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PCRC / Definitive Subdivision – 18-03
180 Newtown Road
Decision on Remand
February 6, 2020



Planning Board

TOWN OF ACTON

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DECISION ON REMAND

18-03

After Land Court Remand Public Hearing

180 Newtown Road PCRC

Planned Conservation Residential Community (PCRC)
Definitive Subdivision

February 6, 2020

The Acton Planning Board (hereinafter the Board) issues this Decision on Remand after holding an advertised public hearing in accordance with the Remand Order in the Land Court case *Hryniwicz v. Coughlin*, Civil Action No. 18 MISC 000668, dated October 18, 2019 and further clarified on November 5, 2019. The subject property is located at 180 Newtown Road and is shown on the Acton Town Atlas as parcel D3-10 (hereinafter the Site).

The Board opened the public hearing on December 16, 2019 and continued it to January 21, 2020. The Board closed the public hearing on January 21, 2020. Board members Mr. Derrick Chin (Chair), Ms. Emilie Ying (Vice Chair), Mr. Jon Cappetta (Clerk), Mr. Ray Yacoub, and Mr. Anping Liu were present throughout the hearing.

The Board understood from the Remand Order that the Land Court found it had failed to state in its original decision granting the PCRC special permit one specific finding, namely that the PCRC “enhances the goals of the Open Space and Recreation Plan.” At the beginning of the hearing on December 16, 2019, the Board voted 4:1 (Chin, Ying, Cappetta & Yacoubi in favor; Liu opposed) in favor of limiting the focus of the public hearing on the question of whether or not the PCRC enhances the goals of the Open Space and Recreation Plan. The minutes of the hearing and submissions on which this Decision is based upon may be viewed in the Planning or Town Clerk’s offices at the Acton Town Hall.

1 EXHIBITS

The Board considered the following exhibits:

- 1.1 The Board’s original decision.
- 1.2 The Land Court’s Order on Motions for Summary Judgment, dated October 18, 2019 (the Remand Order).
- 1.3 The Land Court’s clarification of the Remand Order, dated November 5, 2019.
- 1.4 The Town of Acton Open Space and Recreation Plan 2014-2021.
- 1.5 Town of Acton agency comments:
 - Tom Tidman, Acton Natural Resources Director, dated November 26, 2019 with four map attachments:
 - Map #1 — Map of Surrounding Conservation Lands
 - Map #2—Anderson Land
 - Map #3—Trails through 180 Newtown Road to Bulette Conservation Land/Town Forest
 - Map #4 — Vernal Pools and Wetlands
 - Tom Tidman, Acton Natural Resources Director, dated January 21, 2020.
 - Roland Bartl, Acton Planning Director, dated December 11, 2019.
- 1.2 Written public comments:
 - Public hearing handout (“If you are against high density developments in rural areas, please attend”), undated, no author identified.
 - Dan Jones dated December 16, 2019.
 - Lea Walton dated December 16, 2019.
 - Rick Hryniwich dated December 11, 2019.
 - Rick Hryniwich dated January 14, 2020.
 - Terra Friedrichs dated December 14, 2019.
 - David Shoemaker dated January 11, 2020.
 - Ken Henderson dated January 13, 2020.
 - Trudy Khosla dated January 20, 2020.
 - Stephen and Kali Hart dated January 21, 2020.
- 1.6 Hearing Continuation Agreement:
 - Agreement to continue the Public Remand Hearing to January 21, 2020, dated December 16, 2019 and filed with the Acton Town Clerk on December 17, 2019.

3 BOARD ACTION

After hearing public comments, including comments from the plaintiff, the defendant, and the defendant’s attorney, and after reviewing the exhibits, and recognizing that the majority of the public comments were

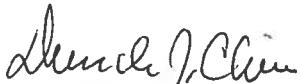
outside the public hearing scope, which was to determine whether the proposed project enhances the goals of the Open Space and Recreation Plan, the Board on January 21, 2020 voted 4:1 (Chin, Ying, Cappetta and Yacoubi in favor; Liu opposed) to make a finding that the PCRC enhances the goals of the Open Space and Recreation Plan.

The Board is constituted in the Acton Town Charter as a seven member board, although it presently only has six members (one of whom was absent from this hearing). In order to approve a special permit for this PCRC application, five members of the Board were required to vote in the affirmative. *Mullin v. Planning Board of Brewster*, 17 Mass. App. Ct. 139, 143-144 (1983) (regardless of any vacancies or absences, the number of votes required to approve a special permit is fixed, based on the full authorized membership of the board). Thus, although a majority of members present voted in the affirmative to make a finding that the PCRC enhances the goals of the Open Space and Recreation Plan, that vote is insufficient to approve the PCRC application. The Board thus deemed its vote a rejection of the PCRC application.

4 APPEALS

The Land Court retains jurisdiction in the case and has given instructions to the plaintiff and the defendant on how to proceed should either of them be aggrieved by this Supplemental Decision. With respect to any other persons, appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Town of Acton Planning Board:



Derrick Chin, Chairman

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Szkaradek, Town Clerk

Date

Copies furnished:

Defendant
Plaintiff
Town Clerk
Owner

Land Use Department
Engineering Department
Town Manager

Police Chief
Municipal Properties Director
Fire Chief