



TOWN OF GRAFTON
Zoning Board of Appeals
GRAFTON MEMORIAL MUNICIPAL CENTER
30 PROVIDENCE ROAD
GRAFTON, MASSACHUSETTS 01519
Phone: (508) 839-5335 ext 1157 FAX: (508) 839-4602
www.grafton-ma.gov
koshivosk@grafton-ma.gov

RECEIVED TOWN CLERK
GRAFTON, MA

2022 MAY 16 AM 9:12

Case Number: 2022/715-3
Decision on Application for
Determination of Completeness and Release of Surety

Applicant: Adams Road Company, LLC
Project Location: 68, 70 and 72 Adams Road
Assessors Map 41, Parcels 4, 4A and 15

I. Background

The “High Point Estates” residential subdivision located off Adams Road (the “Project”) was approved under a Chapter 40B Comprehensive Permit issued by the Grafton Zoning Board of Appeals (“ZBA”) on December 24, 2002, modified by a decision of the Housing Appeals Committee dated December 4, 2004, and amended by the ZBA on December 14, 2005.

On or about March 11, 2020, the Applicant, Adams Road Company, LLC (“Applicant”), filed with the ZBA an application for a Determination of Completeness pursuant to Section 3.3.5.1 of the Grafton Subdivision Rules and Regulations. This regulation is applicable because the governing Chapter 40B comprehensive permit expressly provided that the Project was subject to all local regulations unless waived. The “determination of completeness” framework in the Subdivision Rules and Regulations, which governs post-construction review and approval of roads and infrastructure, was not waived, and therefore applies. The Applicant does not contest this.

The Planning Board has a form application for determinations of completeness. The form acts as a checklist of sorts, requiring all subdivision developers to provide the same type of documentation to the Town to ensure that the Project has been constructed in accordance with the permits and the Subdivision Rules and Regulations, and that the infrastructure has been satisfactorily installed to Town specifications.

On November 23, 2020, the Planning Board determined that because the Project was permitted under Chapter 40B, the ZBA has jurisdiction to determine if the Applicant has sufficiently completed construction of the roads and related infrastructure, and if so, to issue a certificate of completion. As noted above, the Planning Board would normally perform this duty, but under Chapter 40B, the ZBA fulfills this role. However, with respect to the road

acceptance process, it is the *Planning Board* that must make a recommendation to the Select Board whether a road should be accepted as a public way or not, under G.L. c. 41, § 81I.

The Applicant's 2020 application for determination of completeness was ultimately denied due to continued flooding and erosion conditions on Lot 76 (3 High Point Drive), which were allegedly caused by lot development uphill from Lot 76. Lot 76 contains the original house on the Project Site and is now owned by Nancie Picconi. Erosion and sediment control issues have plagued this Lot since at least 2016. On July 24, 2018, Ms. Picconi filed a formal zoning enforcement request with the Grafton Building Commissioner. In response to this complaint, former Town Planner Joseph Laydon and the ZBA's consulting engineer, Jeffrey Walsh, visited the site several times and filed opinions and reports. Mr. Walsh corroborated Ms. Picconi's observations, and opined that the likely source of the sediment on Lot 76 was erosion from Lot 58, and possibly Lot 55.

Grafton Subdivision Rules and Regulations, Section 4.6.1 provides:

"Lots shall be prepared and graded in such a manner that development of one lot shall not cause detrimental drainage on another lot (either within or outside the subdivision) or onto streets either during construction or upon completion..."

Further, Comprehensive Permit Condition 32 required the Applicant to abate any nuisances during construction of the Project. Condition 46 required that stormwater systems be operational and fully constructed prior to the issuance of occupancy permits for a particular phase.

To resolve this issue, the Planning Board, ZBA and the Applicant agreed on a framework under which the ZBA would retain, at the Applicant's expense, an independent civil engineer with expertise in stormwater modeling to provide a report on whether the Applicant's site and lot development activities have caused new flooding or increased flooding on Lot 76 to such a degree that it would constitute a nuisance or trespass under Massachusetts common law. See, Tucker v. Badoian, 376 Mass. 907 (1978). If the answer is "no," then that issue would no longer be an impediment to a determination of completeness. If the answer is "yes," then the Applicant must perform whatever actions are necessary to eliminate the drainage condition before obtaining the determination of completeness.

If the ZBA determines that construction is complete, and no further work is needed with respect to Lot 76, then the Applicant can petition the Select Board to place an article on the next Town Meeting warrant to accept the roads within the Project as public ways. G.L. c. 82, §§ 17 and 21. The Select Board must then refer the matter to the Planning Board for a recommendation pursuant to G.L. c. 41, § 81I.

A renewed application for determination of completeness was filed with the ZBA in March, 2022. The application was incomplete when filed, and was supplemented by the Applicant's representatives up and through the date of the ZBA's hearing, April 28, 2022. Notice of the public hearing was published on April 14 and April 21 in the Grafton News, and was mailed to the owners of record of the lots within the High Point Estates subdivision.

II. The Public Hearing

On June 1, 2020, the ZBA's peer review engineering consultant, Jeffrey Walsh, P.E., filed a letter to the ZBA commenting on the status of the construction of the roads, utilities and other infrastructure for the Project. Mr. Walsh opined in the letter that most of the open design issues have been resolved, and reported at the ZBA hearing on April 28, 2022 that he had no further concerns with the completion of the Project infrastructure.

October 22, 2020, Mr. Walsh filed a letter with the ZBA commenting on the draft "as-built" plans prepared by the Applicant's engineers. At the April 28, 2022 hearing, Mr. Walsh commented on a few notational discrepancies on the plans. Further, some of the plan sheets provided to him electronically were not the most recently-updated plan sheets. Mr. Walsh recommended that he review the hard copies of the plans that were filed with the ZBA office to ensure that all plan sheets are in order.

There was a discussion of an old mill structure located on the open space parcel within the Project. The fee or a restriction on the open space parcel must be conveyed to the Town of Grafton pursuant to Condition 52 of the Comprehensive Permit. The structure is dilapidated and unsecured. The ZBA agreed that the structure should be removed prior to the land being transferred to the Town.

On the issue of Lot 76, the Board reviewed an opinion letter from Sean Reardon, P.E. of Tetra Tech, Inc., who was hired to perform the independent study of the Project's impacts on Lot 76. Mr. Reardon's letter concludes that development of the lots uphill from Lot 76 had resulted in significant alterations of drainage patterns, which have caused erosion and flooding on Lot 76. Mr. Reardon further opined that re-grading and other corrective actions could be undertaken by the Applicant to alleviate the flooding conditions and to restore Lot 76.

The Reardon letter was received by the Board on the day of the hearing, and therefore the ZBA offered to continue the hearing to give the Applicant an opportunity to respond. The Applicant declined that offer, and its counsel stated that it viewed the issue as a private property dispute, and not relevant to the determination of completeness. The Applicant stated that it wanted a decision on its application rather than a continuance.

The Town Planner also noted the following other deficiencies with the Project:

(1) *Per section 5.9 of the Subdivision Rules and Regulations, Grass Plots, undeveloped areas need to be covered and seeded.* 3 undeveloped lots contain mounds of dirt and trash, and a hole for a foundation that was never constructed.

(2) *Per Section 5.15 of the Subdivision Rules and Regulations, Cleanup, §§ 5.15.1, No later than October 31 of each calendar year, the developer shall stabilize all exposed soils and other vulnerable or sensitive areas in a manner acceptable to the Conservations Commission and the Planning Board (or in this case the Zoning Board of Appeals). No additional disruption may occur except in accordance with the approved construction plan.* 3 lots are currently undeveloped and have mounds of dirt and trash on them.

(3) *Per Section 5.15 of the Town of Grafton's Subdivision Rules and Regulations,*

Cleanup, ss. 5.15.2, No lot shall be considered complete until all stumps, brush, roots, and like material and all trees, rocks, and boulders not intended for preservation by the developer shall have been removed and disposed of in a manner and place satisfactory to the Planning Board (in this case the Zoning Board of Appeals). Any fire hazard shall be removed promptly to the satisfaction of the Fire chief. This paragraph does not authorize the removal, including severing and stripping of soil loam, sand, or gravel on such lot(s). 3 undeveloped lots have mounds of dirt and trash, and one lot has an unsecured foundation hole. Also, an old building at the entrance of the development is in disrepair and falling down.

The acting Chairman William McCusker stated that he believed that the unresolved flooding and erosion issues with Lot 76 precluded a determination of completeness by the ZBA under the Subdivision Rules and Regulations. He entertained a motion, which was made William Yeomans and seconded by Vice Chair Marianne Desrosiers. The Motion was framed in the affirmative, to make a determination of completeness and to release the surety being held by Norwood Bank.

The ZBA members voted as follows:


Brian Waller, Chairman – No
Marianne Desrosiers, Vice Chairman - Yes
Kay Reed, Clerk - No
William Yeomans, Member - No
William McCusker, Member – No

The Motion failed, the effect of which is a determination of incompleteness under the Subdivision Rules and Regulations, Section 3.3.11.4.

Dated this ___ day of May, 2022.

Grafton Zoning Board of Appeals

By:



Brian Waller, Chairman