



Town of Rowley
Massachusetts

ZONING BOARD OF APPEALS

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February 19th, 2015 Meeting Minutes

Those present: Chairman Donald Thurston, Thomas Heidgerd, Nathaniel Dummer, Dave Levesque, Town Counsel Attorney Steve Fletcher and administrative assistant Lisa Lozzi. Robert Clewell, Peter Carpentier, and Philip Cressey are not in attendance.

I. Call to Order

Chairman Thurston calls the meeting to order at 7:00pm and reads the Agenda for the record.

II. Miscellaneous Business

- **7:05 pm: Approval of Minutes – January 15th, 2015**

Board Members review the minutes and Chairman Thurston asks for a motion to accept the minutes as submitted. Levesque makes a motion to accept the minutes as presented. Heidgerd seconds. All in favor. The ayes have it.

III. Cont'd Public Hearing(s)

- **7:10 pm: Case #A10.06 – Marion Way**

(Members acting on case: Chairman Thurston, Clerk Heidgerd, Member Dummer and Member Levesque)

Clerk Heidgerd gives a brief explanation for the reason for this meeting with Town Counsel Attorney Steve Fletcher stating the Board is at a point where it would like to complete its review with this case. The Board has substantially secured all the material as best the Board could and had been working with consultant Edith Netter from Mass Housing for the duration of the case and her retirement preempts her completing the case with the Board. The Town Counsel, Brackett and Lucas has been involved indirectly with the material that has been submitted before and the Board thought with Netter's absence at this point moving forward, it would be helpful to have Town Counsel work with the Board for the last phases of the Decision process. The Board reached out to Mr. Steve Fletcher of Brackett and Lucas and shared with him the timeline which the case has been in front of the Board including all the evidence submitted and almost five (5) years with many rounds of information and many rounds of continuances. The Board is at the point now with the four (4) remaining members on this case who are here this evening and hope over the next few months to be able to complete the Board's deliberations. This will be the first step in the final deliberations to whatever step the Board will take. The Board asked Mr. Fletcher to attend tonight's meeting so the Board could discuss any number of variables concerning the type of Decision the Board might draft.

Chairman Thurston thanks Attorney Fletcher for coming to tonight's meeting and hopes he's a great help to the ZBA.

Chairman Thurston states the Board has had this case for five (5) years and there have been many discussions on the different aspects of the case which some the Board likes and some the Board does not. It's been difficult to get the information we needed. Some came through, some did not. We are in limbo as to which way we are going at this point. The ZBA will start with the timeline.

Attorney Steve Fletcher says he's going in on this cold and asks the Board if the public hearing had been closed whereas he wasn't clear if the hearing had closed or not. Board response is no.

Heidgerd mentions that the ZBA is under somewhat of a time frame due to Member Dummer retiring the end of June 2015 after 55 years with the ZBA. The ZBA will be unable to act on this case if we do not decide on a draft for signature no later than the June meeting which means operationally come up with a draft for final review in May of 2015 for a 30 day window for deliberations.

Fletcher says he will make himself available for the Zoning Board.

Thurston says what bothers him is the non-discussion of the waivers. Chairman Thurston has asked Mr. Decoulos repeatedly for the figures for how they pertain to the finances and they have not given any of that information. There have been many continuances. Some have been from our perspective yet many many continuances have been because the Board had asked for information and they haven't been ready.

Heidgerd asks Mr. Decoulos if he has anything for the ZBA. Decoulos produces a new Purchase and Sale agreement and hands it to the Chairman. There is discussion on expiration date between Board Members. It is the same document, just updated to reflect new expiration date of as December 31st, 2015. Thurston states the Board asked for the Purchase & Sales agreement because the previous Purchase & Sales agreement expired on December 31st, 2014. Chairman Thurston states to let the record show the Board has received a new Purchase & Sales agreement showing an expiration date of December 31st, 2015. Lozzi makes a copy and hands to Attorney Fletcher.

Chairman Thurston states for the record, this project came before the Board in May of 2010 and proceeds to read the project 'timeline' document for the record. (10 pages)

Heidgerd reads Chairman's letters of 4.18.13 and 5.16.13 for the record. Lozzi makes copy of 5.16.13 letter and hands to Attorney Fletcher. (4.18.13 letter is already in Attorney Fletcher's possession.)

Thurston continues reading the project 'timeline' to completion.

Attorney Fletcher asks the Board if there is a running inventory of the 'received' documents as exhibits for the ZBA would want to recite in the Decision everything that has been submitted. Lozzi says the ZBA will produce one.

Fletcher asks Decoulos if it's his understanding the Board should be looking at everything from day one whereas there is a dilemma here with periods of changes which appear to have relevance. Decoulos responds with mention of changes in plans.

There is much Board discussion with Decoulos on the 'past' plans.

Thurston tells Decoulos to supply the Board with a current full set of plans.

Board discussion on the date of the next month meeting in regards to member Levesque not being available. The Board decides on March 16th, 2015 for the next ZBA meeting to enable Levesque to attend.

Attorney Fletcher asks Decoulos if he keeps a record of what he submits to the Board and Decoulos answers yes. Fletcher asks Decoulos could he send the Board a 'line item' listing of documents submitted to the Board and Decoulos says 'absolutely'.

Attorney Fletcher says his recommendation is that it is up to the applicant to decide what they want to supply. When the ZBA is looking for closure, make sure Mr. Decoulos has submitted everything he wants to submit. Fletcher says he admires the ZBA Board for their patience and diligence in providing opportunities for Mr. Decoulos to supply information but ultimately it is up to Decoulos to present the ZBA with evidence to make a Decision on. In line with inventory exhibits, the ZBA has asked for information and believes it hasn't gotten it or some of it anyway. It would be good to isolate what it is that the Board thinks Decoulos hasn't provided whether it's the traffic report or response to comments or whatever it is, because if in deed Decoulos hasn't provided information, and the ZBA has given ample opportunity and Decoulos knows he's supposed to provide it, that would be part of the Decision.

Attorney Fletcher encourages the Board to focus in on what the Board has asked for and what Decoulos has provided. Whether that results in the Decision to deny or approve, it would be helpful in the ZBA's considerations as well as the Decision. The ZBA starts off with what the evidence is and what Decoulos has provided. It is Mr. Fletcher's understanding that Mr. Decoulos is going to provide the ZBA with updated plans and if there's anything else.

Attorney Fletcher asks the ZBA to provide an inventory of all documents (letters, emails, etc.) pertaining to the project which will aid with the deliberations process.

Mr. Decoulos is told by Chairman Thurston to provide the Board with a 'complete' set of updated plans.

Mr. Decoulos addresses the Chairman concerning a previous letter submitted to the ZBA asking for the release of the balance of funds from the account and Chairman Thurston replies when the ZBA has made a decision pro or con, Mr. Decoulos will get the balance. Not before because the ZBA isn't done. The ZBA hasn't had a final review of the plan because the ZBA hasn't received a final plan which the ZBA will expect at the next meeting. Decoulos says he just thought he'd ask.

Attorney Fletcher reads from the ZBA Rules and Regulations booklet; within 30 days after completion of project the final funds will be released.

Decoulos hands Chairman Thurston a letter for continuing the hearing.
Chairman Thurston asks for a motion to accept Mr. Decoulos continuance letter for

**continuing the Marion Way hearing to March 16th, 2015. Heidgerd so moves.
Levesque seconds. All in favor. The ayes have it.**

Heidgerd asks Attorney Fletcher a question from an operating point of view such as what happens if the ZBA falls outside the ability to have the four Board Members on this case by the time Member Dummer retires. What happens to the case? Fletcher says there would be problems of certain members missing meetings with majority of board vs majority of quorum.

IV. Adjournment

**Chairman Thurston asks for a motion to adjourn the meeting. Heidgerd so moves.
Levesque seconds. All in favor. Meeting adjourns at 8:50 pm.**

**Minutes accepted at the __March 16, 2015_____meeting.
Documents provided at the meeting and are available in the ZBA office:**

Minutes of January 15th, 2015
Chairman's Letter of April 18th, 2013
Chairman's Letter of May 16th, 2013
Purchase and Sale Agreement effective 1.15.15
(hand given to Chairman by Mr. Decoulos)
Letter of Continuance from Mr. Decoulos dated 1.19.15
Letter of Request from Mr. Decoulos for Release of Funds dated 1.20.15