

**Minutes of Meeting
Grafton Planning Board
April 23, 2012**

RECEIVED-TOWN CLERK
GRAFTON, MA.

JUN 12 8 46 AM '12

A regular meeting of the Grafton Planning Board was held on April 23, 2012 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 Stephen Qualey, Clerk James Walsh III, Robert Hassinger, David Robbins and Associate Member Sargon Hanna. Staff present was Town Planner, Stephen Bishop and Assistant Planner Ann Morgan.

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

Chairman Spinney received unanimous consent to take Action Item 1-B out of order.

ACTION ITEM 1-B - PLANNING BOARD RECOMMENDATION FOR DETERMINATION OF COMPLETENESS FOR NICHOLS DRIVE, MAGILL & ASSOCIATES, INC., PETITIONER

Mr. Bishop informed the Board that the Request for Determination of Completeness package has been reviewed by the Planning Office and recommended that the Planning Board make a positive determination.

MOTION by Mr. Robbins, **SECOND** by Mr. Walsh, to issue a "Determination of Completeness" for Nichols Drive, located in the "Nichols Way Subdivision". **MOTION** carried unanimously 5 to 0.

ACTION ITEM 1-A - CONSIDER DECISION - SP 2012-3 ALFREDO MENDES, TRUSTEE OF THE MENDES REALTY TRUST - 8 PUTNAM LANE

Mr. Bishop noted that the draft decision provided an exhaustive set of Findings, including a long history detailed in Finding #8; and adding that the Decision and Conditions have been left blank for the purpose of the Board to work out the details by adding specific language.

Chairman Spinney wished to note that since Mr. Robbins was unable to vote due to absence, that Mr. Hanna was designated to vote on this special permit.

MOTION by Mr. Walsh, **SECOND** by Mr. Qualey, to make favorable Findings for F-1 through F-18.

DISCUSSION: Mr. Qualey pointed out some corrections and Mr. Walsh questioned the language in Finding F-18 regarding Mr. Donadio's statement during the hearing, but the information was not corroborated.

MOTION carried unanimously 5 to 0.

Mr. Robbins recused himself to the audience as a non-voting member for this decision.

The Board discussed Finding F-19 with regard to the references made in Finding F-14 stating that the Applicant did not provide any design or engineering information to address the increased vehicular load or the drainage impacts; and did not address the need to reevaluate the requirement to upgrade the driveway to access standards and public safety design requirements.

MOTION by Mr. Hassinger, **SECOND** by Mr. Walsh, to make negative findings for Finding F-19. **MOTION** carried unanimously 5 to 0

MOTION by Mr. Hanna to make a favorable finding for Finding F-20. There was no second to the motion.

MOTION by Mr. Hassinger, **SECOND** by Mr. Qualey, to make negative findings for Finding F-20.

DISCUSSION: The Board discussed the ZBA appeal case that is before the court. Attorney Knapik was allowed to clarify the details of the appeal case and how the application eventually was referred to the Planning Board for approval.

MOTION carried unanimously 5 to 0.

Chairman Spinney received unanimous consent to table the SP 2012-3 Mendes Decision until later in the meeting.

MINUTES OF PREVIOUS MEETINGS

MOTION by Mr. Qualey, **SECOND** by Mr. Walsh, to approve the open session minutes of April 9, 2012 as drafted. **MOTION** carried 4 to 0 with Mr. Robbins still absent from the Board.

STAFF REPORT

Mr. Bishop informed the Board that on Thursday evening on June 7, 2012 there will be another workshop at the South Grafton Community House in South Grafton regarding Village Mixed Use. Mr. Bishop added that also on June 14th, Flag Day, the ribbon cutting ceremony will be held for Mill Villages Park.

Mr. Hassinger suggested that Mr. Bishop request Grafton Cable to cover the ceremony live.

Mr. Walsh announced that the next Super Park meeting will be Tuesday in Conference Room E and the next Agricultural Commission meeting will also be on Tuesday in Conference Room B. Mr. Walsh added there will be an informational chicken by-law meeting held at 10:00 a.m. at the South Grafton Community House.

Mr. Robbins returned to the Board.

ZBL 2012-2 PROPOSED AMENDMENT TO THE ZONING BY-LAWS – AMEND SECTION 4.4.3.2.12 – CEVMS & AMEND SECTION 4.4.4.1 – TEMPORARY SIGNS

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

Chairman Spinney noted that the Board of Selectmen had requested the Planning Board hold a public hearing and make a recommendation to them specifically regarding CEVMS & Temporary Signs, yet there was no one present from the Board of Selectmen to direct their questions to.

Mr. Qualey stated that he was the Chair for the Sign By-Law Committee, and that the Committee's Clerk and a member were here. Mr. Qualey added that his Committee was charged by the Board of Selectmen to come up with a sign by-law for CEVMS and for Temporary Signs.

Mr. Bishop remarked that since there is exactly 21 days to Town Meeting, the Board will have to close the hearing and make a recommendation tonight to legally present the proposed amendment to Town Meeting.

Chairman Spinney polled the Board to see where the Planning Board stands with regard to the proposed amendment.

Mr. Walsh stated that the by-law was beyond his expertise due to the limited amount of time he has been seated on the Planning Board, but that he is comfortable with electronic usage signs.

Mr. Robbins remarked that he could not support the amendment as proposed, adding that he viewed the by-law as unfair and that CEVMS should be allowed in any district where illuminated signs are allowed under the current by-law. Mr. Robbins noted that he would need to see some justification for the restrictions and could not support the amendment as written.

Mr. Hassinger stated that the current by-law does regulate all of the language in the proposed amendment and that two generations of Town Counsel had said that. Mr. Hassinger noted the two things that should be considered are if this is a good idea and if the Town should or should not make these changes.

Mr. Hanna stated he shared Mr. Robbin's sentiments and that Mr. Hassinger also has some good points. Mr. Hanna questioned if any other groups had looked at the by-law.

Chairman Spinney lamented that there was not sufficient time to vet the proposed by-law language and no representative present to answer any questions for the Board.

Ruth Anderson of 30 Elmwood Street, South Grafton stated that it was too involved to put the entire sign by-law section before Town Meeting, so it was broken down into the CEVMS and Temporary Signs for now. Ms. Anderson noted that the Committee has been back & forth with the Zoning Enforcement Officer in structuring this proposed by-law, and that what is before you now has been reviewed by the Town Administrator, the Board of Selectmen, the Sign By-Law Committee, Building Inspector Robert Berger and Stephen Bishop.

The Board continued to discuss their concerns with the legal aspects, fairness and possibly whether CEVMS should even be allowed by right wherever illuminated signs are permitted with the current by-law.

Chairman Spinney received unanimous consent to move on to the second part of the Proposed By-Law amendment dealing with Temporary Signs.

Mr. Hassinger made several points concerning the changes causing certain sections of the by-law to be missing, nothing specific on political signs and fairness questions with giving different rights and restrictions regarding For Profit versus Non Profit.

Mr. Robbins expressed concerns about the use of the wording for Profit Organizations, which should be referred to as Not For Profit Organizations; for example 501C3, 501C4.

Mr. Qualey remarked that his Committee has revamped the entire Definition section of the by-law specifically to clarify all of this language.

Mr. Walsh agreed with the statements of Mr. Hassinger and Mr. Qualey, noting that much of the language was confusing and not easy to pass along to Town Meeting.

Chairman Spinney reminded the Board that if they do not close the public hearing on this proposed amendment that it cannot legally go before Town Meeting. Mr. Hassinger recommended that the Board either close on both proposals, or not deliver a report on either one.

Chairman Spinney suggested the Board deal one-on-one with Mr. Bishop who will email a draft report which can be viewed and comments/suggestions made on an individual basis.

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

Mr. Hassinger & Mr. Robbins repeated their concerns that the report reflects the seriously flawed legislation being presented with this proposed amendment. Mr. Bishop noted that he has heard each member's independent thoughts and vote, and he will work one on one to tweak the report to reflect the Board's recommendations.

MOTION by Mr. Hassinger, **SECOND** by Mr. Walsh, to direct Staff to draft a report on the CEVMS proposed amendment, stating the Planning Board votes not to recommend acceptance of this article as written due to fairness and legality concerns, and specifically whether CEVMS should be allowed by right wherever illuminated signs are permitted. **MOTION** carried unanimously 5 to 0.

MOTION by Mr. Hassinger, **SECOND** by Mr. Walsh, to direct Staff to draft a report regarding the TEMPORARY OR PORTABLE SIGNS proposed amendment, stating the Planning Board votes not to recommend acceptance of this article as written due to structural and specific provision deficiencies, although the Board wished to note that they generally supported the intent of the amendment. **MOTION** carried unanimously 5 to 0.

Mr. Bishop informed the Board that he would transmit an immediate draft response to the Board of Selectmen and the Finance Committee before their next meetings.

Chairman Spinney called a five minute recess to the meeting.

Chairman Spinney received unanimous consent to resume the Mendes decision.

MOTION by Mr. Walsh, **SECOND** by Mr. Hassinger, to make an unfavorable finding for F-21.

DISCUSSION: Mr. Qualey requested 2 conditions be made with regard to Finding F-21: that there be signage placed as to the location of the home being served by the fourth driveway; and that there are not any hardscapes located within the Tower 1 fire truck turning radius.

MOTION failed by roll call vote: Hanna-nay, Qualey-nay, Hassinger-aye, Walsh-aye, Spinney-nay.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to make a favorable finding for F-22.

DISCUSSION: Mr. Walsh stated this finding was not proven at this public hearing.

MOTION carried by roll call vote: Hanna-aye, Qualey-aye, Hassinger-nay, Walsh-nay, Spinney-aye.

MOTION by Mr. Hanna, **SECOND** by Mr. Qualey, to make a favorable finding for F-23.

DISCUSSION: Mr. Hassinger pointed out that the current common driveway is closest to the Miscoe Brook, is in a critical ACEC area, no drainage was approved and no environmental impacts were shown.

Mr. Qualey rescinded his **SECOND** to the **MOTION**.

Mr. Hanna withdrew his **MOTION**.

DISCUSSION: Attorney Knapik reminded the Board that the neighbors preferred the common driveway access over the Lot 11 easement.

MOTION by Mr. Hanna, **SECOND** by Mr. Qualey, to make an unfavorable finding for F-23.

MOTION carried by roll call vote: Hanna-aye, Qualey-aye, Hassinger-no, Walsh-aye, Spinney-aye.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna to make a favorable finding for F-24.

DISCUSSION: Mr. Hassinger noted that it was not a good trend to start with the ease of using common driveways to access public ways, specifically with this language and that others could take this same position and argument to add a common driveway. Mr. Walsh stated the Board should set up a standard for future policies.

MOTION carried by roll call vote: Hanna-aye, Qualey-aye, Hassinger-nay, Walsh-nay, Spinney-aye.

MOTION by Mr. Hanna, **SECOND** by Mr. Qualey, to approve Finding F-25 as written. **MOTION** carried unanimously 5 to 0.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to approve Finding F-26 as written. **MOTION** carried unanimously 5 to 0.

MOTION by Mr. Walsh, **SECOND** by Mr. Hassinger, to make an unfavorable finding for F-27. **MOTION** carried unanimously by roll call vote: Hanna-aye, Qualey-aye, Hassinger-aye, Walsh-aye, Spinney-aye.

MOTION by Mr. Qualey to make a favorable finding for F-28 with the two conditions previously mentioned regarding signage and hardscape.

Mr. Qualey retracted his Motion.

MOTION by Mr. Qualey, **SECOND** by Mr. Walsh, to make an unfavorable finding for F-28. **MOTION** carried unanimously by roll call vote: Hanna-aye, Qualey-aye, Hassinger-aye, Walsh-aye, Spinney-aye.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to make a favorable finding for F-29. **MOTION** carried unanimously by roll call vote: Hanna-aye, Qualey-aye, Hassinger-aye, Walsh-aye, Spinney-aye.

MOTION by Mr. Hassinger to make an unfavorable finding for F-30. There was no Second.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to make a favorable finding for F-30. **MOTION** carried by roll call vote: Hanna-aye, Qualey-aye, Hassinger-nay, Walsh-aye, Spinney-aye.

MOTION by Mr. Hanna, **SECOND** by Mr. Qualey, to make favorable findings for F-31, F-32, & F-33. **MOTION** carried unanimously 5 to 0.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to make a favorable finding for F-34. **MOTION** carried by roll call vote: Hanna-aye, Qualey-aye, Hassinger-nay, Walsh-nay, Spinney-aye.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to make an unfavorable finding for F-35. **MOTION** carried unanimously by roll call vote.

MOTION by Mr. Hanna, **SECOND** by Mr. Qualey, to make favorable findings for F-36 & F-37. **MOTION** carried unanimously by roll call vote.

MOTION by Mr. Walsh, **SECOND** by Mr. Hassinger, to make an unfavorable finding for F-38.

MOTION carried 4 to 1 by roll call vote: Hanna-nay, Qualey-aye, Hassinger-aye, Walsh-aye, Spinney-aye.

MOTION by Mr. Hanna, **SECOND** by Mr. Qualey, to make a favorable finding for F-39.

DISCUSSION: Mr. Hassinger disagreed and stated it will create a nuisance, hazard or congestion.

MOTION carried by roll call vote: Hanna-aye, Qualey-aye, Hassinger-nay, Walsh-nay, Spinney-aye.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to make a favorable finding for F-40.

MOTION carried by roll call vote: Hanna-aye, Qualey-aye, Hassinger-nay, Walsh-aye, Spinney-aye.

MOTION by Mr. Walsh, **SECOND** by Mr. Hassinger, to make a favorable finding for F-41.

MOTION carried by roll call vote: Hanna-nay, Qualey-nay, Hassinger-aye, Walsh-aye, Spinney-aye.

MOTION by Mr. Walsh, **SECOND** by Mr. Hassinger, to deny Waiver W-1.

DISCUSSION: Mr. Walsh noted that in Finding F-27 that the applicant did not satisfy the submission requirements for a site plan. Mr. Hassinger added that with regard to Finding F-14, the applicant failed to provide the necessary information to ensure the adequacy of the way for the additional common driveway.

MOTION failed 3 to 2 by roll call vote: Walsh-aye, Spinney-nay, Hassinger-aye, Qualey-nay, Hanna-nay.

MOTION by Mr. Hanna, **SECOND** by Mr. Hassinger, to grant Waiver W-1. **MOTION** carried 3 to 2 by roll call vote: Hassinger-nay, Qualey-aye, Hanna-aye, Spinney-aye, Walsh-nay.

VOTE TO EXTEND DURATION OF MEETING BEYOND 10:00 P.M.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to extend the meeting beyond 10:00 p.m. **MOTION** carried unanimously 5 to 0.

MOTION by Mr. Qualey to approve the decision with the following conditions: 1.) Signage acceptable to the Fire Department depicting all the homes on the common driveways.

Mr. Qualey withdrew his decision approval Motion and wished to document only the conditions stated at this time. Mr. Qualey continued with condition #2.) That no hardscape items are placed within the turning radius of the Tower One Fire apparatus.

Chairman Spinney requested the Board members each discuss their individual votes and reasons substantiating their decision.

Attorney Knapik refreshed the existing appeal information stating that there is currently an abutters ZBA decision appeal pending in Land Court with regard to the decision outcome of Mr. Mendes Special Permit approval for a fourth lot access to the existing common driveway.

Attorney Knapik affirmed that the abutters will withdraw their appeal if the Planning Board grants Mr. Mendes approval on the common driveway access.

Mr. Hanna stated he votes yes because it makes sense for Mr. Mendes to build the house and this choice seems to be in favor of the most people.

Mr. Qualey stated he votes to approve the special permit for all of the reasons previously stated.

Mr. Hassinger stated he was against the approval and pointed out that the Planning Board does not negotiate a deal with a developer, fight it out and then give back to the developer.

Mr. Walsh stated he could not vote for the approval after hearing all the information of the entire proceedings, taking everything into consideration and also what is best for the Town.

Mr. Hanna added that denying the approval was only preventing the inevitable, that the house will be built eventually, and that this denial will only prolong the hardship for the homeowners and the subdivision.

Mr. Hassinger wished to note that the Board needs to make the right choice for the Town, have consideration for the importance of the ACEC, enforce what has been established in the By-Laws and Subdivision Rules & Regulations, and specifically must adhere to decisions made in the past.

Mr. Hanna noted that the Planning Board should look at each application as a singular case and not be concerned with the past or the future.

MOTION by Mr. Qualey, **SECOND** by Mr. Hanna, to grant Special Permit/Site Plan SP 2012-3 with the stated conditions. **MOTION** failed 3 to 2 by roll call vote: Hanna-aye, Qualey-aye, Hassinger-nay, Walsh-nay, Spinney-aye.

The Special Permit/Site Plan SP 2012-3 was denied.

The Board, noting this was their last official meeting together as a Board, acknowledged their pleasure in working with Chairman Spinney and wished him luck in his race with the Board of Selectmen.

MOTION by Mr. Qualey, **SECOND** by Mr. Robbins, to adjourn the meeting. **MOTION** carried unanimously 5 to 0.

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

EXHIBITS

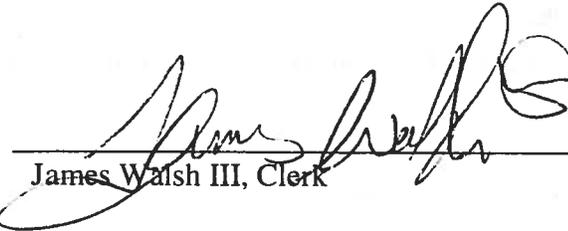
- **Action Item 1A: Consider Decision – SP 2012-3 Alfredo Mendes, Trustee of the Mendes Realty Trust, 8 Putnam Lane**
 - Draft Special Permit and Site Plan Approval Decision, dated April 6, 2012, 10 pages.

- **Action Item 1B: Planning Board Recommendation for Determination of Completeness for Nichols Drive, Magill & Associates, Inc., petitioner**
 - Memorandum, Staff Review, Nichols Drive / “Nichols Way” Subdivision Determination of Completeness, dated April 13, 2012, 1 page.
 - Correspondence from Magill Associates, Inc., Nichols Drive Request for Determination of Completeness, dated and received April 2, 2012, 2 pages, including the following attachments:
 - Correspondence, Grafton Conservation Commission, Nichols Way Subdivision (Nichols Drive), dated March 29, 2012, 1 page.
 - Correspondence, Grafton Department of Public Works, Nichols Way Subdivision, dated March 29, 2012, 1 page.
 - Certificate of Compliance, dated March 28, 2012, 1 page.
 - Copy of a Citizen’s Petition to see if the Town will vote to accept the roadways and associated utilities and easements know as Nichols Drive, no date, 1 page.
 - Correspondence, Grafton Board of Sewer Commissioners, Nichols Way Subdivision, dated December 1, 2009, 1 page.
 - Correspondence, Grafton Water District, Nichols Way, dated May 19, 2011, 1 page.
 - Copy of Public Notice, Request for Determination of Completeness, Nichols Drive, advertised March 28, 2012, 1 page.
 - Correspondence, Graves Engineering, Nichols Way As-Built Plan, Acceptance Plan and Legal Descriptions Review, dated April 2, 2012, received April 3, 2012, 2 pages.
 -

- **Item 5: Draft Meeting Minutes**
 - Grafton Planning Board, April 9. 2012, 4 pages.

- **Public Hearing 9A: ZBL 2012-2 Proposed Amendment to the Zoning By-Laws – Amend Section 4.4.3.2.12 – CEVMS & Amend Section 4.4.4.1 – Temporary Signs**
 - Memorandum to the Planning Board, Recommended Sign By-Law Revision - May Town Meeting, dated March 28, 2012, 1 page, with the following attachments (3 pages):
 - Section 4.4.3.2 – Draft language, Changeable Electronic Variable Message Signs (CEVMS)
 - Section 2 – Draft Language, Amend Section 2.3 Definitions for CEVMS

- Section 4.4.4 – Draft language, Section 4.4.4.1 – Organization, Nonprofit and Profit Organization
- Section 2 – Draft Language, Amend Section 2.3 Definitions for Temporary Sign and Nonprofit Organization
- o Legal Notice for Public Hearing, ZBL 2012-2, date stamped March 30, 2012, advertised in the Grafton News on April 4 and April 11, 2012, 4 pages.



James Walsh III, Clerk