

**Sutton Planning Board
Minutes
April 23, 2018**

Approved  _____

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

General Business

Minutes:

Minutes of 4/9/18 were tabled until the next meeting.

Filings:

The Board acknowledged the legal filing of the following applications: accessory apartment - 119 Eight Lots Road, Open Space Subdivision (four lots) - 137 Dodge Hill Road.

Form A Plans: None.

Bond Extension – Villas Phase II

J. Hager stated Mr. Burns has asked for a brief extension to finish paving and other finish items. A Villas Trustee was present and had no objection as long as this is the last extension for this phase.

Motion: To extend the cash bond and lender's agreement for Phase II to 10/1/18, R. Largess

2nd: S. Paul

Vote: 5-0-0

Correspondence/Other:

Site Plan Endorsement – 219 Whitins Road

Motion: To endorse the site plan dated xx/xx/18, S. Paul

2nd: R. Largess

Vote: 4-0-1, W. Whittier abstains as he wasn't at the last meeting

The Board reviewed the application for an earth removal permit exemption for this project. 1,330 cu. yds or about 70 truck trips of uncontaminated sandy loam to be removed over a period of 7-10 days (10 loads per day) and transported to the McIntyre Pit in Douglas.

Motion: To grant an exemption from Earth Removal permit incidental to approved Site Plan,

R. Largess

2nd: S. Paul

Vote: 5-0-0

Public Hearing (Cont.) – Forest Edge Open Space Reduction – Ariel Drive off Blackstone Street

Attorney Dan Klasnick noted it has been quite some time since the start of consideration of this application. He stated the applicant has put forth a good argument why the Board can and should amend the special permit. He provided an additional submission based on discussion at the last meeting with a plan and land calculations for removal of the telecommunication land from the open space. Two calculations one with and without the telecommunication parcel. Parcel 1A has been added to the calculations, this is the open space around the condominiums in compliance with the bylaws that was not previously included. In both cases there is significant excess open space.

He restated even if the conservation restriction had been placed they still could have submitted the application that is before the Board. He noted a draft restriction of the open space has been submitted to the Town. Finally, he reasserted the need for a tower in this location and that the Grafton parcel is not suitable for a number of reasons.

The Board discussed land and open space calculations. J. Hager noted discrepancies between the totals on the final plans as opposed to what is on the charts submitted this evening. J. Bruce explained they calculated open space this time by taking the total area in Sutton and excluded only what isn't open space and arrived at the number that was submitted this evening. J. Hager said the open space has to be more clearly shown on the site plan for calculation purposes.

Jon Bruce noted if the Board feels the land on which the cell tower sits has to be separated from the open space, this can be done, but he still intends to preserve all but the actual area being used for the tower, equipment and drive. J. Hager confirmed the lot shown for the potential tower appears to be a compliant building lot in accordance with Grafton bylaws.

J. Hager noted Counsel has recommended that the tower should be removed from the open space, as this use is not consistent with the intent of open space. This area was estimated at 18 acres but the applicant suggested they could possibly reduce it further.

J. Hager confirmed that the failure of the applicant to comply with prior conditions could not be a stand-alone reason to deny this application. She added if the effect of the prior non-compliance from meeting today's special permit requirements then it could be considered, but she doesn't feel this is the case. J. Anderson expressed his continued frustration with Mr. Bruce not having placed the original restriction, which has made this request much less of a challenge, the applicant has derived a definite benefit.

R. Largess stressed this issue needs to be resolved and he feels the Board should not approve any more open space in another town.

J. Bruce noted the other condominium developments in Sutton do not have permanent restriction on their open space. J. Hager stated the Associations own the open space and restrictions are contained in the Master Deeds. J. Bruce noted the Master Deeds could be amended.

Mr. Bruce stated he understands the Board's position when using hindsight to say if the restriction was placed this application would be much harder but he noted he could argue in hindsight he could have legally cut out every acre of extra open space and wouldn't have to deal with the Board at all on this issue. He added the entity that holds the open space will be a philanthropic non-profit.

The Board read correspondence from Cara Alderucci of 105 Ariel Drive into the record she expressed numerous concerns that she felt would ultimately negatively affect her home.

Gary Mathieu of 109 Ariel Circle, also a Trustee was concerned even if the Board grants this there is still more excess open space, what will stop Mr. Bruce from coming back again? He noted Forest Edge residents bought into the complex with all the open space, he noted the approval was based on the full amount of open space being preserved. He noted every member of the association he has spoken with is totally opposed to this application. He stated Mr. Bruce should donate all the open space to a land trust and get a great tax write off instead of trying to change the rules.

Joe Laydon, Grafton Town Planner, noted they have not had a chance to review the latest info submitted by Attorney Klasnick. He noted the last calculations they saw had about 19 acres of open space and if you subtract what is now shown as a separate lot the margin is too close to not review. He noted this also changes the intent of his request to remove all of this land from c. 61 protection and this will have to be refiled. He stated the Telecom Act is now being leveraged as well creating many last minute moving parts. The Bylaws says the ownership and responsibility for the open space will be the home owners association or the land could have gone to a land trust, so why were those options not exercised? The original decisions of the Planning Board and Zoning Board should stand, what is being asked is not consistent with the original project planning.

J. Bruce noted the open space around the condominiums is under the control of the association (Parcel 1A). He asserted if this land had been donated to another party he feels it would have just changed the applicant before the Board now as the Grafton land that is proposed for the tower on this street was land that was donated for open space and there are towers on land trust land in Mass. He added Grafton received notice of removal of this land from 61 (conversion not sale) quite some time ago and chose not to exercise their rights. J. Laydon noted there was no appraisal or anything for Grafton to act on.

M. Sanderson stated if the proceeds of the tower would just go to a non-profit why is Mr. Bruce trying to push who will benefit. He stated the charities would benefit. Lease fees are not going into the Jet Ski fund.

W. Whittier said he understands that Town Counsel recommends the tower land be a separate lot and although he doesn't like it and feels its equivalent to the applicant going back on his original word, he believes Mr. Bruce does have the legal right to make this application and obtain this change.

J. Hager cautioned the applicant may need to agree to an extension of the hearing, and in any case needs to know what specific additional information is needed. She suggested if the Board feels they have all the info they need, they should close the hearing and she will work with Counsel to draft whatever type of action the Board feels is appropriate. At which point the Board can deliberate and make a decision in open meeting.

Adam Rey of 42 Folette Street said it is not so much the area (1.18 acres) of open space being used, it is the proposed placement of the tower on a high hill/ridge which is unique and negatively effects all the open space and adjacent residences. He added his phone still works everywhere in the immediate area. He felt it was horrible there would be a claw back of the originally negotiated open space.

Motion: To close the public hearing, let the Planning Director work with Town Counsel on a decision, and schedule deliberation and decision for May 21st, J. Anderson
2nd: S. Paul

R. Largess felt open space should be purely open space. S. Paul said he is inclined to correct the prior wrong and deny separation of any land out for a cell tower. M. Sanderson said she felt the application was contrary to the original agreement and not fair to the condo owners.

J. Bruce stressed he did not approach Verizon, they approached him.

J. Hager noted the applicant needs to agree to an extension of the special permit timeline as well as the Telecommunication time line in case it applies to this application. Attorney Klasnick said they agreed to an extension to May 21st.

Vote: 5-0-0

(W. Whittier steps down from the Board)

Proposed Bylaw Recommendations

J Hager explained in the confusion at the last long meeting she forgot to have the Board vote a recommendation for Article 25, which proposes additional screening for large solar projects in residential areas.

Motion: To recommend that Town Meeting approve article 25 as there is no down side to more protection, M. Sanderson
2nd: R. Largess
Vote: 4-0-0

J. Hager noted that the Finance Committee and Town Administrator were disappointed with the Baord recommending approval of both articles 15/16 as well as 17. They stated they felt many in Town look to the Planning Board for what they feel is in the best interest of the Town. They asked that the Board at least take a straw poll as to whether each member feel full prohibition or partial prohibition is best for the Town.

The majority if those present and voting (3-1) felt partial prohibition was best for the Town, but asked it be termed "partial allowance" instead. S. Paul also asked as this is the Board preference, that the order of articles be changed to put this article first.

Motion: R. Largess
2nd: S. Paul
Vote: 4-0-0

Motion: To Adjourn, S. Paul
2nd: M. Sanderson
Vote: 4-0-0

Adjourned 8:51 PM