



Planning Board

TOWN OF ACTON
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REMAND DECISION

18-03

After Supplemental Public Hearing

180 Newtown Road PCRC

Planned Conservation Residential Community (PCRC)

Definitive Subdivision

September 15, 2020

GRANTED AND APPROVED WITH CONDITIONS

The Acton Planning Board (hereinafter the “Board”) issues this Remand Decision after holding an advertised public hearing in accordance with the Remand Order issued by the Land Court (Justice M. Vhay) case *Hryniwicz v. Coughlin*, Civil Action No. 18 MISC 000668, dated October 18, 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 August 18, 2020 and continued it without deliberation to September 15, 2020 to provide adequate time for the posting of the legal ad. The Board closed the public hearing on September 15, 2020. Board members Mr. Derrick Chin (Chair), Ray Yacoubi (Vice Chair), Mr. Jon Cappetta (Clerk), Mr. Anping Liu, and Mr. Sam Bajwa were present throughout the hearing. Mr. Bajwa, who was not present for the original Decision on this project prepare for this Public Hearing by reviewing all past materials submitted concerning this Project and all minutes of prior hearings. The Board understood that the Land Court found it had failed to include in its original decision granting the PCRC special permit the specific finding that the proposed PCRC project “enhances the goals of the Open Space and Recreation Plan”. At the first remand hearing held on December 16, 2019, the Board was constituted in the Acton Town Charter as a seven member board, although it presently only had six members (one of whom was absent from this hearing). During that hearing, the Board took evidence and made specific findings concerning how the proposed project furthered the Open Space and Recreation Plan.

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 at the first remand hearing on December 16, 2019 voted in the affirmative to make a finding that the PCRC enhances the goals of the Open Space and Recreation Plan, that vote was insufficient to approve the PCRC application. The Board’s vote was thus deemed rejection denial of the PCRC application.

The Applicant appealed that denial to the Land Court, and the Applicant and the Town agreed to remand the application to the Planning Board for further deliberation once the newly-constituted five –member

Planning Board was seated. At the June 2020 Annual Town Meeting, the Town Charter was amended to reduce the membership of the Planning Board from a seven member board to a five member board.

The minutes of the hearing and all 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, the Board's remand decision, and all related documents and hearing records for the original public hearing & remand public hearing, each of which is incorporated herein by reference.
- 1.2 The Land Court's Order on Motions for Summary Judgment, dated June 22, 2020 (the Remand Order).
- 1.3 Remand public hearing legal ad.
- 1.4 Town of Acton agency comments from the following:
 - 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.
 - Robert Hummel, Assistant Town Planner, dated August 11, 2020.
 - Evan Carloni, Senior Health Inspector, dated August 24, 2020.
 - QinRui Pang, Civil Engineer 1, dated August 27, 2020.
 - Chris Allen, Acton Water District, dated September 2, 2020.
- 1.5 Written public comments:
 - Rick Hryniwich, dated 08/13/20; and
 - Terra Friedrichs, dated 09/15/20.
- 1.6 Hearing Continuation Agreement:
 - Agreement to continue the Public Remand Hearing to September 15, 2020, dated August 31, 2020 and filed with the Acton Town Clerk on September 2, 2020

3 BOARD ACTION

After hearing public comments, including comments from the applicant's attorney and the defendant/abutter (Rick Hryniwich) in the Land Court case, as well as members of the public, and after reviewing the exhibits, and information submitted during the public hearing, the Board voted to supplement the findings on the original Special Permit Decision to include a specific finding that the information provided in this public hearing satisfies that the plan enhances the Town's Open Space and Recreation Plan. Specifically, the Board referenced the letter and email provided by the Natural Resource Director, Tom Tidman, dated November 26, 2019 and January 21, 2020, which detailed the significance

of the open space portion of 180 Newtown Road PCRC as being a “high priority” parcel for protection and preservation within the Open Space and Recreation Plan. Board members stated agreement with Mr. Tidman’s letter and email which detailed that the open space parcel in the proposed PCRC is a key element in the Plan as it completes a public trail connection to the abutting Bulette conservation area and has an extremely high wildlife value. Like at the prior remand hearing, the Board adopted the conclusions of Mr. Tidman as their findings for that element required under the PCRC Bylaw. All prior findings of the Board from past Public Hearings and votes are incorporated herein by reference.

The Board on September 15, 2020 voted 5 - 0 (Chin, Yacouby, Cappetta, Liu, and Bajwa in favor) that the proposed PCRC project at 180 Newtown Road enhances the goals of the Open Space and Recreation Plan.

4 APPEALS

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

Signed as delegated by and 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	Land Use Department	Police Chief
Plaintiff	Engineering Department	Municipal Properties Director
Town Clerk	Town Manager	Fire Chief
Owner	Land Use Department	Town Counsel