearing discussion was on the status of the roadway and not too much on subdivision review.

The Board continued to discuss their options regarding the public hearing and how a decision would be handled if the permit was denied.

Mr. Hassinger suggested Staff discuss with Town Counsel which avenue the Board should follow of closing the hearing or granting a continuance.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Qualey, to grant the applicant's written request to continue the public hearing to January 10, 2011. **MOTION** carried unanimously 5 to 0.

Chairman Spinney received unanimous consent to pass over discussion on the Comprehensive Plan.

#### **MINTUES OF PREVIOUS MEETINGS**

**MOTION** by Mr. Qualey, **SECOND** by Mr. Hassinger, to approve the open session minutes of November 8, 2010 as drafted. **MOTION** carried unanimously 5 to 0.

#### **STAFF REPORT**

Mr. Bishop wished all a Happy Thanksgiving.

#### **CORRESPONDENCE**

Mr. Hassinger discussed the value of several Grafton Common Subcommittees, along with the Planning Board, to provide some involvement in the Common planning and proposed changes.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Christensen, to adjourn the meeting. **MOTION** carried unanimously 5 to 0.

The meeting was adjourned at 7:54 p.m.

#### **EXHIBITS**

- Action Item 1A: Draft Decision, SP 2010-7, Justin Compton, 13 Wheeler Road, North Grafton; raising and keeping of livestock (chickens) on less than 5 acres; 7 pages.
- Item 5A: Draft Meeting Minutes, Grafton Planning Board, November 8, 2010, 4 pages.

- Discussion Item 2A: Correspondence from Town Counsel regarding Brielle Road and the Brigham Hill Estates Definitive Subdivision Approval, dated November 17, 2010, 1 page.



---

Stephen Qualey, Clerk