

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING June 19, 2013**

The Chairman called the meeting to order at 7.54 p.m. with all members present.

The Board agreed, by unanimous consent, to proceed with a hearing on the appeal of Mr. Cassidy. The Chairman noted that this hearing was held outside the normal 30 day period with the consent of the appellant. The Chairman also announced that the Board would first consider the question of the appellant's standing to bring this appeal, and, if the appellant was successful on this question, would then proceed to a full hearing on the merits with input from the appellant, the Zoning Enforcement Officer and the public. In response to a question from the public (in fact from the attorney for Calarese Properties, the developer of the development concerning which the appellant was seeking a ruling) the Board decided that on the question of standing public comments would be received as *amici* contributions.

The appellant stated that he had been told by persons he had consulted that he should seek an opinion regarding whether the high retaining wall, which would be built very close to his property line, was a "structure" within the meaning of that term as used in the Zoning ByLaw. Furthermore, the appellant noted that the letter from the Zoning Enforcement Officer stated that he had a right of appeal.

At this point, lengthy exchanges took place between the appellant and the members of the Board. Among the points raised were (a) it is difficult to see how the appellant fits into any of the categories of persons entitled to appeal enumerated in MGL 40A, Section 8, which defines the Board's limited jurisdictions; (b) it is not clear what effect a favorable decision on the merits of the appeal would have; since the proposed retaining wall has not yet been built, nor has permission for its construction been obtained from the Planning Board, there is presently nothing against which the Zoning Enforcement Officer can act; (c) both respect for a fellow Board, and the risk of depriving the developer of due process, counsel against action by the Board on a limited factual record which might foreclose action by the Planning Board on a more developed

factual record; and (d) since a decision by the Board would not bind the Planning Board, there is a risk of inconsistent decisions if the Board proceeds.

When comments were invited from the public, Mr. Joseph Antonellis, the attorney for Calarese Properties, presented the Board with a written memorandum relating to the standing issue. Mr. Antonellis urged that the problem with the proposed appeal was not one of vagueness, as had been suggested in earlier discussions, but rather that the question was not ripe. There are multiple things going on at the Planning Board and Calarese could not at present obtain a building permit for the proposed retaining wall since there has been no site plan review. Mr. Antonellis stated that he understood the argument for judicial economy but hearing the present appeal would not in fact be such judicial economy (directing attention to the *Connors* case cited in his brief) since permission for the proposed wall might never be given or a different wall might be substituted. Issue of an advisory opinion is not an appropriate way to proceed in the present circumstances.

There was no further public comment. When the Board indicated that they would move immediately to deliberation on the standing issue, the appellant sought to withdraw his appeal. By unanimous consent, the Board allowed this withdrawal, noting that that no determination had been made about standing or the facts of the case.

A motion was made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously to accept the Minutes of the May 15, 2013 meeting as presented by the Clerk, with one agreed minor amendment.

A motion was made by Mr. Cole, seconded by Mr. Biocchi and passed by a vote of 4-0 to accept the petitions of Ms. Cataldo and Sprint, and set them for hearing on July 17. Mr. Musmanno abstained since he would no longer be a member of the Board by the hearing date.

The Board then interviewed Mr. Craig Olsen, who had expressed an interest in becoming a member of the Board. Mr. Olsen explained that he had attended many Zoning Board of Appeal meeting in his previous town, especially those involving large projects such as schools. Following the interview, on a motion made by Ms. Doherty and seconded by Mr. Biocchi, the Board unanimously recommended to the Selectmen and the Town Administrator that Mr. Olsen be appointed to the Board.

The Board then signed bills, and by unanimous consent accepted the decision on the application of Ms. Blenkhorn with one agreed amendment.

A motion to adjourn was passed by unanimous consent and the Board adjourned at about 9.20 p.m.