

# Town of Millbury Board of Appeals

Paul Nigosian, Chairperson  
Robert Simmarano, Clerk  
Harold Proodian  
Ken Perro  
Daniel Mezynski  
Anna Lewandowski, Alternate member



MUNICIPAL OFFICE BUILDING  
127 ELM STREET  
MILLBURY, MA 01527

RECEIVED  
TOWN CLERK  
16 APR 29 PM 1:39  
MILLBURY MASS

## Meeting Minutes

Wednesday, March 30, 2016

7:00 pm

**Board of Appeals Members Present:**

Paul Nigosian (Chairperson)  
Robert Simmarano (Vice Chairperson)  
Ken Perro (Clerk)  
Anna Lewandowski (Alternate)

**Absent:** Daniel Mezynski and Harold Proodian

**Guests:** Jodi Healy (owner of property), Ms. Healy's Attorney Michael Mochos and (1) Abutter: Jane (last name unknown).

**I. Call to Order:**

Having complied with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, relative to advertising and notifying abutters, the Meeting was declared officially opened by **Ken Perro** at 7:05 pm. All decisions of this board are final except as provided in Chapter 40A of the Massachusetts General Laws.

**II. Public Hearing:**

**Owner: Jodi Healy; (4 Sutton Road, Millbury, Ma; Map 79; Lot 11) (By a deed duly recorded in the Worcester Country Registry of Deeds in Book 15547, Page 174)**

Petitioner: **Property Owner: Jodi Healy**

Petition Purpose: **REMAND** (previous petition meeting with the BOA dated back on Wednesday, January 29, 2014 for a "Special Permit" to install an illuminated message sign, petition for Permit was **DENIED**; Appeal was filed with the Town of Millbury clerk's office on February 7, 2014). Petition is being re-visited as a "Remand" in front of the Board for a Special Permit for a (3' x 4') Illuminated Electronic Message Center Static Sign for the property located at 4 Sutton Road, Millbury, Ma for the use of occupying business and community service type announcements.

**Paul Nigosian:** We are here to hear Jodi Healy of 4 Sutton Road, Millbury, Massachusetts: Map 79; Lot 11 for a “Special Permit” to install an illuminated message sign. Announced that there were only 4 members present on the board therefore the petitioner, Jodi Healy, would have to get all four members for an approval, Ms. Healy was given the option to postpone the hearing for a later date if she didn’t want to follow through with the hearing. Ms. Healy’s Attorney, speaking on Ms. Healy’s behalf, has agreed to move forward.

**Ms Healy’s Attorney Michael Mochos (takes the podium):** States that he and his client, Ms. Healy, are back based on a Remand through the Worcester Superior Court; on January 29<sup>th</sup>, 2014 when they previously appeared in front of the board their appeal was rejected, February 9<sup>th</sup> 2014 they received the hard copy of the denial from the board through the town clerk and on February 25<sup>th</sup> 2014. Ms. Healy filed an appeal, during that time the town at first was “pro-say” which is not allowed under law, finally they did select Kopelman and Paige to represent them. Atty. Tom Lane of that firm was the lead attorney on this matter, in discussions it was decided through the opinion of the town council that this matter should go back to the board of appeals for purposes of a remand to have a re-hearing, therefore Judge Lemire of the Worcester Superior Court issued on February 23, 2016 an order of remand; requested in 90 days that they have a hearing.

The application that was mentioned was finally heard on January 29<sup>th</sup>, 2014 but was filed by Ms. Healy on November 1<sup>st</sup>, 2013 pursuant to the zoning bylaws article 3; section 34, as to a sub section 34.26. This request is for the purpose of an illuminated static sign, it’s not a blinking sign, it’s a static sign with the dimensions of 3’ft x 4’ft. The sign meets the requirements of the zoning bylaws; article 3, section 34, in a sub section 34.26. In the original application Ms. Healy had provided to you, “Illumination of sign will be scheduled and adjust accordingly with changing daylight to allow for appropriate visibility. On or around dusk and sunset, brightness will decrease gradually to reach 25%+/- brightness (in winter months even less). During sunlight hours and depending on glare, brightness will be set between 75% and 100%. Images, text and all messages will be static, messages will change approximately every 5-7 seconds or sometimes it will be just static completely, closest viewing distance is approximately 43 feet of oncoming traffic, sign will be shut down at 10PM, sign will display information as required. In accordance with 34.5, 3; Electrical permit will be submitted with approval.

When the final denial was received there was no given reason for the denial, that is incorrect under law by itself, although it was an extensive hearing, both the building inspector and the town planner were here making various statements which had no data support and no official records to support their ideas of why they recommended to this board to reject in this appeal on behalf of his client, Jodi Healy 4 Sutton Road LLC, it has to be pointed out that it’s not proper for a board to just say denial and not provide the reasons, not to know why officially and in fact it was rejected; the presentation here is on the basis of both statute law and also the town bylaws, this is the proper permit request and meeting the requirements of that bylaw in the basis for the sign it’s also governed by Massachusetts General Laws Chapter 48, section 9 that Special Permits may be issued only for uses which are in harmony with a general purpose and intent of the ordinance or bylaw section; article 3; section 34, as to a sub section 34.26.

This is a commercial area this sign won't have any interference with the neighborhood.

Not knowing what reasons the board rejected it for the first time we now respectfully request that the board approves it, but bringing it to the boards attention if it is rejected they will be going back to court for a remand and they will proceed on the basis of the appeal that was filed back in February of 2014.

**Abutter: Jane (Hagstrom? of 177 or 179 W. Main St.). took to the podium to speak:** She explained she lives 2 properties over from behind the property in question, 4 Sutton Road. Jane explained that she also attended the first meeting back on January 29, 2014 and as then she still has reservations for the sign, as she stated, 1.) The sign didn't meet the criteria for the bylaws, 2.) The safety of the sign with the fork in the road that might be distracting to the oncoming traffic with the flashing lights, neon or how ever the sign may be designed, she also mentioned that even though 4 Sutton Road and the property across the street is listed as commercial property the rest of the neighborhood is zoned as residential, she states that was some of the reasoning why the sign was turned down for a permit in the previous meeting back in January of 2014, she had spoke with the building inspector that afternoon that it didn't meet the criteria of the sign and even though they had to go through the courts for the process the same reasons are there from two years ago to deny the special permit.

**Attorney Michael Mochos (takes the podium):** He explains that even with what she had to say in regards to what the building inspector had told her that afternoon his presence would be needed at the meeting to make her finding official, he states that the sign does meet the requirements according to the zoning bylaws, he continues to ask the board not to consider the statement made in reference to what the building inspector had told her earlier

**Questions from the Board:**

**Anna Lewandowski:** (States; since the two people who were first opposed to this are not here I find ironic) and asks Ms. Healy if the building is still a real estate office? (It was Ms. Healy's real estate office back in 2014 when this hearing first took place), the space is now being rented out is a second hand shop. The owner stated that the sign will be there for the use of the current tenant/ business owner to display the business name or any local activities taking place that the town of Millbury would like to advertise for instance local events or charities as a community service on her part, she had no future thoughts about using the sign for her own personal advertising, (real estate), the sign was just going to be used for the current business.

**Paul Nigosian intervenes if anyone has any further questions:**

**Anna Lewandowski:** States that the original permit was for a real estate office and reading from the minutes from the previous hearing that a motion was made and seconded to grant a special permit for a real estate office "only" as for 4 Sutton Road, Millbury, Ma and questions if the board is dealing with a real estate office or is the board dealing with something else therefore is there a need for a new application?

**Paul Nigosian intervenes:** The application was just for the sign the real estate was just an example of what would be displayed. The appeal is a remand from the courts therefore a new application is not needed what is being presented to the board is a continuation from January 2014's meeting.

**Paul Nigosian:** Again asks if anyone has any further questions or anyone from the audience wishes to speak and then entertains a motion to close a public hearing? **Robert Simmarano** made a motion, **Ken Perro** second the motion **Anna Lewandowski** and **Paul Nigosian** both were in favor.

**Paul Nigosian:** Asks if there is any discussion amongst the board?

**Robert Simmarano states:** He was in favor for the sign then and he is in favor for the sign now and that he is not going to change his decision.

**Anna Lewandowski states:** That she did vote for it previously, she does have a safety issue with it and that it does distract people going from one way or the other and not that she wants to go through this again she does feel strongly about the safety issue.

**Ken Perro states:** He doesn't have a problem with the sign, it's not like it's a massive billboard that flashes up on Rt. 290, 495 or the Mass Pike, the size of the sign is fine, he wasn't present for the last meeting because he wasn't on the board at the time.

**Paul Nigosian:** Just to clarify; the bylaws do state electronic message centers, EMC's and changeable messages, changeable signs manually activated are permitted in all business and industrial zones, EMC's are allowed by special permit in all business and industrial zones, elements to be reviewed and regulated and allowing a special permit shall include but not be limited to the following....

The intensity of illumination shall not exceed the standards set by Illuminating Engineering Society Publication TM11-00, an international sign association electronic message display brightness sky as most recently updated, free standing EMC's are prohibited in business one. They are allowed by special permit, the only thing the board can do as far as a "Special Permit" is put limits on it, we can say it for advertising for the business that's in the building, turning it off at a certain time, etc....

**Paul Nigosian:** Asks if there is any discussion amongst the board or any one wants to make a motion?

**Robert Simmarano states:** He doesn't think the board should get into making all kinds of reservations with the operating of the sign, he thinks that the board should keep it as general as possible and hope that the people using the sign will use it in a respectable way according to what the neighborhood should have, I don't think they're trying to create Time Square down there.

**Paul Nigosian:** What they had put forth in the petition; the sign will be shut down at 10pm and display what is required...

**Attorney Michael Mochos (intervenes and takes the podium):** States that Ms. Healy is also offering to advertise for any town events and she is not going to have other commercial businesses advertising or using the sign, it's just for whoever her tenant is and any type of community service, he asked that this statement be put into the motion if there is any other concern.

**Paul Nigosian & Attorney Michael Mochos discuss:** The sign meets all the requirements; size wise, brightness, it's not flashing, it could change every 8 to 7 seconds and the sign is considered an electronic message center (EMC).

**Paul Nigosian:** Asks the board if anyone wants to make a motion?

**Robert Simmarano:** Motions to move forward and give Ms. Healy the variance, correction "Special Permit".

**Paul Nigosian:** We have a motion to approve the application for a special permit for a laminated electronic message center, static sign located at 4 Sutton Road, Millbury, Ma for use of the business and for community service announcements; the sign will be shut down at 10pm daily.

**Robert Simmarano:** again makes the motion, **Ken Perro:** Seconds the motion, **Paul Nigosian:** asks the board, all in favor? The board is in favor, the motion is approved 4 - 0.

**Paul Nigosian:** Instructs Ms. Healy to give the town a week to 10 days before it is filed with the town clerk, there is still a 20 day waiting period in the event of an appeal.

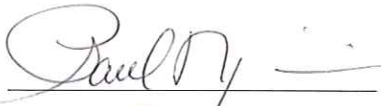
**III. Approval of Meeting Minutes from February 24<sup>th</sup>, 2015:**

**Paul Nigosian** Entertains a motion to accept the minutes February 24<sup>th</sup>, 2016; **Ken Perro:** made the motion, **Robert Simmarano:** seconded, all in favor 4 - 0.

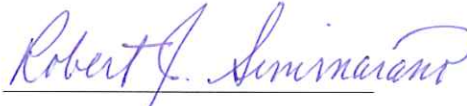
**IV. Adjournment**

Motion to adjourn by Chairman Nigosian at 8:00 pm, **Robert Simmarano** made the motion, **Ken Perro** second the motion carried unanimously 4 - 0.

Respectfully submitted by Nancy Young and submitted to Town Clerk.



Paul Nigosian, Chairman



Robert Simmarano, Vice Chairman



Ken Perro, Clerk



Anna Lewandowski, Alternate