

**GROTON PLANNING BOARD  
DECEMBER 18, 2003  
MINUTES**

Chairman Barringer called the meeting to order at 7:00 PM in the Town Hall  
Members present: Barringer, Clements, Degen, Eliot, Lewis, Perkins and Wilson

**BROOKS ORCHARD SPECIAL PERMIT DECISION**

*(Member Degen stepped down because he is an abutter.)*

The Planning Board discussed the special permit decision for the Brooks Orchard development. Applicants June Johnson, Aleta Manugian, Robert Pine and Marion Stoddart of the Groton Land Foundation, landowners Steven and Joshua Webber, and several abutters were present.

Chairman Barringer noted that the Board closed the public hearing on October 30, 2003 so no additional comments would be considered. He summarized the background of the concept plan approved at the September 23, 2002 Special Town Meeting. He noted that there were several outstanding issues, including financial disclosure by the Groton Land Foundation, and a follow up letter from the State Ethics Commission on Member Wilson's participation. Member Wilson stated that he intends to vote on the special permit decision. He has not received the letter from the State Ethics Commission to date.

Member Clements stated that he does not like the proposed plan and does not want to encourage the applicant to pursue the plan as designed. He said he is not satisfied with the emergency vehicle access provisions and the length of the proposed dead-end street. The long driveways off the subdivision road are not consistent with the subdivision regulations.

Member Lewis agreed that the Board must assure adequate access to the units. He cited problems with shared driveways off Kaileys Way and Watson Way. He said the applicant should reduce the length of the road and driveways.

Member Clements noted that the existing shared driveway serves the Trimper property, McLatchy property, and Brooks Orchard. He asked how this shared driveway could be used as emergency vehicle access for the proposed development.

Member Wilson responded that the shared driveway is an emergency vehicle access, not primary access to the development.

Member Eliot stated that the Special Town Meeting approved construction of 18 units. The Planning Board agreed that the development should be pushed back on the site. She stated that she prefers the new plan.

Member Lewis said he would prefer a shorter road and better plan.

Member Clements said this is an important piece of land. Creative fund raising may result in saving the entire parcel of land. Member Eliot responded that the Webbers have already provided the funds to save this land.

Member Perkins suggested asking the applicant to submit an alternative plan with a shorter roadway and homes located toward the front of the site. The alternative plan should be drawn to preliminary plan, not definitive plan, standards. Member Lewis agreed and stated that he would not want the applicant to incur the expense of preparing two, fully engineered definitive plans.

The motion was made by Perkins to **GRANT** a special permit to the Groton Land Foundation to construct 14 dwelling units as shown on the plan entitled, "Brooks Orchard Limited Development Plan," prepared by Pine and Swallow Associates, dated April 28, 2003, and as further shown on a plan entitled, "Brooks Orchard, Preliminary Subdivision in Groton, Mass., Prepared for Groton Land Foundation, Inc." prepared by Dillis & Mische and Ducharme & Wheeler,

dated May 15, 2003, subject to the following findings and conditions:

## **Findings**

### **I. Consistency With Concept Plan:**

*The Special Town Meeting, held on September 23, 2002, voted to approve the Brooks Orchard Concept Plan (Article 24). The Planning Board's report to the Special Town Meeting included the following recommendations and conditions:*

#### **Concept Plan Recommendations:**

- The development of the land as described in the proposed concept plan will result in a minimum of 160 acres being permanently protected as agricultural land and open space.
- The type of housing to be constructed will provide diversity in the Town's housing stock. As offered by the applicant, one unit will qualify as "affordable."
- The proposed development will provide valuable linkage between other existing conservation areas thereby protecting wildlife corridors.
- The applicant has offered to work with the Water Commissioners on the potential siting of a water storage facility on this parcel.
- The proposed concept plan is consistent with the recommendations of the Comprehensive Master Plan sections on Agriculture, Housing, Natural Environment, Open Space and Recreation.

#### **Concept Plan Conditions:**

- The applicant shall propose improvements to the intersection of Martins Pond Road, Chestnut Hills Road, and Orchard Lane during the special permit and site plan review process. The proposed improvements must be acceptable to the Planning Board and the Town's public safety officials.
- The applicant shall work with the Board of Health and Department of Environmental Protection on the remediation of contaminated soils on the site.
- The plan is subject to all required permits and approvals.

### **Planning Board Determination**

*As required in §218-27C(2), the Planning Board determined that the special permit plan is consistent with the concept plan approved by Town Meeting because:*

- More than 160 acres will be permanently protected as open space, providing a valuable link between other conservation areas.
- The number of units has been reduced from 18 shown on the concept plan to 14 shown on the special permit plan.
- The applicant will provide one affordable unit as required in §218-26F(2)(f).
- The housing clusters were relocated on the special permit plan to avoid interfering with the wildlife corridors on the site, although an alternative plan may be proposed at the definitive plan stage. In addition, the farmhouse architectural design integrates the existing farm buildings into the plan.

- The applicant has worked with the Groton Water Department to provide access to the proposed water storage tank to be located on 4.50 acre Parcel D.

## **II. Comprehensive Master Plan**

*The proposed development complies with the following Goals and Objectives of the Comprehensive Master Plan:*

### **Natural Environment**

- To protect agricultural lands.
- To protect important geological features such as drumlins and eskers.
- Study and better understand the wildlife movement patterns within the town to determine the need for special zoning provisions to protect areas for wildlife movement. Prevent development patterns that would clearly barricade wildlife movement.

### **Open Space and Recreation**

- To acquire lands through purchase, conservation restriction or other development restrictions to enhance the town's current holdings.
- To link current and future public land holdings with trails and additional holdings.
- To protect lands and support private use of lands such that Groton's prime food producing areas are passed to future generations.
- To protect open land for its groundwater recharge value.
- To protect wildlife habitats and balance that protection with open space and recreation planning.
- Link existing public land holdings by purchasing or gaining restrictions on key linking parcels.
- Ensure appropriate and adequate public access to public recreation and open space resources.
- Update and implement a trail plan so that existing trails can be linked together through gradual easements and acquisitions.
- Develop incentives to encourage landowners to protect open land, views and habitats in the ensuing development.

### **Agriculture**

- To provide incentives for people to use their land for agriculture.
- To provide means for property owners to receive a return on their farmland and forestry land investments while still protecting as much of the land as possible.
- To avoid placing barriers in the way of the activities associated with agriculture.
- Continue supporting farmers' applications to the state's Agriculture Preservation Restriction Program. Lobby to increase state funding to that program.
- Explore zoning strategies that allow for clustering of homes and long-term protection of farmland.

### **Housing**

- To encourage and require that housing development be designed so as to fit within the environment rather than overpower the environment.
- Continue to encourage preservation of agricultural land and open space by allowing cluster development by special permit.

-

### III. Section 32.1C Criteria

*The Planning Board made the following findings based upon the criteria set forth in Zoning By-Law § 218-32.1:*

1. **Social, economic and community needs:** The proposed special permit plan serves social and community needs by providing housing which is designed to blend aesthetically with its surroundings and the environment. The 1600 – 2600 square foot range of housing units is more modest in size than the typical 3500 squarefoot houses being constructed in Groton. The proposed use of the existing barn as a community center will provide a sense of community for the residents of the development.

The top of the Chestnut Hills, the highest elevation in Town, will be utilized for the construction of a new water storage tank. The proposed development plan will provide access to the site shown as “Pcl D 4.5 acres” on the preliminary plan.

The existing orchard will be restored and maintained by a local orchardist so the land will be returned to active agricultural use. The hay fields will also be managed as active agricultural land.

2. **Traffic flow and safety:** The Board voted unanimously that Orchard Lane is not adequate in its present condition to serve the proposed 14-unit development. The Board received comments from the Police Chief, Fire Chief, and Highway Surveyor regarding the proposed changes to the intersection of Martins Pond Road and Orchard Lane. Sight distance and other traffic safety concerns must be addressed by the applicant during the definitive plan stage.

An emergency vehicle access road, located on an easement on the abutting McLatchy property, will provide access to the development and to the Water Department’s water storage tank.

3. **Adequacy of utilities:** There are adequate public utilities at this location. The development will have public water and fire hydrants.
4. **Neighborhood character:** The proposed development will blend into the visual and natural environment. The permanent protection of more than 160 acres of open space will enhance neighborhood character. The proposed housing sites are located farther away from the existing neighborhood, although an alternative plan may be proposed at the definitive plan stage.
5. **Impacts on the environment:** Given the scale of the proposed development and the careful siting of homes, the environmental impacts will be minimal. The applicant submitted a study entitled, “Results of Tracking Surveys Conducted at the Brooks Orchard in Groton, Mass.,” prepared by the Ecological Extension Service of the Massachusetts Audubon Society,” dated April 2003. The proposed development is sited to avoid conflict with wildlife habitat and wildlife corridors identified in the study. The proposed 160-acre open space parcel provides as important link between the abutting 100-acre Sorhaug Woods to the north and the abutting 32-acre Groton Hills to the east. In addition, the proposed public access trail system will provide a critical link in this geographic area.
6. **Fiscal impact on the Town:** The proposed development will not have a significant fiscal impact on the Town because the modest size housing units will be limited to two and three bedrooms with fewer school-age children than a conventional development.

#### **Conditions:**

*The Planning Board granted the special permit with the following conditions:*

1. The applicant shall submit a traffic study with the definitive plan application.
2. The applicant shall submit a proposed road improvement plan for Orchard Lane, a plan for the redesign of the intersection of Martins Pond Road and Orchard Lane, and a plan for traffic flow around Orchard Lane and Chestnut Hills Road. The road improvement plan and intersection redesign are subject to the approval of the Planning Board, in consultation with its engineer, and the Town’s public safety officials at the definitive plan stage (see comments from the Highway Surveyor, Fire Chief, and Police Chief).

3. The proposed subdivision road shall be constructed to minor street standards unless waived by the Planning Board at the definitive plan stage. The Board understands that an open drainage system will be proposed for better stormwater management.
4. The applicant will submit an alternative design plan, prepared to preliminary plan standards, showing the location of the subdivision road, driveway, and housing units toward the front portion of the site substantially closer to Orchard Lane.
5. The subdivision road shall be a private road maintained by the homeowners association. The subdivision road shall be accessible to the public.
6. The applicant shall submit an executed easement as well as an agreement documenting how the emergency vehicle access road will be maintained to provide safe and adequate access to the site for emergency vehicles at all times. The design of the emergency vehicle access road is subject to the approval of the Planning Board, in consultation with its engineer, and the Town's public safety officials at the definitive plan stage.
7. The site plan, including the subdivision road, driveways, and housing units, shall be designed to accommodate wildlife migration patterns, as offered by the applicant.
8. The applicant will provide one affordable unit as required in §218-26F(2)(f). As offered by the applicant, the farmhouse cluster shall contain one unit accessible for the disabled.
9. The location of all water mains and fire hydrants shall be shown on the definitive plan. The design of the public water system is subject to the approval of the Groton Water Department and Fire Chief (see Water Department comments dated May 6, 2003 and July 23, 2003).
10. The shared driveways serving the two housing clusters shall be constructed in conformance with Chapter 345 Shared Driveway Regulations.
11. Parking for public use of the trails and open space shall be shown on the definitive plan. The applicant shall submit a site plan showing the design of the proposed parking area as required in §218-25 Site Plan Review.
12. The applicant shall address all outstanding issues in the JNEI report dated October 9, 2003.
13. The Board of Health has jurisdiction over any required soil remediation activities related to the development of this site. No construction related activities, including proposed remediation efforts, shall begin on the site until the Board of Health has approved the soil remediation plan (see Board of Health comments dated May 14, 2003 and August 14, 2003).
14. The Conservation Commission has jurisdiction over any alterations within the 100 foot buffer zone of wetlands. The applicant shall work with the Conservation Commission to minimize potential impact on wetlands and buffer zones (see Conservation Commission comments dated May 15, 2003 and August 4, 2003).
15. An erosion and sedimentation control plan must be submitted to the Earth Removal Advisory Committee for its review and approval as required in Chapter 198 Soil Erosion and Sedimentation Control. The erosion and sedimentation control plan shall be appended to the definitive plan as required in § 346 8C(1)(c)[1][c].
16. The removal of any excess earth materials from the site requires a Certificate of Exemption from the Earth Removal By-law. Chapter 134 of the Code of the Town of Groton Chapter 134, § 10 Exemptions, states:

“The above exemptions do not cover the removal of earth materials from the premises involving topographical changes or soil-stripping or loam-stripping activities, nor shall the tentative or final approval of a subdivision plan be construed as authorizing the removal of earth materials from the

premises, even though in connection with the construction of streets as shown on the plan.”

17. The grant of this Special Permit shall not be construed to relieve the Applicant of the requirement to obtain definitive plan and site plan approval, if applicable, from the Planning Board pursuant to Groton’s Zoning By-laws, the Subdivision Control Law and the Rules and Regulations of the Planning Board. The Applicant is encouraged to incorporate the Site Plan Review materials into the Definitive Subdivision Plan.
18. The Applicant shall establish a homeowners and/or unit owners’ association (the “Association”) to operate, maintain and repair the subdivision road, shared driveways, emergency vehicle access road and infrastructure. The documents establishing the Association shall set forth the obligations of the Association for the operation and maintenance of all such improvements. Prior to the issuance of any certificate of occupancy, the Applicant shall provide documents establishing such Association to the Planning Board for approval by legal counsel as to form and for verification that such documents are in conformance with this decision.
19. At least 160 acres of protected open space shall be provided. The Open Space shall include all areas to be granted to the Conservation Commission or made subject to a Conservation Restriction or Agricultural Preservation Restriction (APR) approved and recorded pursuant to M.G.L. c.184 §31 – 33. The conservation restriction, APR or deed conveying the open space to the Conservation Commission must be recorded at the Registry of Deeds and evidence of recording submitted to the Planning Board and Building Inspector prior to the issuance of any building permits.
20. This special permit shall not be in effect until certified copies of the special permit decision and the subsequently endorsed definitive plan are recorded at the Middlesex South Registry of Deeds as required in GL Chapter 40A, Section 11, and Groton Zoning By-Law Section 218-32.1. No construction or site alteration shall commence nor shall any necessary permits be issued by any Board or official until evidence of such recording is submitted to the Planning Board by the Applicant.
21. This special permit shall lapse in 24 months, which shall not include such time required to pursue or await the determination of an appeal referred to in Chapter 40A, Section 17, from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. The recording of the special permit and subsequently approved definitive plan shall constitute commencement of substantial use.
22. The term “Applicant” as set forth herein shall mean the Applicant, its heirs, successors and assigns.

The motion was seconded.

Joshua Degen asked he if could make a point of order. Chairman Barringer said “yes.”

Mr. Degen stated that the grant of the special permit requires five affirmative votes, while approval of the definitive plan requires four votes. Chairman Barringer said that is correct.

*The motion passed with Barringer, Eliot, Lewis, Perkins, and Wilson in favor; Clements opposed.*

### **VERIZON SPECIAL PERMIT DECISION**

The Board deliberated the special decision for the Verizon’s special permit to collocate its equipment on the Gibbet Hill tower. Town Counsel Patricia Cantor, Verizon’s attorney James Valeriani, landowners Steven and Joshua Webber, and several abutters were present.

Member Lewis stated that the landscaping issues should be spelled out carefully in the special permit decision. Member Degen said the landscaping requirements are different if the equipment is flush mounted rather than a standard array.

Chairman Barringer asked if the Board could ask Verizon to flush mount its equipment since the Board has approved standard arrays for other carriers on the same tower.

Town Counsel Patricia Cantor said the outlook in Federal Court is not favorable in upholding denials. However, there are two types of cases that have been upheld. One involves significant adverse visual impact, and the other involves the availability of an alternative site or no gap in coverage to be filled by the proposed tower. The Board must make findings on the visual impact of the flush mounted equipment versus the standard array. Attorney Cantor said, with David Maxson's analysis on record, the Board could grant a special permit with conditions that is defensible. The appeal is to federal court, which involves complicated litigation and investment in legal resources.

Member Degen asked if the Board could grant a special permit for a flush mounted array when the applicant proposed another type of equipment. Attorney Cantor said, "yes," a conditional grant is within the scope of the Board's authority. However, the applicant may appeal the decision to federal and state court.

Member Clements noted that David Maxson's report stated that requiring flush-mounted equipment is not prohibiting services and there is no real gap in coverage.

Member Wilson asked if the Board agrees that screening is not needed if the equipment is flush mounted.

The Board discussed the microwave dish, currently located on the DEM fire tower. Member Wilson said the location of the microwave dish is up to the applicant. Member Degen said Verizon could install the connection between the microwave dish and the equipment on the Gibbet Hill tower.

Member Lewis said the tower should be screened for the abutter no matter what type of equipment is used. Member Wilson said screening the tower is the responsibility of the group – not just Verizon. Member Perkins noted that Verizon offered to provide screening for the abutter at the public hearing.

Member Degen said if a full array is used, the tower should be landscaped, but flush mount equipment may not require as much landscaping.

Chairman Barringer said the applicant offered to provide landscaping costing up to \$2500.00. The abutter submitted a quote to the Board of \$28,000.00 for landscaping. Perhaps a compromise can be reached.

Member Degen suggested planting five white spruce, Norway spruce or white fir trees at a height of 14 to 16 feet. These species are wind tolerant and have a better chance of surviving.

Chairman Barringer asked if Member Degen's suggested plantings might be for a standard array with less landscaping required if the equipment is flush mounted. Member Degen agreed.

Attorney Cantor said the Board's findings should not refer to PCS or cellular equipment – it should refer only to personal wireless service facilities.

Landowner Steve Webber asked to correct a factual error. Member Degen left the meeting in protest because he said he was not allowed to speak during the Brooks Orchard deliberations.

The motion was made by Wilson to hear the clarification from Mr. Webber. ***The motion was seconded and passed with Barringer, Clements, Eliot, Lewis, and Wilson in favor; Perkins abstaining.***

Steven Webber declined to make his comment.

Planning Administrator Michelle Collette said the record must be correct about the elevations leased to the different carriers. Joshua Webber noted that the spaces leased on the tower are AT&T at 140 - 150 ft, Verizon 130 – 140 ft, Voice Stream 120 – 130 ft, Sprint 110 -120 ft, Nextel 100 – 110 ft, and Cingular 90 – 100 ft.

Attorney Cantor said the Board should refer to the coverage maps submitted for the applicant for existing conditions with the DEM tower, without any tower, and with the proposed equipment on the Gibbet Hill tower. The Board

should also refer to David Maxson's report in its findings. Verizon did not submit any coverage maps showing service with flush-mounted equipment.

Attorney James Valeriani said Verizon submitted written testimony to the Board regarding flush mounted equipment.

The Board will prepare two draft decisions with findings – one for the proposed array and one with a condition that the equipment be flush-mounted. The Board will vote on the decision at its meeting on January 8, 2004.

### **PUBLIC HEARING – ROCKY HILL SPECIAL PERMITS & DEFINITIVE PLAN**

The Board continued the public hearing to consider the applications submitted by David Moulton of Fox Meadow Realty Corporation for special permits, site plan review, and definitive plan approval for the Rocky Hill subdivision. Applicant David Moulton, Attorney Robert Collins, and design engineer Drew Garvin of R. Wilson Associates were present.

Attorney Collins said the report prepared by Brain Butler of Oxbow Associates indicates that there is no significant activity with blanding's turtles at the site. There will be no difficulty with the proposed road network as designed. The road will be designed to use natural grades and work with the topography to minimize disturbance to the land. A "T" turn-around will be used rather than a cul de sac for the proposed 18-ft wide, super-elevated road.

Member Lewis asked about the width of the shared driveways. Attorney Collins said the driveways will be 16 ft wide, and the roads will be 18 ft wide.

Member Perkins expressed concern about the amount of runoff that will be directed downhill. Attorney Collins said gravel wicks would be installed to collect runoff. Drainage calculations will be submitted with the definitive plan.

Member Wilson said this is a better roadway design than the previous plan. He asked how steep the driveways would be. Mr. Garvin said the driveways would be about 8% in the steepest locations. Chairman Barringer noted that the Shared Driveway Regulations have a maximum grade of 8%.

The Board will walk the site on Saturday, January 17, 2004 at 8:30 AM.

The Board voted unanimously to continue the public hearing on January 22, 2004 at 7:30 PM.

### **SPECIAL PERMIT DECISION – ROCKY HILL AFFORDABLE UNITS**

The Board discussed its special permit decision on the nine affordable units in the Rocky Hill development as voted on October 23, 2003 but not yet filed with the Town Clerk. Attorney Collins had expressed concern about the condition that the limited equity deed restriction is required in perpetuity. There were also some questions about whether the units will be rented or sold.

Attorney Collins said the applicant no longer has concern about the deed restrictions being in perpetuity. The units will be rentals as stated in the concept plan unless the special permit decision is amended at a later date. Attorney Collins said Mr. Moulton would prefer to sell all nine units to the Groton Housing Authority to manage.

The Board signed the special permit decision as voted on October 23, 2003.

### **DEER HAVEN BUILDING PERMITS**

Attorney Collins asked the Board to inform the Building Inspector that the outstanding issues regarding the Deer Haven subdivision have been addressed. Attorney Collins submitted a draft conservation restriction to the Conservation Commission for Parcel C in the Deer Haven subdivision. Mr. Moulton plans to construct a duplex with the two required affordable units in the subdivision. All outstanding earth removal issues have been resolved.

The motion was made by Perkins that the Planning Board send a letter to the Building Inspector stating that building permits can now be issued for the Deer Haven subdivision. *The motion was seconded and passed unanimously.*

### **PRE-SUBMISSION REVIEW – EMERSON HOSPITAL OFFICE BUILDING**

Attorney Collins met with the Board to discuss adding two more office spaces to the Emerson Hospital Medical building on Boston Road. Mr. Collins said when the new site plan is submitted for review, the Board will have an opportunity to address some of the outstanding site issues, including the drainage problems at the intersection near CVS on Boston Road and the turning lane at the access onto Boston Road from the Post Office.

Member Perkins asked if there are enough parking spaces to serve two more offices. Attorney Collins said, "yes," there is exactly the number of spaces required in the by-law. He said he would submit supporting documentation with the site plan review application.

Member Eliot noted that pedestrian access within the site should be addressed by construction of a sidewalk along the edge of the parking area. Attorney Collins said they would consider it.

### **BERTOZZI FARM PERFORMANCE BOND**

The Board received a report dated December 18, 2003 from Judith Nitsch Engineering, Inc. with an estimate of \$300,184.57 to complete the Bertozzi Farm subdivision. The motion was made by Perkins to approve the amount of \$300,184.57 for the performance bond. *The motion was seconded and passed unanimously.*

### **HAYDEN ROAD EMERGENCY VEHICLE ACCESS ROAD**

The Board discussed the plowing and maintenance of the emergency vehicle access road from the end of Hayden Road to Hidden Valley Road. The Board is holding the funds from the performance bond to complete the Carmichael Estates II subdivision. Hayden Road and Madeline Drive have not been accepted as public ways yet.

The motion was made by Perkins to request that the Highway Surveyor plow the emergency vehicle access road. *The motion was seconded and passed unanimously.*

Meeting adjourned at 10:00 PM

Respectfully submitted,

Michelle Collette  
Planning Administrator