

DECISION OF THE ANDOVER PLANNING BOARD  
AS A SPECIAL PERMIT GRANTING AUTHORITY

ON THE APPLICATION OF  
Scott Gibson

**For a Special Permit for Earth Movement under Section 6.3 of the Zoning By-Law.**

Decision: SP10-03

YES (with conditions)

A public meeting of the Planning Board was held on September 28, 2010, in the Third floor conference Room of the Town Office Building. Present and voting in the affirmative on the matter were members Joan Duff, Vincent Chiozzi, Linn Anderson, John McDonnell and Mark Yanowitz.

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TOWN OF ANDOVER, MASS

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on July 8, 2010 and July 15, 2010, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws, Chapter 40A, a public hearing was convened on July 27, 2010 on the application of Scott Gibson for a Special Permit for Earth Movement associated with a Definitive Subdivision development of a residential subdivision. The hearing was continued and closed on September 28, 2010, with the aforementioned members of the Board present throughout.

In consideration of the Special Permit for Earth Movement, the applicant had submitted an earth quantities calculation for review. Approximately 1000 cubic yards of material will be moved around within the site. It has been the past practice of the Planning Board to regulate the hours

and days of the earth movement activities. In this instance, the Planning Board has conditioned their approval by restricting earth movement activities to the time period between the last morning pick-up of school children, and the first afternoon drop off.

In considering a special permit for earth removal and regrading the Planning Board must find that the subdivision plan with which it is associated, as a whole, makes the best feasible use of existing topography. The Board must also find that the proposed use will not be unreasonably detrimental to the established or future character of the neighborhood or the town, and further that there are adequate public roadways and municipal utilities. In considering a special permit the Board can, and will, impose such conditions or safeguards, as it deems reasonably necessary.

In the opinion of the Board, the subdivision plan as a whole, makes the best feasible use of the existing topography; the areas of the building lots themselves; and the roadway profiles which will not involve major cuts or removal of earth materials from the site. Although the development is being constructed in an established neighborhood, any adverse effects to those abutters can be mitigated through the regulation of hours of operation. In the opinion of the Board the issuance of the special permit (with appropriate conditions) will not result in unreasonable detriment to the neighborhood or the Town.

In consideration of all of the foregoing, including the plans, documents, and testimony given during the public hearing, the Planning Board hereby approves and issues a Special Permit for Earth Movement to Scott Gibson, applicable to 39-47 High Plain Road, and subject to the following conditions which are the same as those imposed on the aforementioned definitive subdivision plan:

### **Conditions of Approval**

#### General Conditions

1. For purposes of this approval the subdivision shall be defined as all features depicted on the plans described under condition number 2; the developer shall be defined as the applicant, Scott Gibson, and all assigns or successors in title to the development, and all contractors and subcontractors under control of or in service to the developer;
2. Except as otherwise provided for in these conditions, the construction of the subdivision and all activities associated therewith shall be in conformance and compliance with the information, details, notations, grading and features shown on the following plans and drawings:
  - a. Sheet 1 of 6, Subdivision Plan of Land, 39 – 47 High Plain Road, dated June 25, 2010, last revised August 16, 2010, as prepared by JM Associates.
  - b. Sheet 2 of 6, Record Plan, 39 – 47 High Plain Road, dated June 25, 2010, last revised September 23, 2010, as prepared by JM Associates.
  - c. Sheet 3 of 6, Existing Conditions, 39 – 47 High Plain Road, dated June 25, 2010, last revised August 16, 2010, as prepared by JM Associates.
  - d. Sheet 4 of 6, Grading & Erosion Control Plan, 39 – 47 High Plain Road, dated June 25, 2010, last revised August 16, 2010, as prepared by JM Associates.
  - e. Sheet 5 of 6, Roadway and Utilities, 39 – 47 High Plain Road, dated June 25, 2010, last

revised August 16, 2010, as prepared by JM Associates.

- f. Sheet 6 of 6, Conventional Build Out, 39 – 47 High Plain Road, dated June 25, 2010, last revised August 16, 2010, as prepared by JM Associates.
3. Original mylar prints of the above mentioned plans and associated notes must be submitted for endorsement to the Planning Division within 30-days following the statutory 20-day appeal period.
4. Prior to the recording of the definitive plan, the applicant shall provide to the Planning Department a digital file containing the plan if produced using computer aided drafting and design (CADD) software. The file format shall be in AutoCAD DWG (or ASCII DXF) version 2004 or earlier and Adobe PDF, delivered on CD-ROM or DVD-R media. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet. A review of the digital file shall be made by the Department of Public Works prior to the recording of the definitive plan.
5. Sheet 2 of a plan entitled “Definitive Subdivision Plan, RECORD PLAN, 39 – 47 High Plain Road”, dated June 25, 2010 last revised September 23, 2010, as prepared by JM Associates and an instrument containing these conditions, shall be recorded at the North Essex Registry of Deeds pursuant to the requirements of the Subdivision Rules and Regulations of the Andover Planning Board;
6. The owner and applicant shall, pursuant to statute, have twenty (20) days following the approval action of the Andover Planning Board to file an appeal of said action, and in the absence of an appeal shall be deemed to have accepted said action and these conditions;
7. Within five (5) days any transfer of ownership of this subdivision, in whole or in part, the developer shall notify the Andover Planning Department of the name and address of the new owner(s). The developer shall provide the new owner(s) with a copy of these conditions;
8. No permits for building may be issued by the Inspector of Buildings for Lot 2 unless and until the provisions of Section V.E. of the Rules and Regulations of the Board have been satisfied. Once a building permit has been issued for any particular lot this condition will be deemed to have been complied with and considered released for that lot;
9. Except as herein waived, the subdivision shall be constructed in accordance with and subject to all applicable provisions of the Rules and Regulations of the Board. The approval and these conditions shall be enforced under the provisions of Section V.H. of the Rules and Regulations of the Board;
10. All grading and earth disturbance within the subdivision shall be governed by Sections VI.F.6., and VI.F.7. of the Rules and Regulations of the Board, as well as the Special Permit for Earth Movement as issued under the Planning Board Decision SP10-03;
11. Import or export of earth materials from within the subdivision is prohibited except as may be provided for under special permit issued under Planning Board Decision SP10-03, or as otherwise

allowed under the applicable provisions of the Zoning Bylaw;

12. Except as herein waived, the subdivision shall be constructed in accordance with and subject to all applicable provisions of the Rules and Regulations Governing the Subdivision of Land in the Town of Andover. The approval and these conditions shall be enforced under the provisions of Section V.H. of the Rules and Regulations of the Board;
13. Prior to the recording of the definitive plan at the Registry of Deeds the developer shall provide the Planning Department with a municipal lien certificate indicating that all taxes, assessments and charges have been paid in full as required by MGL, Chapter 60, Section 23;

#### Prior to Construction

14. Prior to any construction activity of any kind within the subdivision roadway or on Lot 2, the developer shall submit for review and approval to the Planning Department a proposed construction sequence schedule, said schedule is to be used as a guide to activities within the development including construction of roadways, utilities, drainage systems, stabilization, and stockpiling. This schedule once established shall not be deviated from, but may for good and demonstrated reason, be modified by agreement between the developer and the Planning Department;
15. Prior to introduction of construction equipment onto the site, a preconstruction meeting shall be conducted between the developer, the developer's contractors, the Planning Department, the Building Department, and the Department of Public Works for the purpose of reviewing these conditions and the construction sequence schedule;
16. Construction traffic associated with this subdivision shall be regulated by the Inspector of Buildings. Prior to commencing any hauling operations, a hauling route shall have been reviewed and approved by the Inspector of Buildings. Any deviation from the approved route and/or scheduling once established shall require proper notification and approval from the Inspector of Buildings. Construction traffic shall be defined as large trucks hauling earth moving equipment, dump trucks, trucks hauling building materials, cement trucks, and contractors' vehicles larger than panel trucks. Hauling of earth materials and heavy equipment on the site is restricted to the time period between the last morning pick-up of school children, and the first afternoon drop off. It shall be the developer's responsibility to inform all contractors, subcontractors, vendors, and workmen of this restriction, which shall be enforced under the provisions of Section V.H. of the Board's Rules and Regulations;
17. The encroachment of the house on Lot 1 shall be removed prior to the conveyance of Lot 1 or prior to the commencement of any work on or conveyance of Lot 2. This condition shall be placed on the plan prior to endorsement.
18. The encroachment of the house on Lot 3 shall be removed prior to the conveyance of Lot 3 or prior to the commencement of any work on or conveyance of Lot 2. This condition shall be placed on the plan prior to endorsement.

#### Throughout Construction

19. Earth disturbed by construction activities associated with the driveway, easement areas, such as tree cutting, stump grubbing, cutting, filling, and regrading, shall be appropriately stabilized by methods determined by the Planning Department within sixty (60) days of such disturbance unless otherwise approved by the Planning Department;

20. Lot 2 shall not remain in an open condition longer than sixty (60) days. "Open" shall be defined as that period of time between initial preparation of the lot for building (clearing of trees, stripping of topsoil), and the time that the foundation has been installed, backfilled, and the rough grading has been established and stabilized by use of temporary seeding, mulching, or netting. This restriction shall remain in force until the lot has been properly stabilized and shall survive changes in ownership of the lot;
21. Stockpiles of earth materials shall not be permitted in any area, which necessitates removal of trees for such purpose, nor within fifty (50') feet of any wetland boundary, drainage channel, or watercourse. Stockpiles shall be designated on a plan, which shall be submitted to the Planning Department, said locations to be determined by the developer and approved by the Planning Department. Stockpiles shall be prohibited in areas, which have not been approved by the Planning Division;
22. Long term (more than sixty days) stockpiles of earth materials shall be shaped and secured by haybales along the perimeter and shall be stabilized by temporary seeding or netting;
23. Burial or burning of vegetation, stumps, or construction debris is strictly prohibited anywhere within the subdivision. Such materials shall be removed and properly disposed of off the site;
24. All construction activities within the subdivision shall be confined between the hours of 7:00 a.m., and 6:00 p.m., Monday through Friday, unless otherwise approved by the Planning Board. Once fully framed, interior construction related activities are allowed on Saturdays between 8:00 a.m. and 6:00 p.m. unless otherwise restricted or prohibited by the Inspector of Buildings in response to complaints. Construction activities include the transport of equipment, materials and supplies to and from the subdivision. Interior construction within the structure once fully enclosed shall be regulated by the Inspector of Buildings;
25. As field conditions warrant, berms of type and design specified by the Department of Public Works shall be installed in locations determined by the written decision of the Director of Public Works;
26. Construction activities on individual lots shall be conducted in a workmanlike manner at all times. Blowing dust or debris shall be controlled by the developer of lots through stabilization, wetting down, and proper storage and disposal methods;

Prior to Clearance Certificates

27. Prior to issuance of a Clearance Certificate for Lot 2, the developer shall establish a segregated account, which shall be used to secure proper stabilization and removal of all erosion controls prior to completion and to ensure planting of the eighteen (18) Arborvitae shrubs along the southerly boundary line as proposed. Said account shall be established in an amount recommend by the Town Engineer and Tree Warden and approved by the Planning Board and secured in a manner and form approved by the Board. This account once established shall be used as a mechanism to assure all unnecessary erosion controls are promptly removed and the plantings have taken place;
28. Prior to the issuance of a Clearance Certificate for Lot 2, all utilities shall have been fully constructed and approved by the Department of Public Works. Immediately following the installation of said utilities, the developer shall prepare as-built plans pursuant to Section VII.W. of the Rules and Regulations Governing the Subdivision of Land in Andover;

29. Lots 1 and 3 have existing dwellings located on each lot and shall not be subject to the Planning Board condition #27, shall not require a segregated account, and shall not require a Clearance Certificate prior to conveyance.

Prior to conveyance of a lot

30. Prior to the conveyance of Lot 1, Lot 2 or Lot 3 the developer shall provide the Planning Department with a surveyor's certification that temporary lot corners have been established on the ground for the lot to be conveyed. Once established, maintenance of these temporary corners shall be the responsibility of the lot owner;
31. The drainage areas shown on the plans shall be fully constructed, stabilized and operational prior to pavement of the driveways and development of any house lot;

Prior to occupancy of Lot 2

32. Prior to planting the eighteen (18) Arborvitae shown along the southerly boundary line of Lot 2, the location of the trees must be reviewed and approved by the Planning Staff;

Prior to release of the account

33. The 18 Arborvitae shrubs must survive one (1) year following initial planting. The owner shall replace any trees that die within one year from the date of planting in kind and in similar size;
34. An as-built and profile plan of the roadway shall be submitted for review and approval to the Department of Public Works with a copy of the same being submitted to the Planning Division;

Specific Conditions

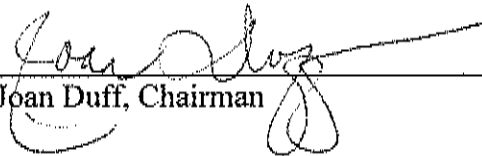
35. The developer shall be responsible for all maintenance of the drainage systems until such time as Lot 2 is conveyed to a new owner, whereupon the system shall then be the responsibility of the owner of Lot 2. The owner of Lot 2 shall bear sole financial responsibility for the maintenance, repair and replacement of said system. The Town shall be provided with an easement to maintain and repair said system in the event the owner of Lot 2 fails to do so, but all costs associated with any such repairs and maintenance by the Town shall be born solely by the then current owner of Lot 2;
36. The owner of Lot 2 is responsible for the maintenance and upkeep of the roadway, including snow removal;
37. All three lots within the subdivision will be restricted to a legal address of High Plain Road;
38. The roadway is a Private Way as shown on the plan and is intended to remain as a Private Way in perpetuity;
39. All utilities including water service lines serving Lot 1 and Lot 2 shall be private;
40. Trash pickup shall be along High Plain Road for Lots 1, 2 and 3;
41. The roadway pavement (width) shall be restricted to 18 feet at its intersection with High Plain Road and shall decrease to 12 feet in width at the location shown on the approved plan. The Right of Way shall remain at forty feet, however the roadway pavement width shall never be constructed more than 18 feet wide without the written legal consent of all abutting property owners and without the written consent of the Planning Board;

42. There shall be a Preservation Restriction placed on the existing historic barn located on Lot 1.
43. The Planning Board and Town Counsel shall review and approve the legal documents which will implement conditions #35 through #42 within 30 days of the close of the 20 day appeal period.
44. A bar scale shall be placed on the record plan and the plan notations shall be updated to reflect the amended wording on conditions 17 and 18.

Following the statutory twenty-day appeal period, and in the absence of any appeal, the plan and an instrument containing the foregoing restrictions will be filed in the Registry of Deeds. The applicant is responsible for the costs associated with the Registry filings.

On September 28, 2010, at a regularly scheduled public meeting, the Andover Planning Board voted (5-0) to issue the foregoing Special Permit for Earth Movement.

Date: 10-1-10

  
 Joan Duff, Chairman

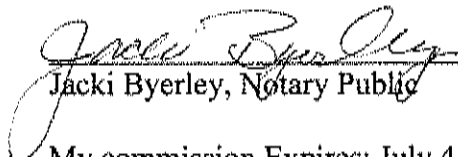
Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: 10-1-10

On this 1<sup>st</sup> day of October, 2010, by Joan Duff, the authorized agent of the Andover Planning Board, proved to me through satisfactory evidence, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the documents are truthful and accurate to the best of her knowledge and belief and who acknowledged to me that she signed it voluntarily for its stated purpose and acknowledged the foregoing to be the free act and deed of the Andover Planning Board.

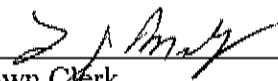
Before me,

  
 Jacki Byerley, Notary Public  
 My commission Expires: July 4, 2014

CERTIFICATION

I, LAWRENCE MURPHY, Town Clerk of the Town of Andover, Massachusetts, do hereby certify that twenty (20) days have elapsed since this decision of the Andover Planning Board was filed in my office on 10-1-2010 and no appeal against said decision has been filed.

Date: 10-26-2010

  
 Town Clerk