

**Minutes of Meeting  
Grafton Planning Board  
January 24, 2011**

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A regular meeting of the Grafton Planning Board was held on Monday, January 24, 2011 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 – MRSP 2010-8 “ABBY WOODS”  
SUBDIVISION – 18 CARROLL ROAD**

Mr. Bishop informed the Board that there were a number of findings with regard to the easement for future roadway purposes, keeping the house lots as far away from the wetland area as possible, and a review of the finding and conditions within the previous decision issued. Mr. Hassinger asked about a provision for a future right-of-way. Mr. Bishop noted that Findings F-14, 15, and 16 discussed those issues raised for the flexible as well as the conventional plan and that there was no waiver requested, but added it was the intent of the applicant to make that request during the Definitive plan application.

**MOTION** by Mr. Christensen, **SECOND** by Mr. Qualey, to make favorable findings for F-1 through F-10. **MOTION** carried unanimously 5 to 0.

**MOTION** by Mr. Qualey, **SECOND** by Mr. Hassinger, to make favorable findings for F-21 through F-25. **MOTION** carried unanimously 5 to 0.

**MOTION** by Mr. Christensen, **SECOND** by Mr. Hassinger, to make favorable findings for F-26 through F-58. **MOTION** carried unanimously 5 to 0.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Qualey, to grant MRSP 2010-8 & Preliminary Plan approval for “Abby Woods” Subdivision with the Findings and Conditions as discussed and amended. **MOTION** carried unanimously 5 to 0.

**STAFF REPORT**

Mr. Bishop informed the Board that he will be presenting the Mill Villages Park to the Board of Selectmen at their February 1<sup>st</sup> meeting, with the hopes of moving forward with the approval necessary for beginning work in the spring. Mr. Bishop added that the Streetscape Committee has displayed an onsite billboard announcing the Mill Villages Park will be coming soon.

Mr. Bishop stated that the Board will need to begin work on zoning amendments for the upcoming spring Town Meeting with regard to the changing floodplain regulations language to accommodate the new FEMA maps. Mr. Bishop remarked that he has added this task as an agenda item for a Planning Board meeting in March.

Mr. Bishop remarked that he would like the Board to start in February to begin drafting language for conceptual areas for new zoning for the Mill Villages zoning district. Mr. Bishop noted that the Streetscape Committee will be having a conversation with the Planning Board with regard to this task in anticipation that the Board will entertain bringing these plans before the Town at the October Town Meeting. Mr. Bishop stated that the membership of the Streetscape Committee, comprised of many residents of South Grafton, have been asked to consider where they think these districts should be placed. Mr. Bishop noted that the Chapter 40-R zone is a mixed use by right, and hopefully the Town will be able to incorporate the surrounding area with the same type of environment, allowing for the concept of small business with business and living quarters within the same site.

### **MINUTES OF PREVIOUS MEETINGS**

**MOTION** by Mr. Qualey, **SECOND** by Mr. Christensen, to approve the open session minutes of January 10, 2011 as drafted. **MOTION** carried unanimously 5 to 0.

### **CORRESPONDENCE**

Chairman Spinney informed the Board that he had received a letter from the Library Board of Trustees asking the Planning Board's endorsement for the library grant. Mr. Hassinger asked if the letter was for all Board members, and if it had a response deadline. Mr. Robbins noted that he had seen the letter, which was the library trustees soliciting endorsement from the various Town boards, and with a deadline of last Friday. Mr. Robbins noted that when this type of letter is sent out, it is difficult for most boards to respond in a timely manner due to meeting schedules. Mr. Hassinger stated he would have been interested in reading the letter, is concerned about the Perrault property behind the library for parking, and responding with regard to the Grafton Common Committee.

### **REPORTS FROM PLANNING BOARD REPRESENTATIVES ON TOWN COMMITTEES AND CMRPC**

Mr. Qualey reported to the Board that the Sign By-Law Committee was up and running with new meeting dates of the 2<sup>nd</sup> and 4<sup>th</sup> Wednesdays of the month in Conference Room E-2. Mr. Qualey stated that the on line survey was complete and the Committee is hoping to provide copies to Town Counsel, the Board of Selectmen and the Planning Board, allowing them to see what the people would like for signs in Town. Mr. Qualey noted that the Committee plans to run some public forums and public outreach and then present their final by-law at Town Meeting. Chairman Spinney suggested the Committee allow the Planning Board plenty of time to review the by-law prior to Town Meeting.

### **“BRIGHAM HILL ESTATES” SUBDIVISION – TOLL BROTHERS, INC. (OWNER) PLANNING BOARD HEARING – MASS GENERAL LAWS, CHAPTER 41, SECTION 81W – TO CONSIDER THE MODIFICATION, AMENDMENT OR RESCISSION OF THE DEFINITIVE PLAN APPROVAL OF JANUARY 28, 2009 – OFF 15 BRIELLE ROAD AND 153 BRIGHAM HILL ROAD**

Chairman Spinney recused himself to the audience due to a conflict of interest.

Vice-Chair Hassinger presided as Chairman and opened the public hearing after Mr. Qualey read the legal notice.

Present for the meeting were Attorney Mark Kablack, representing Toll Brothers, Inc.; and Eric Carlson, David Bauer, and Greg Kamendulski of Toll Brothers, Inc. Also present was Attorney Ginny Kramer, representing Town Counsel for Bowman & Penski.

Mr. Bishop briefly reviewed the situation of Toll Brothers, Inc. beginning construction on the “Brigham Hill Estates” Subdivision and realizing they are unable to access the subdivision from Brielle Road due to the fact that it is not a public way. Mr. Bishop further noted that a meeting had been held last week with Toll Brothers representatives and attorney to try to reach an acceptable solution for all involved. Mr. Bishop stated that Attorney Kablack was present this evening with a proposed solution to the Town.

Attorney Kablack informed the Board that his client has been working cooperatively to find resolution to the problem of Brielle Road. Attorney Kablack stated that he was here tonight to hopefully form a partnership with the Town to bring Brielle Road to the standards for acceptance by the Town. Attorney Kablack noted that the Town had taken over the remainder of the bond amounting to approximately \$46,000.00 and was unable to complete the roadway with the funds available. Attorney Kablack added that a punch list from Graves Engineering dated August, 2010 identified the most crucial items that were needed to bring the subdivision and roadway into Town compliance. Attorney Kablack submitted to the Board a Toll Brothers revised Graves Engineering punch list of items to be completed that they felt comfortable taking on with associated cost risk. Attorney Kablack stated that they felt comfortable the list would satisfy the residents of Brielle Road, the Planning Board, and the Town, adding that the Brielle community has existed for quite a while and has established a neighborhood setting. Attorney Kablack pointed out that the revised list eliminates the street trees, sidewalks and associated items, and easement bounds, noting that the first two items have been requested to be eliminated by the residents. Attorney Kablack finished by stating that if this revised list is accepted, the Town and Toll Brothers will enter a Memorandum of Understanding, with the details to be worked out with Town Counsel; the new plan will be changed over to CAD acknowledging what is saved or changed in the As-built/Acceptance plans, and will be in a form acceptable to the Registry.

Mr. Hassinger was interested to know if the rules in effect for the subdivision plan were from 1988 or more current, as the regulations for bounds have changed over the years. Mr. Hassinger was also concerned that eliminating items that are part of the approved design would be altering an approved plan.

Mr. Bishop remarked that due to the unusual situation and period of time the subdivision has been in default, the Planning Board would have the flexibility to make a determination of completeness on its own motion.

Town Counsel Ginny Kramer stated that the subdivision has never been formally modified due to the default state, but the Board can allow this during their determination of completeness process.

Mr. Hassinger expressed concerns on receiving lawsuits regarding the Planning Board treating subdivisions differently, and does not want to compromise the Board’s ability to enforce their rules. Mr. Hassinger pointed out that they have not been able to defend their decision if they are not being consistent.

Town Counsel noted she would look into Mr. Hassinger's point, and added that she would be comfortable defending a decision in this case.

Mr. Christensen asked Attorney Kablack if his client was amenable to the punch list from Graves Engineering to bring the street to Town acceptance standards. Mr. Bishop noted that the revised list submitted by Toll Brothers was essentially the same list with the sidewalks and trees removed and a few adjustments.

Mr. Christensen asked if the street acceptance work totals more than \$46,000.00, who will be responsible for the additional expense? Attorney Kablack explained that if the Planning Board is in agreement on the revised list submitted and that the \$46,000.00 can be used through some mechanism, then the \$46,000.00 will be at their risk, with the commitment only to do what is on the list and not being held responsible to fix anything previously done improperly years ago. Mr. Christensen noted that he was concerned that if something does come up that was improperly done or unexpected, and if Toll Brothers are not responsible and the Town cannot afford to pay...who will be responsible? Mr. Bishop stated that he had walked the area with the appropriate people who have created the final punch list to finish the roadway for acceptance, and they saw nothing to indicate that the roadway was in condition with all functions working properly.

Mr. Qualey stated he would like to require any fencing that is needed for safety be added back to the punch list. Attorney Kablack answered that only fencing associated with the sidewalk construction was eliminated; and that all fencing for safety issues still remains.

Mr. Hassinger discussed his concerns for how to structure an agreement that will allow Toll Brothers to move forward and still allow the Town the assurances that the Brielle Road issue will be resolved.

Mr. Bishop added that Town Counsel will be working with Toll Brothers and Attorney Kablack to draft a Memorandum of Agreement for Planning Board approval to fully vet the issues.

Bruce Spinney of 19 Brielle Road stated that he was speaking as a resident of Brielle Road and represents the neighborhood with a signed petition to submit requesting that sidewalks and trees be eliminated, but the rest of the punch list to be enforced.

Mr. Hassinger read the submitted petition statement into the public hearing record.

Marsha Platt of 122 Brigham Hill Road stated she was a member of the Board of Assessors and was disputing the developer's request to eliminate the permanent bounds for the homeowners, which the Assessors Office uses to keep descriptions of homeowners properties. Mr. Hassinger noted that he encourages the Assessors Office to make those requests known on the Town Department correspondence sheets in the future.

William Keeler of 14 Brielle Road expressed concerns for legal issues if the entire plan is rescinded and there are trucks moving in and out of the subdivision. Mr. Keeler stated that if the subdivision had been approved in error, then the Planning Board should be able to rescind it.

Town Counsel Ginny Kramer stated that the property adjacent to Brielle Road was owned by a developer who has a Definitive plan approval that states he can build a subdivision. The Board is holding a public hearing in accordance with the provisions of Mass General Laws, Chapter 41, Section 81W to consider the issue of Brielle Road to be used as an access roadway for the

subdivision when it is not a public way. Attorney Kramer noted the Town is trying to rectify this issue with the developer.

John Koshivos of 4 Brielle Road stated it would be a worse situation to stop the project and leave the neighborhood with a cleared out field with nothing there.

Michael Urban of 5 Hillside Avenue expressed concerns that when Toll Brothers bought the subdivision they would have been aware that Brielle Road was not a public way. Mr. Christensen explained that Toll Brothers are not responsible to bring Brielle Road up to public standards; they bought an approved plan that had a fundamental issue. Mr. Urban argued that they bought a bad plan and are now making demands on the Town to deal with the issues in order to proceed with their plan. Mr. Robbins added that at the time the Brigham Hill Estates subdivision was approved, it was assumed that Brielle Road would become a public way; circumstances changed and the Town is now trying to clear up the problem. Attorney Kramer noted that in addressing Mr. Urban's point, that it is very unclear what the ruling would be in court on this issue; that bonified purchases are protected from certain legal actions; and that Brielle Road is not part of the development.

Beth Fitzmaurice of 157 Brigham Hill Road informed the Board that she was a new resident of the area and asked the Board to explain to her the circumstances and safety of the associated traffic between Brigham Hill Road and Brielle Road.

Mr. Hassinger received unanimous consent to direct Town Counsel to work on what has been discussed and continue the hearing to a date certain with a Memorandum of Agreement.

**MOTION** by Mr. Christensen, **SECOND** by Mr. Robbins, to continue the public hearing to February 14, 2011 at 7:30 p.m. **MOTION** carried unanimously 5 to 0.

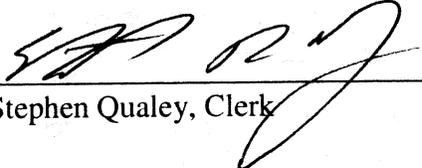
**MOTION** by Mr. Christensen, **SECOND** by Mr. Hassinger, to adjourn the meeting. **MOTION** carried unanimously 5 to 0.

The meeting was adjourned at 8:48 p.m.

## **EXHIBITS**

- **Action Item 1A – MRSP 2010-8, “Abby Woods” Subdivision, 18 Carroll Road, North Grafton; 10 lot (conventional) or 12 lot (flexible) subdivision**
  - Draft Decision, draft dated January 21, 2011, 13 pages.
- **Item 5A: Draft Meeting Minutes**
  - Grafton Planning Board, December January 10, 2011, 6 pages.
- **Public Hearing 9A: “Brigham Hill Estates” Subdivision, Central Toll Brother, Inc., Off Brigham Hill Road and Brielle Road, North Grafton:**

- Memorandum regarding Project Review Comments from the Board of Health, received 1/3/11, 1 page.
- Brielle road Cost to Complete / Dedication Estimate, submitted by Attorney Mark Kablack representing Toll Brothers, 1 page, no date, submitted to the Board during the public hearing on January 24, 2011.
- Original petition, Removal of Sidewalk and Plantings from the Brielle Road Approved Subdivision Plan, 1 page, no date, submitted to the Board during the public hearing on January 24, 2011.

  
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Stephen Qualey, Clerk