


Sutton Planning Board
Minutes
August 13, 2018

Approved _____



Present: J. Anderson, R. Largess Jr., S. Paul, W. Whittier, M. Sanderson, W. Baker
Staff: Jen Hager, Planning Director

General Business

Minutes: Tabled until next meeting.

Filings: None.

Form A Plans:
85 Gilmore Drive – No longer needed

153 Manchaug Road

Byron Andrews, RPLS, of Andrews Survey & Engineering was present to present this plan. He explained this plan shows the division of land, the majority of which is presently underwater at Manchaug Pond. The board previously approved a plan showing the current upland portion of the Larochele lot which is now shown on this plan in its entirety including the portion of this lot that is underwater. The remainder of this plan shows the division of another un-buildable lot from the remainder of the Leonard Estate. This division is intended to provide Pond access to owners across Manchaug Road and contains less than 250 s.f. of upland area, the remainder of this lot is underwater as well. Mr. Andrews explained the Leonard deed defines the land along this section of Manchaug Pond via the shoreline, the only problem being that this deed was drawn before two different dams were installed that altered the shoreline of the Pond significantly leaving a good deal of the land described in this deed now underwater. All comments made by the Planning Director have been addressed except for the lack of metes and bounds on the West lines of the property as this property boundary is defined only by the former shoreline of the Pond that AS&E has a record of via a 1950's unrecorded plan.

In response to a question from the Board, Robert Nunnemacher of the Board of Assessors confirmed there are three great ponds in Sutton otherwise owned by the State and he is aware of two of the three where underwater area is currently assessed to private parties.

In response to a question as to whether these land owners can block access to this part of the Pond, Mr. Andrews noted there is standing colonial law which grants the public right to "fish and fowl" on these ponds.

Motion: To endorse the Form A plan with a revision date of 8/13/18 showing one new non-buildable parcel and the remaining non-buildable parcel as well as the entirety of a formerly approved parcel including underwater area, S. Paul

2nd: R. Largess Jr.

Vote: 5-0-0

Forest Edge Phase II Bonding

The Board reviewed a request to release the phase 2 covenant and replace it with a cash bond reduced by the bond figure for underground electric as this has been fully installed. J. Hager confirmed that Jeff Walsh of Graves Engineering, the Town's consulting engineer, is good with this reduction and that she performed a site visit to confirm the electric is in and operating.

Motion: To release the covenant for Phase 2 of Forest Edge Condominium Development,
W. Whittier
2nd: S. Paul
Vote: 5-0-0

Motion: To accept a cash bond in the amount of \$135,456 and endorse the related performance
agreement with a performance date of February, 2019, W. Whittier
2nd: R. Largess Jr.

Bruce Akerley of 106 Ariel Drive from the condominium association questioned the ability to finish the project in such a short period of time. J. Hager explained while it is unlikely the project will be done by then, the surety only guarantees the roadway, infrastructure and land restoration it does not mean all units will be constructed in this time frame. The Board is indicating with this vote that they want to keep an eye on the progress of this project and have occasion to make sure it is moving forward at a reasonable pace in everyone's best interest.

Vote: 5-0-0

Correspondence/Other: None

Public Hearing (cont.) – Bridle Path Definitive Plan Rescission – Barnett and Jones Roads

J. Hager apologized to the Board and the applicant for not checking on the status of tax payments immediately before the first night of the public hearing. She noted taxes had been paid the Thursday before the meeting. Mr. Funari, the applicant, is also present this evening to answer any questions the Board may have relative to his request to rescind this approval as he no longer intends to construct the project as approved. The Board reviewed departmental comments which held no objections. There were no questions from the public.

Motion: To grant the rescission of the approval of the definitive subdivision plan entitled Bridle
Path recorded at the Worcester District Registry of Deeds at Book 859 Plan 92,
R. Largess Jr.
2nd: W. Whittier
Vote: 5-0-0

Motion: To close the public hearing, W. Whittier
2nd: R. Largess Jr.
Vote: 5-0-0

Public Hearing (Cont.) – Primetals Manufacturing – 85 Gilmore Drive

The following people were present representing the applicant, King Rivera LLC:

Michael Dimenico, King Street Properties
Josh Labeau, Architect, Troika Studios
Steve O'Connell, Andrews Survey & Engineering
Travis Brown, Andrews Survey & Engineering
Bill Wheeler, Director of Operations, Primetals

Michael Dimenico explained they have responded to various outstanding items and questions including Northbridge traffic concerns. They have returned to address any final questions.

Travis Brown elaborated that all comments from Graves engineering and the Planning Director have been addressed. With respect to Northbridge's traffic concern about truck traffic cutting through town, Mr. Brown summarized information from a letter from Primetals that the 4-5 tractor trailers that will leave the site each day will not be going to local locations, they will be using Route 146 to get to the turnpike and/or railyards for out of state or country transport.

J. Hager stated that she has been in contact with Northbridge and King Street trying to assuage concerns with dumping anymore large vehicles into the intersection of Hill, Lynwood, Church in Northbridge. She noted the traffic memo came in after the Northbridge Board's last meeting and their next meeting is not until tomorrow evening. They have respectfully requested the Sutton Planning Board hold final action until they have a chance to review these materials and have a discussion in open meeting and provide their feedback to the Board. She noted she had a frank discussion with the Northbridge Planner about the impact of the minimal amount of truck traffic projected even if all 15 small and large trucks came through Northbridge center in a 9.5 hour first shift trying to gauge what the concern is, to no avail. She noted she felt that employee traffic might be a bigger concern and therefore Primetals provided a letter regarding the location of current employees that would suggest the majority of employees will also use Route 146 to get to the site, not impacting Northbridge. The Planner of course does not make decisions for the Board.

The Chairman suggested the Board address the Route 146 Overlay permit and everything related to the Site plan other than traffic and only continue to address this one concern if it remains. J. Hager reminded the Board they need to act on an earth removal exemption application. She added the location of soil to be removed from the site has changed to just be shifting to the adjacent northern site within the Park.

R. Largess Jr. felt the Board could do a conditional approval leaving an opening to address any traffic concerns. S. Paul wondered how many vehicles traverse Sutton streets to go to Walmart in Northbridge each day? R. Largess Jr. agreed but noted he wants to be a good neighbor to Northbridge, but also wants this project to move forward.

Jim Coull, former Park owner noted the MEPA certificate he originally obtained said the interchange could handle and increase of just under 3,000 vehicle trips per day and the Park generates nowhere near this amount.

J. Anderson noted Sutton needs the cooperation of Northbridge to allow road opening for a significant gas line extension all within the Town of Northbridge so he felt strongly the Board should be accommodating of the traffic concerns. J. Hager agreed she hoped Northbridge would take Sutton's comments seriously on a project that might affect Sutton. The Board agreed they would move forward with everything except Site Plan Review specific to the issue of traffic.

In response to a question from Wally Baker J. Hager stated she filed a very large grant application for the gas line for this project last week and received letters of support from both Northbridge and Douglas as they know the line will also benefit them. She noted the great deal of cooperation Northbridge has given to date on the application and the desire to maintain this excellent working relationship.

Steve O'Connell from Andrews Survey & Engineering reviewed the earth removal aspect of the plan showing that soil removed from this site will be moved to the adjacent site to the North. Soil can be shifted on site to areas beneath pavement and landscaped areas and for fill areas, what is being moved just can't be used under the building per Code.

Motion: To grant the earth removal exemption with the condition that anything over 300 c.y. that needs to leave the Park will be approved in advance by the Planning Board, R. largess Jr.
 2nd: W. Whittier
 M. Sanderson confirmed this doesn't change anything about the application in front of Conservation Commission as this work is all outside their jurisdiction.
 Vote: 5-0-0

Josh Labeau of Troika Studios, an Architect on this project reviewed the architecture and view shed rendering for this project including what might be visible from neighboring residential areas. He provided the following measurements for distances of the building from Route 146 at 380', from the closest home on Mendon Road at 600' and the closest home on Virginia Ave at 400'. The building is 35' at its tallest. The production portion of the building is light gray metal panel and the office portion is a darker gray metal panel with perforated orange screening accenting the most visible corner of the building where the company name will appear.

J. Hager noted the language in the Route 146 Overlay bylaw leads people to think that any structures built in Sutton should look like they dropped out of the 1800s, but she noted the importance, particularly 21st century industries and other businesses to showcase they are state of the art modern operations. While this building doesn't have mill granite on it and doesn't look like a huge barn, it speaks of what this company is a modern company that work in the high tech end of the steel manufacturing industry. This is a high quality building and site, housing a quality company.

Knick Nunnemacher of 24 Singletary Avenue noted this is a manufacturing company and the building needs to work with the needs of the company.

Motion: To grant the Route 146 Overlay Special permit with the following conditions, W. Whittier

1. The Board reserves the right to review site landscaping within a year of installation for the purpose of adding plants which may be reasonably necessary to complete the intended aesthetics and screening.
2. The Board reserves the right to review and adjust lighting and require adjustments within a year of initial illumination if they find it to be a danger or nuisance.
3. No exterior storage shall be allowed.
4. Prior to commencement of construction the applicant will provide a minimum of one week's notice and review staked limits of clearing with Planning Board representative.
5. Prior to issuance of sign permits the applicant shall submit any signage not shown on the Site Plan to the Planning Board. The Board shall review and act on the signage for compliance with the Sign Bylaw and the Route 146 Overlay District Bylaw criteria.
6. The Applicant shall ensure proper maintenance of plantings on the site, including immediate replacement of dead or diseased plantings unless it is winter or summer, in which case in the following planting season.
7. Inspection and maintenance of site drainage system and structures shall be performed in accordance with the recommended schedule but in no case less than once per year. A written report shall be prepared by the inspector, including any required correction actions to be taken, such report to be submitted to the Planning Board within fourteen business days of owner's receipt of the report. Any required correction actions shall be promptly implemented by the owner at its expense.

2nd: R. Largess Jr.

There was no public comment.

Vote: 5-0-0

Steve O'Connell noted concerns expressed with the common driveway bylaw language and interpretation of lot width and frontage on lots on a cul-de-sacs in the Office Light Industrial District. He stressed the Form A he was going to file would not have altered the frontage for Lot 9R previously approved during subdivision and he believed the Board at the time felt this lot was in compliance as the regulations are silent on the issue of lot width on reduced frontage OLI cul-de-sac lots other than the fact that the dimensional table uses the same measurement for lot width and frontage in every case. However, he discussed these issues with his client as well as the Planning Director and his client has decided in order to avoid having the Board make an interpretation of the bylaws that could be questioned, they will be filing a definitive subdivision plan for the entrance driveway to become a private roadway, thereby eliminating the lot width and frontage concern all together. This private way will have a 40' Right of way and 30' of pavement. They will need waivers, but nothing the Board has not seen before. He added that the emergency access road will be connected to the end of this proposed road to eliminate a dead end in excess of 500'.

W. Whittier stated the applicant had dealt with the Board's concerns about the future of the remaining land very effectively.

Karl Norwood, current owner of the balance of the Park, asked about the ability to have a third lot cut from this remaining land and where its frontage would come from. J. Hager stated the second lot could be broken into as many condo parcels as Mr. Norwood wishes. It was never envisioned that this remaining land could be broken into more than two wholly independent lots considering wetlands and grades.

Motion: To continue the public hearing to 7:05 P.M., W. Whittier

2nd: R. Largess Jr.

Vote: 5-0-0

Forest Edge Deliberation and Decision (Cont.)

The Chairman stated the Planning Director has worked with himself and Counsel to draft findings and potential conditions of approval for this Special Permit Amendment application. He stated he would request the Board make these findings and a motion on this project with draft conditions at which time he will allow discussion even though the hearing is closed.

Attorney Gerald Moody, new counsel for Mr. Bruce, introduced himself and noted he has tried to meet offline to discuss issues of disagreement and has been unable to have these conversations. He is not privy to proposed conditions and feels that perhaps his client should apply to re-open the hearing and allow these discussions to take place with the intent of reaching a mutually agreeable decision.

Jon Bruce expressed he is still unsure why the Board feels the variance granted by the Zoning Board of Appeals does not control the issue of density.

J. Hager stated Mr. Moody has provided his and his client's position in writing on issues before the Board and she has had many face to face meetings with Mr. Bruce on the same, and it is clear there are a few points on which the applicant and Town Counsel will never agree. These matters are very unlikely to be settled by continued discussion. She noted the Town has spent a substantial amount of money on legal counsel in this matter and there is no need to spend more.

J. Anderson expressed frustration that Mr. Bruce is back with yet another angle, to possibly request re-opening the hearing. He asked what it is that Mr. Bruce feels he can gain by a re-opened hearing? He noted Mr. Bruce isn't even going to lose a unit, just the profit between an affordable unit and a market rate unit.

Mr. Bruce said he was unaware that this was the current case.

J. Hager noted Mr. Bruce had been provided the proposed conditions and expressed his concerns relative to the conservation restriction and density calculations, and as has been the case for all the years this project has been in front of the Board, she heard these concerns, consulted with Counsel and the Chairman and has proposed conditions that meet this aboard interpretation of the regulations and are in the best interest of the Town in terms of heading off potential legal challenge.

Attorney Moody suggested that there is no need to restrict future buiding permits until the Conservation restriction is in place as this can be done simply through properly crafted conditions on the Special Permit amendment. J. Hager noted this was a condition of the existing Special Permit and it has provided NO protection to the Town and the Board is still waiting for this restriction to be placed 11 years and dozens of building permits later. J. Anderson stressed after over a decade of the applicant not fulfilling conditions he has agreed to, he has little credibility, however, if the applicant would just listen to the proposed conditions, he will find there is some consideration of the fact that the conservation restriction on part of this land will be occurring in another town over which the Board has no control. Mr. Bruce suggested perhaps the Board can hold the last 10 building permits (of 38).

R. Largess Jr. interjected that regardless of what Town Counsel has said, what is proposed is not at all consistent with what the Board previously approved and what this applicant agreed to, this is not appropriate use of what was supposed to be protected open space, and he will not vote in favor of this application.

Scott Paul began findings in relation to this project:

This application requested the reduction in the amount of Open Land required for the Development by 1.18 acres to allow for the construction of a telecommunications tower and access road as well as related grading, construction access, and siting of drainage facilities. The approximate area in which this work would take place was shown on a sketch plan submitted by the Applicant entitled "Forest Edge at Sutton, Zoning Area Calculation Revisions Associated with Verizon Wireless Monopole, 58 Follette Street, Grafton, MA 01519", dated October 18, 2017, Prepared by Teng Solutions, LLC. The Application requested no other amendments to the Special Permit. Following discussion with the Planning Board, the Applicant submitted a final plan under the Application that was entitled: "Forest Edge at Sutton, Open Land Revision Plan, Ariel Circle, Sutton, MA 01590 & Follette Street, Grafton, MA 01519", dated August 6, 2018, prepared by Teng Solutions, LLC (the "Revision Plan"), showing a parcel of 1.09 acres, comprised of a "Proposed Telecom Lease Area" and "Proposed Telecom Driveway" (together, the "Telecom Parcel"), to be removed from the required Open Land. The related grading, construction access, and siting of drainage facilities had been excepted from the Telecom Parcel and are proposed to remain as part of the Open Land as the applicant has asserted these uses are allowed in accordance with the definition of Open Land.

The Planning Board has reviewed this Special Permit amendment application and all supplemental materials submitted during the public hearing process and has also considered testimony received in open meeting and finds the following:

In accordance with the provisions of Section VII.A.2. of the Town of Sutton Zoning Bylaw- Special Permits: the Board finds:

- 1) With the requested reduction in Open Land and proposed use of a portion of the remaining Open Land to facilitate use of the Telecom Parcel (together, the "Modification"), the specific site remains an appropriate location for the permitted use as a Condominium Development, as impacts will remain unchanged and substantial Open Land will be preserved;
- 2) The Modification will have no effect on the adequacy of public water and sewer systems serving the Development;
- 3) The Modification will not alter the effect of the existing Development on the surrounding neighborhood;
- 4) The Modification will cause no undue nuisance or serious hazard to vehicles or pedestrians;
- 5) The Modification will have no effect on the proper operation of the permitted use.

In accordance with the provisions of Section VI.A. of the Town of Sutton Zoning Bylaw - Condominium Developments the Board finds:

As shown on the plan entitled Forest Edge at Sutton Open Land Revision Plan dated August 6, 2018, with the removal of the Telecom Parcel the Development will retain more than the required amount of Open Land. The Board also finds the Open Land as reconfigured is in keeping with the definition of Open Land contained in this regulation. The Board further finds that the proposed use of the remaining Open Land to facilitate use of the Telecom Parcel as proposed by the Applicant is an allowed use of the Open Land pursuant to Section VI.A of the Zoning Bylaw.

The Planning Board hereby acknowledges the decision of the Zoning Board of Appeals recorded at WDRD Book 34614 Page 58, which allows for the Open Land to be held in separate ownership from the remainder of the Project Tract while continuing to be subject to the requirements of Section VI.A of the Zoning Bylaws and the Special Permit stipulating that it remain permanently protected as Open Land required for the Development.

The Board also finds that the Telecom Parcel may not be considered part of the Development Tract, and as such the Development density is adjusted as follows:

Previous Total Tract Size	92.62 acres
Land Area Removed from Project Tract for Alternate Use	<u>1.09 acres</u>
Revised Area of Project Tract	91.53 acres
Allowed Density of .8 units per acre	73.22 units
Allowed Increase for Affordable Units of +15% (6 Affordable/5 Market Rate)	10.98 units
Maximum Allowed Density	<u>84 units</u>

In all other respects the Development remains unchanged and the Board hereby restates and adopts its previous findings and conditions as set forth in its Special Permit Decision of March 27, 2003, recorded with the Worcester District Registry of Deeds in Book 30994 Page 225.

Motion: To grant the amendment to the Condominium Special Permit allowing the removal of 1.09 acres as shown on the plan entitled Forest Edge at Sutton Open Land Revision Plan dated August 6, 2018, from the Open Land otherwise previously dedicated to the this project and also removing this area from the project tract, with the following conditions: S. Paul

1. Unless specifically varied herein all the original Special Permit conditions remain in full force and effect.
2. The Open Land required for the Development by the Special Permit is hereby amended to remove the Telecom Parcel. The Open Land for the Development shall now consist of all the Open Land approved for the Development by the Special Permit minus the Telecom Parcel as shown on the Removal Plan. This Open Land is shown as "Sutton Land A/K/A Parcel 1-B" and "Grafton Land A/K/A Parcel 2" on the Removal Plan.
3. Prior to issuance of any further building permits for the Project, the applicant shall provide a revised site plan for the endorsement of the Planning Board, consistent with this decision, that shows the entire Development including designated Open Land as well as the final unit configuration. The site plan shall further designate those portions of the remaining Open Land to be used for temporary construction access, grading, and installation of drainage facilities to support the proposed telecommunications facility on the Telecom Parcel.
4. Within 6 months of the filing of this Decision with the Town Clerk, which may be extended for good cause demonstrated to the Planning Board's satisfaction, the applicant shall cause to be recorded a permanent conservation restriction or restrictions on the entirety of the Open Land as modified by this decision in form approved by the Planning Board. Said restriction(s) shall reference a recorded survey plan depicting the Open Land or contain a metes and bounds description of the Open Land sufficient to satisfy G.L. c.184, §26. If the permanent conservation restriction is not in place within 6 months and the applicant does not provide good cause for an extension to the satisfaction of the Planning Board, no further occupancy permits shall be granted until such time as the restriction(s) is/are fully in place.

2nd:

W. Whittier

B. Akerley of 106 Ariel Drive asked who would own the land after restrictions are placed. Mr. Bruce will continue to own the land but the Towns will own the restriction on the land. It could alternatively be transferred to a land trust but in any case it will have to have a permanent use restriction.

Mr. Bruce asked for some input on the required Site Plans.

Vote: 4-1-0, R. Largess Jr. opposed as he feel all land that is a subject of this application was supposed to be permanently preserved over a decade ago and therefore no alterations should be allowed.

Proposed Bylaw Changes

J. Hager noted the Selectmen have proposed an article to completely eliminate the Solar Overlay Bylaw.

Clara Kim of 2 Egan Avenue in Worcester, owner of land and future resident of Stone Circle, was present to ask the Board to sponsor a number of articles that would largely effect the regulations for any ground mounted solar system. A few articles would affect installation in the residential areas if the Selectmen's article does not pass or if someone succeeds in putting the overlay back in place at any point in the future.

Clara explained the proposed articles (copy attached) They are as follows:

- Require a special permit for installations in residential areas (R-1, R-2 or V Districts)
- Add footnote to Use Table to reflect installations in R-1, R-2 and V Districts have to also get a special permit

- 200' setback for installations on land adjacent to residential district lines.
- View shed rendering from various locations for all installations some as determined necessary by the Board.

J. Hager noted outlawing the use of overlay districts in general is not legal. The Selectmen are proposing to overturn the overlay for a specific use, large solar, which is legal.

W. Whittier stated he felt community solar, which can be a good thing, may be prohibited by the proposed changes. He was worried about boxing in the Town and felt existing regulations were restrictive enough. J. Anderson had no issues with changes that were meant to give the Town another method of review. The majority of the Board (3/2) felt the regulations were currently comprehensive enough.

Jen Stevenson of 212 Putnam Hill Road noted that in towns who require Special permits for large installations, this permit has allowed the Town to effectively defend themselves when challenged, it is more legal protection, as well as the ability to place conditions that maybe in the Towns interest.

C. Kim stated she actually felt having the extra level of permitting may make the use more palatable to some as they will know the Baord has more ability to place conditions that protect them from unique circumstances.

W. Whittier noted there will likely be no more large systems coming on line by the time this clears the Attorney General's Office anyhow.

R. Largess reconsidered stating he felt the Board should evolve. He stated he feel it is appropriate for the Board to sponsor these articles.

Motion: To sponsor the solar articles, R. Largess Jr.
 2nd: M. Sanderson
 Vote: 4-1-0, W. Whittier felt current regulations are restrictive and comprehensive enough

The Board discussed the remainder of proposed bylaws (attached) including changes to the Common drive regulations that will restrict these rives for use only when there is a topographic or safety issue, but will specifically allow them in business and industrial areas with more pavement width and adequate construction standards.

Motion: To Adjourn, R. Largess Jr.
 2nd: W. Whittier
 Vote: 4-0-0

Adjourned 10:07 PM