



Town of Rowley  
Massachusetts

## ZONING BOARD OF APPEALS

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### December 20<sup>th</sup>, 2018 Meeting Minutes

Those present: Chairman Donald Thurston, Vice Chairman Thomas Heidgerd, Member Robert Clewell,  
Member David Levesque, Member Donna Thibodeau and Associate Member Kevin Reilley.

Public Attendance – See sign-in sheet

#### I. Call to Order

7:04 pm – Chairman Thurston called the meeting to order and read the Agenda for the record.

#### II. Misc.

- Approve October 18<sup>th</sup>, 2018 Minutes  
**Levesque motions to accept. Heidgerd seconds. All in favor.**
- Vote to Accept #19.03 Withdrawal – Nancy Miller  
**Levesque motions to accept. Heidgerd seconds. All in favor.**

#### III. Public Hearing (s)

#19.04 & #19.05 – Appealing the Inspector of Buildings Decision – 23 & 33 Ellsworth Rd

7:07 pm - Members acting on this case are Chairman Thurston, Vice Chair Heidgerd, Member Thibodeau, Member Clewell, Member Levesque, Associate Member Reilley.

Chairman Thurston reads the PHP, Applicant application and BOS memo for the record.

Clewell addresses the Chairman and states he has a procedural question regarding taking factual evidence in this matter and would like to ask his question once the Chairman is finished.

Chairman reads the BOS comment letter for the record. There are no other dept comments.

Jay Talerman, Applicant's attorney replies, when asked if attorney present, stands before the Board, and introduces himself.

**Chairman Thurston asks Applicant's attorney if he minds 'running together' both cases and he says it would absolutely be appropriate. Chairman Thurston asks to vote. Clewell so moves, Vice Chair Heidgerd seconds. All in favor.**

Attorney Talerman explains his case before the Zoning Board. Mentions the bollard, chain, questions public way, road access, pace of development, just working with one lot at a time for now, would probably pursue opening up the roadway. Says "we take no position on whether or not the lots are buildable or not."

Clewell addresses the Chair and says this would be the appropriate time to ask his question. Says there is a land court case that has decided that the relevant section of Meetinghouse Road is not a public road and understands it's on appeal which is fine because if it's on appeal then it's not appropriate that we have to go by that case. Says he thinks the applications are premature to the

courts decision in the appeal. The Land Court has decided it is not a public way. For the Board to take evidence which means we (Board) decide it's a matter of fact and says it isn't appropriate because it appears to be a matter of law right now. It's not decided law because it's on appeal but if that decision is on appeal, the Board doesn't know where it's going. The Board would take evidence and the people's time to come here and testify about this or that on an issue that could be moot. When the court decides its appeal, it would be appropriate for the applicant to proceed one way or the other. Says as far as he can tell, this is not a matter of fact which this board has to do, it's a matter of law. Says he doesn't think it's appropriate for us to proceed and take the towns resources and take evidence on something where the courts are still in the middle of deciding.

Attorney Talerma says he's providing an alternative to provide relief. Says because there are 3 ways a roadway can provide sufficient frontage; 1. If it's a public way 2. If way was created under the subdivision control law 3. If it is a preexisting way with adequate access. Says the land court considered all three and it was found against the property owners on all three. Says are suggesting for lot 33 for now, and that there are factually different circumstances on the last form of the roadway that provides adequate access and says there is adequate access to lot 33 now and with the removal of the chain it would make adequate access easily. Says sooner or later if we're unsuccessful before you or on appeal or anyone else, we're going to improve this way. Mr. Leblanc has an investment in these two lots and he's had it for a while. He has the right to improve it. We think it's adequate to one of the lots (33) right now as is today. We're happy to work with you (ZBA) and Town Counsel at a pace that is workable for the town.

Town Counsel, Tom Mullen states the Applicant would be entitled to a building permit if the answer to any of the three (3) questions were yes. 1. Is the way a public way? 2. Is the way approved under subdivision control? 3. Is it a way that existed actually on the ground when subdivision control was adopted in Rowley in 1952 and currently has sufficient grades, construction, etc. so that in the Boards view it suffices for adequate access? It is really the latter point that the applicant is focusing on tonight.

Town Counsel, Tom Mullen says to Mr. Clewell's question – he is correct, however, the Board should always be willing to hear out the applicant and should not foreclose an applicant from making a presentation. Says his opinion he's giving tonight is the road is not a public 'way' but advises the Board to hear out the applicant if the applicant has additional evidence. Says to his knowledge he has never seen a subdivision plan that shows this 'way' and accepted as a 'subdivision way'. Says the question is, is this 'way' approved and endorsed under the subdivision control law? Says to his knowledge there is no approval. Says the Board should entertain the question of was this road on the ground in 1952, and assuming it was, does it currently have grades and construction that would satisfy the Board? Says the Board should focus on the Fire Department being able to make it down the road.

Vice Chair Heidgerd asks Town Counsel, if the Board identifies evidence that Mr. Talerma provides that would allow us to conclude that the road could be made to have adequate access at some point in time, it doesn't now, but if made to in our judgement, is it within the jurisdiction of the Board to look at the existing case that is under appeal? Town counsel advises the Board the land court is one piece of evidence, a powerful piece, however the applicant makes other arguments and the Board should hear them out.

Attorney Talerma states each lot is considered on its own merit with treating lot 33 differently – suggests he would ask the Fire Department if they're satisfied with access from the Wilson pond side. Heidgerd states the ZBA will reach out to the Fire Department with commenting on both lots- and asks if anyone knows about the cable-when was it put there, who put it there, and Attorney

Talerman produces a document stating the highway dept put it in, in 2000. Town Counsel reads HD letter for the record.

Roland Tyler of 15 Leslie Terrace stands and says they put up the cable because of multiple accidents on corner of Ellsworth and Leslie Road including a head-on collision.

Street names and lot numbers are discussed between applicant attorney, Board Members, and audience - Chairman Thurston says "actually it is Meetinghouse Lane and not Ellsworth Road. Ellsworth road ends prior to your site 33. Ellsworth started way over on Leslie Road, crosses over and behind the houses on Wilson Pond. Meetinghouse Lane was discontinued by the Town years ago."

Town Counsel advises not considering future developments of the road as Vice Chair Heidgerd previously questioned. Says the question before the Board now is, is it currently appropriately accessible? Also, there is no requirement that a way be a 'thru way' from one public way to another. However, you have to satisfy the Fire Department to turn around. Says the attorney is correct in stating there is a house already there, that's certainly evidence and can be taken into account; it is not legally binding, there is ample legal authority to the affect that if the town makes a mistake one time, it's not bound to make the same mistake over and over in the future.

Clewell addresses Town Counsel and reads from a case law excerpt for the record. Says wouldn't the ZBA look pretty silly if the court upholds their decision while on a parallel course here at the ZBA.

Peter Koutzoukis - 38 Ellsworth Road – stands and says the road is not adequate for one car to get through. The road is not wide enough. Expresses opposition. Says doesn't understand how any of this can happen.

Attorney Talerman says he wants the ZBA to go easy on just the one lot to be developed.

William Sheehan – 66 Wilson Pond Lane - Driveway accesses Ellsworth Road and says has question for Town Counsel and asks who is responsible for improving the roadway under current status and what protections are there for a developer coming through and wanting to improve the roadway for the sake of their development and possibly at the disagreement of the abutters?

Town Counsel says the law in mass is that if you own property that abuts a private way, you have the right to develop the entirety of that way. The only limitation is you may not develop it in such a way as to disadvantage any other owner.

Talerman - We're looking for two (2) house lots but could probably live with one up there. We do want to satisfy the criteria.

Chairman states – any change in the lot dimensions, width, frontage and lot lines along or on Ellsworth Road will lose their grandfathered status.

Talerman produces a surveyed roadway plan and shows to Town Counsel and Board Members. Says he will get a copy to give to ZBA.

Applicant's Lawyer requests to continue the hearing and Vice Chair Heidgerd says the ZBA will reach out to the Fire Department for their comments on road accessibility.

**Vice Chair Heidgerd moves to continue hearing to January 16<sup>th</sup>, 2019 at 7:05. And to reach out to Fire Department to comment and review application again. And possibly conduct a site view. Levesque seconds. All in favor.**

#### **IV. Vote to Approve Minor Modification to Building Plan - #18.10 – 5 Railroad Avenue**

8:17 pm – Chairman Thurston reads letter of intent from American BBQ – Steve Pierro for the record. Board Members examine both the ‘previously approved’ building plan versus the ‘new’ modified plan and after discussion all Board Members approve the new plan.

**Chairman Thurston initials ‘modified’ plan. Clewell so moves to accept the modified building plan as presented and Levesque seconds. All in favor.**

#### **V. Cont’d Public Hearing (s)**

##### #18.06 – Marion Way

8:23 pm – Mr. Decoulos asks about the Fire Dept Comments and Chairman Thurston says before the Board gets into any discussion he wants and proceeds to read a ‘list’ of documents previously requested from Board Members for the record. Tells Mr. Decoulos the importance and necessity of having the requested documentation in order for the Board to proceed any further.

Board Members instruct Lozzi to send a formal letter to Applicant, Owner, Manager and Engineer listing the Board Members requested documentation/information and to further state that ALL is to be received by the next ZBA meeting or application will be denied.

**Board Members suggest continuing to the February meeting to give adequate time to produce requested documentation. Mr. Decoulos agreed. Vice Chair Heidgerd motions to continue the Marion Way #18.06 public hearing to Wednesday, February 20<sup>th</sup>, 2019. Thibodeau seconds. All in favor.**

#### **VI. Adjourn**

**Chairman Thurston asks for a motion to adjourn. Levesque so moves. Clewell seconds. All in favor. Meeting adjourns at 8:42 pm.**

Minutes accepted at the 2.20.19 meeting.

#### **Documents and exhibits provided/used at meeting and are available in the ZBA office:**

Meeting Agenda

Sign-in Sheet

October 18<sup>th</sup>, 2018 Minutes

BOS Memo-Dept Comment

ZBA Signed Withdrawal Form

New Building Plan – American BBQ

Highway Dept Letter of 4.24.2000-#19.04/#19.05

ZBA List of Requested Documents-#18.06

ZBA Continuance Form-Signed by Applicant Lawyer-#19.04/#19.05

Respectfully submitted by Lisa Lozzi