

MINUTES  
FALMOUTH BOARD OF ASSESSMENT REVIEW  
THURSDAY, MARCH 15, 2012, @ 6:00 PM  
TOWN HALL COUNCIL CHAMBERS

**Members Present:** Chairman Richard Olson, Lois Lengyel, Michael O'Connor, Tim O'Donovan and Secretary Mark Porada; **Members Absent:** None

Chairman Richard Olson addressed the first order of business to elect a new Chair and Secretary.

Tim O'Donovan nominated Richard Olson as Chair; Lois Lengyel seconded.

**Motion carried 5-0.**

Michael O'Connor nominated Lois Lengyel as Secretary; Mark Porada seconded. Lois Lengyel abstained.

**Motion carried 4-0.**

Chairman Richard Olson moved to approve the minutes of the October 24, 2011 meeting as written; Tim O'Donovan seconded. Lois Lengyel and Mark Porada abstained as they were not present at this meeting.

**Motion carried 4-0.**

Chairman Richard Olson introduced the 2011 appeal for property identified as **Map/Lot #U59-19; Tax Sheet 161; located at 3 Shady Lane and owned by Marion Doyle.** Michael Doyle is present and authorized to represent the taxpayer, Marion Doyle. Assessor Anne Gregory is present.

Mr. Doyle presented his case and stated that the issue goes beyond a commercial lobster pound being operated next door at 1 Shady Lane in a residential zone. Mr. Doyle spoke about his neighbor obtaining a permit to expand a two car garage and add a third bay. He states the permit was issued but the Code Enforcement Department never followed-up to see what work was completed. The work was not for a third bay; it was for a 1,000 gallon commercial lobster tank. Mr. Doyle stated a friend told him about a Portland Magazine article describing a lobster pound named Linda Kate operating at 1 Shady Lane. Mr. Doyle confronted Mr. Nappi who denied he was running a business at this location. Mr. Doyle discovered that Linda Kate was Mr. Nappi's mother's name. Mr. Doyle described the noise generated by this activity. He stated that 1,800 lbs of lobsters were shipped the day of the Zoning Board meeting in January. Mr. Doyle stated he is concerned about the recent rear expansion of the 3 bay garage.

Chairman Olson asked Mr. Doyle to identify from the aerial photo (exhibit 4) his mother's house and Mr. Nappi's house.

Mr. Doyle stated that Mr. Nappi's garage was in the BP Zone but his house was in the RA zone. He stated that Marion Doyle's house was in the BP Zone, Margaret Honan's front yard at 4 Shady Lane was in the BP Zone and Arthur Batson's house at 2 Shady Lane was in the RA zone. Mr. Doyle expected the mixed zoning issue to be corrected by the Town Council and the Zoning

Board of Appeal was recommending either all in a BP or RA zone. Mr. Doyle stated that Code Enforcement Officer Justin Brown was addressing the issue. Mr. Doyle is requesting an abatement of \$85,000, based on real estate broker Linda Flynn's letter of opinion. He had an appraisal, but did not present it to the Board prior to the appeal hearing. Mr. Doyle relayed his conversation with Linda Flynn regarding the lobster pound and how it would affect the property's value. Linda Flynn was not aware of the lobster pound when she wrote the letter. Mr. Doyle stated his issues were: neighbor's business is shipping lobsters, no town official verified the permitted construction or what was enclosed in the garage or how it was being used. No permit was issued for the storage shed in the backyard and the property was being used illegally. He is requesting an abatement to reflect the actual status of the zone.

Chairman Olson asked the Board if they had any questions of Mr. Doyle.

Mr. Porada stated he was struggling with Linda Flynn's one page analysis summary. Her summary states that the market value range as of November 8, 2011, is from \$379,000 to \$395,000. It is not clear if the \$85,000 impact was already factored in or not.

Mr. Doyle responded that it is \$85,000 of the \$385,900.

Mr. Porada pointed out Linda Flynn's statement of "no unfavorable factors affecting marketability" at the bottom of the page.

Mr. Doyle responded that Linda Flynn added the statement in after hearing about the lobster pound but she did not take the paragraph out.

Mr. Porada asked if Linda Flynn visited the property before she did her analysis?

Mr. Doyle said yes but not that day.

Mr. Porada asked if Linda Flynn was aware of the lobster business?

Mr. Doyle stated he wanted Linda Flynn to make the best possible evaluation not knowing about the lobster pound then what impact a lobster pound would make on the property's value. He asked, "How many people would want to live next door to a lobster pound? The lobster pound is not getting smaller it is doubling in size." Mr. Doyle stated again that he would not be here if the Town advised Mr. Nappi that the lobster pound operation is over and directed Mr. Nappi to take the lobster tanks out.

Mr. Porada stated that he understands his concerns but these zoning and codes issues are beyond the Board of Assessment Review's authority.

Mr. Doyle stated these issues do impact on the value of the property.

Chairman Olson asked Mr. Doyle how long has the lobster pound been operating?

Mr. Doyle stated three years ago this spring and before that Mr. Nappi's house was a three to four bedroom house with a two car garage.

Chairman Olson asked Assessor Gregory to present her case and stated that he understands how she determined market value but wanted to know if she had any comments regarding what adjustments, if any, would be appropriate due to the business activity next door.

Mr. Doyle stated that there is a pump that keeps his 94 year old mother awake.

Assessor Gregory stated her understanding regarding Falmouth's zone lines. She stated that many of the zone lines go through properties versus following the boundary lines. Assessor Gregory stated that the Town Council is going through the approval process to correct the location of the zone lines. Assessor Gregory stated that lobster pounds or any other kind of negative impact on a property is hard to measure since it has not been determined if the lobster pound can legally operate there. Assessor Gregory asked Mr. Doyle if he has gone through all legal appeal channels as she was aware that he did appeal to the ZBA but it was tabled.

Mr. Doyle responded that to his knowledge the ZBA hearing had not been scheduled.

Assessor Gregory stated that it is really difficult to measure negative impacts as you have to have similar properties – one with the issue and one without - that sold during the same time period. This is not a commercial district with a commercial sign out front so buyers would not consider an activity they are not aware of. She does not know the intensity of the activity. It may prove not to be a legal business and then the problem may go away. Assessor Gregory stated that the letter from Linda Flynn does not include anything about the lobster business or what the \$85,000 represents. It may represent the leeway between asking and selling price. There is nothing in the letter that talks about anything negative. She would like to see the data Lynn Flynn used to draw this conclusion. Assessor Gregory states she cannot measure the lobster activity's impact on value as she is not aware of the extent of the problem and she feels the zoning permitting issues will be resolved.

Chairman Olson asked what is the timing of the resolution?

Assessor Gregory stated that the ZBA issue was tabled in January.

Mr. O'Donovan stated it was to be heard before the Town Council on Monday night.

Assessor Gregory confirmed that it was for a zone change and stated that the two issues are correcting the zone lines and home occupation permit.

Mr. O'Donovan asked if the zoning correction in front of the Town Council will make the lots totally residential use?

Assessor Gregory responded yes.

Mr. O'Donovan asked if the resolution would make one lot commercial and one residential.

Assessor Gregory responded no.

Assessor Gregory reviewed all the exhibits and cover letter submitted to the Board. She stated that there are 3,400 residential homes and no two properties are alike. For mass appraisal, assessed values can be within 10% of their most probable selling prices at the time of the last revaluation. Assessor Gregory stated that the sole purpose of the assessing function is to insure the equitable distribution of the property tax burden.

Chairman Olson asked the Board if they had any questions?

Mr. Doyle stated that Linda Flynn didn't put a reference to the lobster pound in that paragraph because they both knew what we were talking about. She did the report for him and not for an appeal situation. She was concerned about liability with the Nappi family suing her if she put in print that the Nappi's lobster pound would cost \$85,000 reduction. Mr. Doyle understands the Assessor's position. He is not complaining that his house is being taxed too high, there are no similar houses that he is aware of that has a lobster pound next door. He also advised the Board that his neighbor is also having issues with getting out of his driveway early in the morning. This is a unique situation that has been allowed to take place not by the assessing department but by the permitting department. Mr. Doyle stated he is here asking for an abatement in value, but feels this was a town failure that afflicted this on his family and the town should take into account this kind of behavior and give him an abatement. If this is allowed to continue he will be back for another abatement.

Chairman Olson asked the Board if there were any other questions. With no further questions, he closed the presentation part of the hearing.

Mr. Porada asked Mr. Doyle if the additional material he has from Linda Flynn would provide how she arrived at the \$85,000?

Mr. Doyle responded that all the information he has validates the \$385,900. He had the letter in his hand, when he asked her questions on what the impact would be having a lobster pound next door, he felt \$100,000, and she felt \$85,000.

Ms. Lengyel stated that she can very much believe the taxpayer comments about the neighbor's situation and accept the fact that it is very irritating but she has no way of knowing how loud it is as she has no direct information on that. Ms. Lengyel stated that the broker's opinion of value was solicited for whatever reason the taxpayer wanted. She does not know where the \$85,000 came from and she did not experience what the taxpayer goes through. She has nothing to justify the \$85,000. She understands there is a Code Enforcement issue, but that is not the responsibility of the Board of Assessment Review.

Mr. O'Connor stated he is in agreement with Ms. Lengyel and it is a big burden for the taxpayer to prove that the assessed value is manifestly wrong. He does not feel that was proven here tonight and he can sympathize with the taxpayer's situation. To be equitable with all taxpayers he will have to deny the abatement.

Mr. Porada stated there is a breakdown with the codes enforcement process and that is unfortunate. Hopefully, it will be addressed. Mr. Doyle's impact testimony is persuasive. His concern is trying to evaluate what that impact is or the value because there is only the one page

from Linda Flynn with the \$85,000 figure but there is no backup as how she arrived at that figure or an analysis behind it. We heard she is reluctant or unwilling to go on record with that number because of her own concerns about the impacts how others will perceive that. We do not have anything here other than this number that has been pulled out of thin air. I understand this is a unique situation but there is no evidence to back up what the adjustment should be, if any.

Mr. O'Donovan stated he is sympathetic with this situation but the issue is a zoning issue. Hopefully, it will be resolved with the Zoning Board and the Town Council. The issue is not a Board of Assessment Review issue. If the ZBA or Town Council leaves it as is, then there may be a case. With those two things pending, there is nothing this Board can do.

Chairman Olson stated he is glad Mr. Doyle brought the abatement request as it sets the Board up for the next appeal, if there is one. There is a high burden to meet. Next time, the Board will want to know the ZBA outcome. The taxpayer needs to come back with stronger information regarding the deviation of value and someone that is an expert in this area.

Mr. Doyle commented he fully realizes that it was going to be a steep hill for him to get up but he wanted to build a record going forward. He will be calling the Police every time he wakes up in the morning due to noise. He spoke of how Mr. Nappi acquired the house and said he will be building a record. He understood the decision and appreciates the Board's time.

Mr. O'Connor motioned to deny the appeal; Ms. Lengyel seconded it.

**Motion carried 5-0.**

Recording Secretary Pamela Given scheduled the Notice of Decision hearing for March 22, 2012, at 8:00 am in the Town Council Chambers. She reported the status of the 2011 appeals as follows:

- Six Taxpayers appealed their assessed values
- Assessor denied two, abated three, and one is pending
- The deadline for filing a 2011 Abatement Appeal is March 26, 2012

The Board discussed the Town of Falmouth Board of Assessment Review current procedures and adopting a revised Rules and Procedures policy. The Board agreed to continue the discussion at the next appeal hearing on April 12<sup>th</sup>.

Chairman Olson motioned to adjourn.

**Motion carried 5-0.**

Respectfully submitted,

Pamela Given  
Recording Secretary

*These minutes are not verbatim; CD available to view exact language.*