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December 30, 2022

via email (coughlanf@graffton-ma.gov)

Grafton Planning Board
30 Providence Road
Grafton, MA 01519

RE: 11 Wheeler Road Subdivision a/k/a Stillwater Estates (the "Project")
Grafton Land Trust ("GLT") Trail and Drainage

Dear Members of the Board:

At the Board's last meeting, the Board received an email opinion from Town Counsel Ginny Kremer as to the Grafton Land Trust's Modification Petition filed pursuant to MGL c. 41, Section 81W regarding the Project. She advised the Board that GLT had no standing to file a modification petition under Section 81W and also opined that the Stillwater Estates drainage matter is a private matter that the Board should refrain from getting involved in. Per the Town Planner, a response from GLT had to be filed by December 30 or Town Counsel and the Town Planner would consider the matter closed. In accordance with that request, I present the following:

1 Standing

As you know, the Board does not need a Modification Petition from an "interested party" to modify an approval, as Section 81W gives the Board the power on its own initiative to modify a plan. Thus, whether or not GLT has standing is irrelevant to the ultimate decision on this matter, since, under either scenario, it is the Board's decision on whether to modify the approval to address the drainage matters or not. As such, as formally stated below, at this time, GLT withdraws its modification request to simplify matters, even though GLT clearly has standing, as indicated in the footnote below.¹

¹ There appears to be only one case interpreting the phrase "any party interested" as it is used in MGL c 41, Section 81W. In that case, Hamilton v Planning Board of Beverly 35 Mass App Ct 386 (1993), the court determined the phrase to mean "a person having a cognizable interest". While there are not cases under 81W interpreting the

2. Stormwater Management is Not a Private Matter

Atty Kremer states in her email that this drainage issue is a private matter and the Board should not get involved. However, in Conway v. Town of Westford Planning Board, Misc 16-000570 (Mass. App. Ct.) 2020), the Court found as follows:

Chief among the policy concerns underlying the enactment of the [Massachusetts] Subdivision Control law was to ensure the provision of “adequate drainage, sewerage, and water facilities, without harmful effect to adjoining land.

It is therefore indisputable that addressing this drainage problem is absolutely within the Board’s purview and not a private matter. The original filing for subdivision approval by the McGriffs, the original applicants, specifically acknowledged that damage would occur to GLT property, citing measures to “reduce ponding [on the trail] from both rainfall and stormwater runoff” and “to prevent erosion and flooding.”

Those concerns have indeed become a reality. GLT has previously presented photo evidence of the flooding and siltation on the adjacent GLT trail in late Summer. I have included in the cover email to his correspondence photos and videos taken within the last two weeks which again show siltation and flooding issues on the trail. It is of note that these latest photos come after the supposed improvements of the drainage system and siltation forebay have been made.

It is important to note that this flooding and siltation make the trail impassable, thereby denying GLT members and the public use of the trail, which is the sole use of that piece of property along the river. It is used for no other purpose. GLT requests that the Board, on its own initiative, modify the subdivision approval so as to address this major drainage issue.

3. Withdrawal of Modification Petition

As noted above, to simplify matters with the Board on this matter, GLT respectfully withdraws its modification petition at this time. By doing so, it simplifies the legal issues and

phrase, it is often an issue in the appeal of zoning matters where it is settled law that “abutters or abutters of abutters ... entitled to [legal] notice” have a presumption of standing. Standerwick v Zoning Board of Appeals of Andover, 64 Mass App Ct 337.

This interpretation of the meaning of “any party interested” is consistent with the interpretation given by the Massachusetts Federation of Planning and Appeals Boards, Inc. in its “Subdivision Control Guidebook” updated through 2002. At the time of publication of the Guidebook, there had been no cases interpreting the “any party interested” phrase. The Federation’s opinion was that “although not yet defined by the courts, a person interested is most likely to a person who would receive notice of a public hearing . . .” Guidebook, page 81W-2.

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places the matter squarely with the Board as to whether, on its own initiative, it will modify the subdivision approval to address this very public stormwater management issue or let the project continue to flood the trail. The trail involved is a trail used heavily by the public. The Board continuously spoke at meetings about the importance of protection of the trail. GLT hopes that the Board will, on its own initiative, assure the protection of this asset of the community and not risk future closure of same due to erosion.

GLT appreciates your consideration of this matter given the importance of the Gummere Woods Trail to the Greater Grafton community. If you have any questions, or desire more information, please feel free to contact me.

Very truly yours,

Michael W. Sowyrda

cc: Rob Aberg, President (w/enc)