

**Sutton Planning Board
September 26, 2011
Minutes**

Approved _____

Present: S. Paul, R. Largess, T. Connors, D. Moroney, W. Whittier, J. Anderson
Staff: J. Hager, Planning Director

General Business:

Minutes

Motion: To approve minutes of 9/12/11, W. Whittier
2nd: T. Connors
Vote: 5-0-1, D. Moroney abstained as he was not present.

Lackey Dam Estates Bond Release

J. Hager reported these roadways are scheduled for public road acceptance this fall. Per the most recent letter from Graves Engineering, all work has been completed. The Board will need to hold cash in an account through the upcoming freeze and thaw cycle, to ensure funding should an old sink hole issue in front of 22 Jared Drive re-surface.

Motion: To release the triparty agreement for Lackey Dam Estates noting the developer will deposit \$5,000 with the Town to be held until no later than June 1, 2012 to cover any issues with the prior sink hole at 22 Jared Drive, R. Largess
2nd: W. Whittier
Vote: 6-0-0

Laplante Way Covenant Release

J. Hager reported the Highway Superintendent has verified this private roadway appears to have been constructed to a higher standard than the approved plans!

Motion: To release the covenant for LaPlante Way, R. Largess
2nd: D. Moroney
Vote: 6-0-0

Paving waiver – 297 Manchaug Road retreat Lot – Tabled to future meeting.

(T. Connors not participating due to conflict as an abutter)

Stockwell Hollow – J. Hager noted this subdivision is about to expire. She reviewed correspondence from Counsel with the Board. She also reviewed the owner's questions as to whether the Board would consider more waivers on this private road to reduce construction costs. The Board noted the owners should come in with a solid proposal. At which time, the Board will rely heavily on the opinion of the safety department heads.

Form A Plans – None.

Correspondence/Other: J. Hager reminded the Board about Water's Farm Days on October 1st and 2nd, The Moving Together annual Biking and Walking conference in Boston on October 12th, and the town-wide Master Plan Charette, planning for Sutton for the next twenty years, on Saturday, October 22nd from 9-12.

Public Hearing – Rescission of Bridle Path Subdivision

S. Paul read the public hearing notice as it appeared in The Chronicle and the reasoning for the requested rescission from the application.

Attorney Peter Keenan representing the land owners, Putnam and O'Shea, explained that issues with title have arisen on this project. He noted that it was the buyer's responsibility to get a title exam and they did not do so until late in the process, at which time it became apparent there was a problem with the title to one of the lots. Per similar proceedings before the Board last year, the Funaris agreed to meet to resolve the issue, but until this issue was re-scheduled there was no attempt to meet this obligation. The current tax bill is \$30,672 and his clients can not afford to pay this, and therefore what the approval rescinded. Their financial woes have also been compounded by a suit being filed against them by the Funaris.

Attorney Stephen Morte representing the developer, Funari, respectfully disagreed and stated he has an affidavit from Steven Funari and related lawsuit filing for defamation stating the situation is not as represented by the land owners. He stressed the Funaris have invested over \$600,000, a large financial burden, only to find out the O'Sheas did not own the land. He stated he does not feel the Board has the power and right to rescind the subdivision approval with litigation pending. J. Hager asked if a trial date has been set? Attorney Morte clarified that he hasn't actually filed an appearance yet, so they don't have a trial date. He urged the Board to let the courts make a decision on the lawsuit and warned the Board of the potential tremendously liability should they do otherwise.

D. Moroney asked why Attorney Morte felt the Board has no right to rescind the approval? He asked if he had any related case law? Attorney Morte stated he could provide some.

Attorney Keenan stated that it wasn't until last week that the Funari's former attorney attempted to meet to resolve the issues, otherwise they have been resistant. He noted due to the title issues the plan is of no worth therefore he is puzzled why the developer is objecting. With part of the land un-useable they will have to come back to the Board. He asserted that the private litigation has nothing to do with the Board's approval or ability to rescind. He countered that the Board has every right to rescind the approval in accordance with the statute, and that threatening the Board is simply not right.

Attorney Morte stated they have filed suit alleging fraud and/or at least negligence of the owners and the Board has to let the suit take its' course. He stressed he feels a rescission would make all past efforts and expenditures all for naught, this would open the Board to potential litigation and would be simply wrong..

It was noted the project is grandfathered until 1/7/2016. Thirteen lots are affected by the title issue.

Lori Funari stated they have a concept plan for a modification, but the O'Sheas have been resistant to discussion to date. The Funaris want to try to do a revision rather than a rescission to preserve the applicability of the zoning laws in place at the time of approval.

W. Whittier stressed it's been a year since the parties were last in front of the board and expressed dismay that they haven't managed to meet. L. Funari stated that the O'Sheas refuse to meet without knowing certain things in advance.

Attorney Keenan stated that they have received two communications from the Funaris since last year's Board meetings: 1) a complaint and summons and 2) last Tuesday the Funari's prior attorney called asking for a meeting at first he agreed to let the O'Sheas know generally what they would be discussing, and then called back and rescinded their offer to meet.

T. Connors noted it would likely be better to just start from square one noting that about 30 acres, or about 25% of the land, is now not eligible for development.

Jack Sheehan of Jones Road asked if the title is not clear doesn't that invalidate the Board's original approval, making the whole discussion mute? He also asked if it might be possible to work out a tax payment plan with the Tax Collector.

The Board will seek advice of Town Counsel.

Motion: To continue the public hearing to October 24th at 7:15 P.M., T. Connors
2nd: W. Whittier
Vote: 6-0-0

Preliminary Subdivision Plan – Ruth – 191 Hartness Road

Norman and Brian Hill of Land Planning were present with a preliminary subdivision plan off Hartness Road at the Grafton Town line. Mr. Ruth the land-owner and Mr. & Mrs. Ray the potential applicants, were also present. The project is located on 24 acres with 13 in Sutton and 9 in Grafton. Two plans were presented 1) an standard subdivision with 6 lots and 2) an open space subdivision with 6 lots. The proponent is willing to proceed with whichever plan the Board prefers.

Mr. Hill explained the wetlands have been flagged and the Town Line located. He stated the main relief they are looking for on the standard subdivision plan is a roadway longer than 500'. They propose a dead end road 1182' long. He said he does not feel the Board actually needs to grant a waiver, they just need to agree to proceed with a project with a longer road. The Planning Director disagreed, noting the Board has to grant a waiver for any aspect of the plan that does not comply with the regulations and they have to specifically state why they feel the waiver is appropriate. The Open Space plan roadway is only 300' but has long driveways and some are shared. Mr. Hill stated they can't connect with a roadway in Grafton and have been unable to purchase additional land from abutters. He added that on the open space plan no work is proposed in the 100' wetland buffers. Mr. Hill noted they would be willing to donate open space to the Town and/or install an oversized fire cistern. J. Hager noted the Board can not consider these offers in their decision, only the standards in the regulations and input that is directly related to the waiver requests.

R. Largess read the comments from various departments. The main concerns appeared to be the road length and topography.

R. Largess stated it appears that the proponent is trying to get too many lots out of the land.

D. Moroney stated he would only allow a waiver on length with the blessing of the safety department heads.

T. Connors stated he would not be in favor of a road over 500'.

S. Paul agreed the land may not be suitable for the number of lots shown. He noted the Board has considered double barrel entrances.

W. Whittier stated the proponent is pushing the envelope and there is a development better suited to this land. J. Anderson agreed and stressed you couldn't legally get 5 lots in a standard subdivision without waiving the dead end road length, therefore you can't have that many in an open space subdivision.

September 26, 2011

Page 4

N. Hill asked for an opportunity to take the Board's comments into consideration and come back on the 24th. The Board agreed to see the proponents again on the 24th at 7:30.

Motion: To adjourn, W. Whittier

2nd: T. Connors

Vote: 6-0-0

Adjourned 8:20 PM