

**SEEKONK ZONING BOARD  
REGULAR MEETING  
MINUTES**

**October 20, 2014**

Present: Ch. Edward F. Grouke, Roger Ross, Robert Read, Neal Abelson (for Ron Blum)  
Keith Rondeau

7:00 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, October 20, 2014. I am going to go over our Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. The Board will ask questions of the petitioner and witnesses. Any questions from the podium will go through the Chair. We will hear from anyone in the audience to speak either in favor of or against the petition or with any questions. At the close of the evidence, we have a discussion and then take a vote. We also usually make a decision on the same night, although we are not required to do that. There are times that we may postpone a petition for another meeting either for a site visit or to gather some information. Once we have closed the public hearing and taken our vote, it is then reduced to writing and filed with the Town Clerk within 14 days of the date the vote is taken. Any person who feels that he is negatively affected by our decision, as long as he has the proper legal standing, has the right to appeal to the courts of the Commonwealth of Massachusetts; and anyone considering taking such an appeal has to have the proper legal standing and comply with very strict time limitations that are applicable to a court appeal. The time limits are very strict.

**2014-19 Edward F. Lundgren**, 49 Mink Street Seekonk, MA, Owner by Nine Warren Avenue, LLC, 49 Mink Street, Seekonk, MA Petitioner, requesting a **Comprehensive Permit**, pursuant to Massachusetts General Law Chapter 40B, and the Town of Seekonk, MA Zoning Board of Appeals Comprehensive Permit Regulations to allow construction of eight (8) homeownership units at 9 Warren Avenue, Plat 2, Lot 9 in an R-3 zone containing 5.96 acres +/- (This was continued from 9 /22/2014)

Paul Cusson and Edward Lundgren were sworn in.

P. Cusson At the last meeting we had regarding this particular development, I think we answered all the questions the board had at that time. We had requested the hearing be closed and the Board wanted the opportunity to have Mr. Rondeau present as he was not at the last meeting and I think the Board wanted to check out some things for themselves. We have nothing more to add this evening other than Mr. Lundgren has presented to the board a draft of some of the rules and regulations that would be included as part of the condominium documents. This is still in draft form to be finalized by the counsel.

Ch. Groucke When you say counsel, you mean...

P. Cusson Mr. Lundgren's legal counsel.

N. Abelson (Referring to plans) Did you move the driveway on that?

N. Lundgren (Referring to plans) That has not been changed by InSite Engineering. We did speak of aligning these to form a "T" which will be done by InSite.

P. Cusson We thought that could be a condition of approval.

N. Abelson I went through the spec sheet, you are going to use Timberline architectural shingles?

N. Lundgren Yes and vinyl siding.

N. Abelson .042 or .039?

N. Lundgren I don't know, I never use vinyl siding, I use cedar shingles but for ease of maintenance, I will be using vinyl.

N. Abelson .042 is a good quality, middle of the road, not really expensive; it would stand up a lot better because the .039 and .036, you hit it once and it just pops.

N. Lundgren I could make that a condition of the approval process. I will be using fiberglass doors not steel.

N. Abelson There is just one other thing, it says you would be using ½" CDX on roof, and you can't do that anymore.

P. Cusson I think you still can with ply-clips.

N. Abelson No, that used to be a HUD thing with the ply-clips but they have changed it.

N. Lundgren Even with that, you still see it. I don't have an issue with that.

- Ch. Grouke Keith, I just want to confirm for the record that you weren't here the last time but you were able to review everything.
- K. Rondeau Yes, I was able to review everything, I actually watched the proceedings that night, any questions I had were answered. I appreciate the Board allowing me the time to have some of my questions brought forth tonight. I had two major questions and they happen to be what you brought up anyway. The two major questions I had were the fire hydrant situation which we will talk about tonight and the schematic of the roadway.
- Ch. Grouke Having mentioned the fire hydrant, we received an email from Chief Healy, saying he might not be able to make it although he might still be here but he says if he can't make it, his comment stands that from a safety standpoint, he prefers that a hydrant be placed at the end of the development.
- N. Abelson Before it coming from the fire station?
- Ch. Grouke Actually, when you say before the development he wanted one...
- N. Lundgren Currently, there is a fire hydrant directly here, right at the property line.
- Ch. Grouke He wanted one brought in to the development.
- N. Lundgren His concern was if there is a fire here, the fire trucks have to go past this or would have to back up and connect to the fire hydrant.
- N. Abelson They make the connection and feed out as they drive away.
- P Cusson The location of the hydrant meets Planning Board Subdivision Rules and Regulations so to require something, as far as distance, so I think personally, I do respect his opinion obviously, but we do comply with the town bylaws, and that is a rather expensive situation to have new hydrant brought closer to the property line.
- N. Lundgren The current hydrant is 145' from the center point of the driveway.
- N. Abelson I would not want to see you bring it into the site. You would have to bring in a...
- N. Lundgren I think InSite thought there is an 8" main here but there is actually a 6" line there. It turns to an 8" line somewhere after this hydrant, perhaps when it crosses the road. We certainly don't want to bring a hydrant in due to the expense of it. I have never been to a fire but it seems like being 145' from the hydrant to the center of the road; the farthest building is less than 250', I know the Planning

Board has them every 500' in new subdivisions; we are way closer than we need to be.

N. Abelson Where is the closest one on the other side?

N. Lundgren Over by InMotion Motor Sports on the other side of Route 6; there is also one on Balmoral Court.

R Ross If memory serves, I asked in September and I didn't make a note but I think I recall you saying it was an \$80,000 proposition.

N Lundgren I spoke with Winwater Company in Warwick and Michael Bradley who works there ball-parked it between \$70-80k to do a "T" here and bring an 8' main and a hydrant, a huge amount of money. Obviously, we want this to be safe, but I think we have achieved that with what is there. It is not ideal perhaps but it is pretty close; only 145' away.

K Rondeau The Chief states he prefers it be placed at the entrance of the development. This is as of today.

N. Lundgren That would be considerably cheaper to do.

P Cusson But it is still unnecessary. My point is, we meet with the Subdivision Rules and Regulations and if the Subdivision Rules and Regulations are not adequate, maybe they should be...you should not...obviously, the Board can do whatever decision it wants but in my opinion, it should not be more stringent than already approved Subdivision Rules and Regulations.

N Abelson This is a different animal, it does not fall under subdivision rules and regulations.

P Cusson But it does comply.

Ch Grouke I am not saying it doesn't.

N. Lundgren So what is the feeling of the Board? We know the Chief wants one there.

Ch. Grouke We are sensitive to what the Chief is saying, we don't want to see you have the tremendous expense of bringing it inside the development but then again, just before the entrance is something we might want to consider I would think. I don't know what the expense of that would be.

N. Lundgren I don't know but maybe that is something we could do.

- R Ross I may be wrong but I think you suggested last month if you did that it would be about \$40K.
- P Cusson I think you said it would be about \$25-30K
- N Lundgren I don't know what the water department would do but the fee for an 8" meter, the fee alone can be \$10-15k.
- P Cusson Maybe as a compromise I think I had requested a waiver of all fees.
- N. Abelson They are not part of the town, so we can't speak for...
- P. Cusson Sure they are. Based on the Housing Committee Appeals decisions, any Board, even though it is a joint water district between two towns, it still is considered a local board. Under 40B, the ZBA has the authority to issue that permit. Dighton was established under a separate legislative, so they are still considered local boards. I think the Board can always, even if the Board feels contrary to that, it is still something we can discuss with the Board. I am trying to get to some kind of compromise.
- Ch. Groucke We are open for a compromise.
- N. Abelson We would have to talk to the Water District.
- P. Cusson No, you have to make your own decision then let the Water District do what they want to do.
- N. Abelson They are not part of the Town though.
- P Cusson In my opinion, under 40B, they are considered a local board even though they are not part of the Town.
- N. Abelson We have no jurisdiction or power over that Board.
- P. Cusson That is not true based on the Housing Appeals Decision, the Amesbury decision. I understand what you are saying and under conventional subdivision and so forth one has to go to the Water District separately to get their permits and so forth. We are not saying we don't want to comply with their standards as far as their construction techniques and that is not a problem but the only issue is whether or not this Board can make a decision to waive the fee, waive half the fee.
- N. Abelson We can't make that decision, it is up to them.
- P Cusson Ie respectfully disagree with you.

- R Ross I am not arguing with you, I don't know, I want to read some cases. I would feel much more comfortable if I read a couple of cases. I am not familiar with the Amesbury...
- P. Cusson Actually, if you have the rules and regulations, I didn't bring a copy with me. I think you have a copy.
- R. Ross I think John Hansen does.
- P. Cusson Under 760CMR 56, the definition of a local board, it says right in that regulation what a local board is and it says "regardless of how it was created" this board cannot for example, we have an Order of Conditions from the Conservation Commission but we have to comply with state law; even though it is a local board. This board cannot act as Conservation Commission in regards to the State regulations. The same as the building code, we have to comply with the state code. I would suggest you look up the definition of a local board.
- N Lundgren If I could put an additional fire hydrant here before we turn into this road for \$15k its okay with me. But if the Water Department is going to charge me a \$20K tie-in fee, which they sometimes do for a new subdivision, then I am not really wild about doing that.
- N. Abelson We should forward the letter from the Fire Chief talking about how he wants that, actually, you guys should do it and explain that there is one and the Fire Chief for public safety reasons wants another one there.
- N. Lundgren I figured being 145' from the center of driveway and 10' from the property line.
- Ch. Grouke Other than the hydrant issue, as far as having this being continued as a public hearing, are there any other issues that we need to address?
- K. Rondeau The schematic of the driveway?
- N. Lundgren We talked about we would "T" this.
- R. Ross I have that as a condition.
- N. Lundgren Also, I will work out with the Water Department to put in a hydrant prior to the driveway.
- N. Abelson I think with a letter from the Fire Chief and stuff like that, I am sure they can help you out because it was...

- P. Cusson Well, I am not sure what the pleasure of the Board is, but if the hearing is closed tonight, you have so many days to make a (inaudible) and you can do that in open session in the next meeting whatever the case may be.
- Ch. Grouke So, if the public hearing is closed tonight we have...
- P. Cusson 40 days to make the decision.
- N. Lundgren I will go to the Water District tomorrow and talk to them, he is pretty agreeable.
- P. Cusson You have 40 days to file with the Town Clerk. And deliberations are supposed to be in an open meeting not a public hearing.
- Ch. Grouke Chris Testa circulated a decision from another 40B petition to give us a refresher course in what these decisions look like.
- P. Cusson Is that an issue for you Chris?
- Ch. Grouke She has already done that.
- P. Cusson Oh, it's been done, I was going to do the same. Let me refresh the Board on the process. Once this decision is rendered, there will be conditions in the permit, we then submit your conditions and since this is a LIP, we submit to DHCD, for final approval and they have to issue final approval and a Regulatory Agreement. The ZBA acknowledges the Regulatory Agreement it is executed between the developer and DHCD. That would be the final approval.
- Ch. Grouke Our decision is subject to more review from the state agency.
- P. Cusson The state is concerned with boards putting in decisions, for example, that the developer cannot make more than 10%. That is not under the Board's jurisdiction, that is for the state agency to determine. So the state is looking for those kind of things that the board has no authority under 40B to make certain conditions. You might want your own deed rider; that is now allowed. There is a standard deed rider that these certain units have to remain affordable in perpetuity. There is a process in which the affordable buyers, when they go to resell at a later date; we talked about the resale multiplier at the last meeting, that is a State regulated process. Some towns, in the past, have tried to put their two cents in, if you will, in changing that and it's not acceptable. Those are the kinds of things the state is looking for. The conditions we are talking about tonight, the vinyl siding, the state doesn't look at that as a rule. If you have a copy of a draft I would like to take a look at it.

- Ch. Grouke Nothing has been done yet, we were looking at a previous decision. It is public record but at that time when it was done we had the help of a consultant to do that.
- P. Cusson Who was that Ed Marchant?
- Ch. Grouke We had Ed Marchant but we also had another law firm that helped.
- P Cusson I would be glad to, if you think it's appropriate, prepare a draft, leaving things blank for the board to fill in. I would be glad to do that, you could take it and throw it away, or do whatever you want, if you think it's appropriate I would be glad to do that, just let me know.
- Ch Grouke At this stage, have all your concerns been addressed?
- K Rondeau In the past, when we talked about the pool of candidates for the 40B, we tried to make certain that town employees that may qualify may have preference if you will.
- Ch. Grouke You mean residents, not town employees.
- P Cusson Local preference has to be demonstrated by the town, the need for that so you have to submit certain documentation by the town to the state tells you what the wording can be, it can be town employees, school employees, employees of companies in the town. There again, 760 CMR actually tells you what the wording can be in local preference. We have not had very good luck with local preference or with the lotteries as a rule. This may be an exception; we only have two units that are affordable. Under local preference, the maximum is 70% of the total being local which would be one. I don't expect to get very many applications but what we do in our outreach when we do the housing lottery is we contact every school, administrator, teacher, worker for the school and all departments. We make a substantial effort to contact all local town employees and local companies. In addition we have it on our website, the CHAPA website; we have not had a lot of applications, because the window of application is small. Local preference may or may not work but you have to demonstrate the need. We have no problem with that if that is the way the Board wants to go. But the actual language is right in the regulations.
- Ch. Grouke That is something we can address in open session. In terms of the public hearing aspect of this, does anyone have concerns about that? I will the poll audience. Does anyone have any further questions on the 40B on Warren Avenue? No response. I would entertain a motion to close the public hearing.



N Abelson made a motion to close the public hearing, seconded by R. Ross;  
**and so voted unanimously by:** Ch. Grouke, Roger Ross, Keith Rondeau,  
Robert Read, and Neal Abelson

**VOTE: (Approve 5-0)**

P Cusson      What I would like, even though the public hearing is closed to public input, usually the developer can participate in questions and answers the Board may have so we will be doing that and I am going to send to you some local preference language and I am going to send to you the definition of local boards.

N. Lundgren    I will speak to the Water Department to see what they want about putting an additional hydrant in. Hopefully that works out.

P Cusson      You're talking about connection fees.

R. Ross        I just saw the site for Amesbury so I will read that in the next couple of days.

P Cusson      The regulations are on the DHCD website.

R. Ross        It will basically be a vote with conditions.

P Cusson      You are going to let me know if you want me to do something otherwise I won't.

R. Ross        I will be glad to look at something but I don't want to be bound by it.

P. Cusson     I have done this quite a few times, I will send something over, you can look at it and make changes, do what you want. I'll send it to you in a work format.

R. Ross        Just send it to Chris.

The Board continued the deliberation of the matter at a public meeting to be held November 3, 2014 at 7:00 PM in the Meeting Room.

Work Session:

**Approval of Minutes:**

R. Ross made a motion to approve the minutes of September 22, 2014, seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Keith Rondeau and Neal Abelson

**VOTE: (Approve 5-0)**

N. Abelson made a motion to allow the applicant for 1727 Fall River Avenue to withdraw the petition without prejudice, seconded by R. Read **and so voted unanimously by:** Ch. Groucke, Roger Ross, Keith Rondeau, Robert Read, and Neal Abelson

**VOTE: (Approve 5-0)**

Ch. Groucke Now we will be going into Executive Session and I am not participating in that so someone else will take over.

G. Sagar I believe this gentleman would like to address the Board.

R. Ross We are going into Executive Session and we are not taking any testimony.

Ch. Groucke I am not part of that and I am going to step down anyway so whoever is going to chair this part of the meeting can make a decision on that.

G. Sagar You are still in open session. You have the right to acknowledge the gentleman in the audience.

Ch. Groucke But I am in a conflict situation on that petition.

G. Sagar You cannot discuss any petition in Executive Session in Open Session so I am saying the gentleman had his hand up and would like to address it now.

Ch. Groucke Okay, come up.

Rick Machowski Shady Lane, Sworn in. I am concerned about the topic and I might be called out of order regarding the executive session. I want to voice my concerns about what is going to be talked about. It has nothing to do with what you guys do in there, I don't know if this is an appropriate time or not.

Ch. Groucke Something tells me that it isn't.

R. Ross My observation is we haven't gone into Executive Session, Mr. Machowski, how do you know what we are going to talk about- other than that matter?

R. Machowski It was on the agenda, that is where I get my information, from what is public.

Ch. Groucke I don't think it's...

R. Ross You're conflicted out, I will do it. With all due respect, the public hearing closed a long time ago and we made a decision. The appeal is pending. We are going into Executive session because of the litigation that is what we are going to discuss.

R. Machowski I understand.

R. Ross I am not at all comfortable taking any comments from the public on matters that we are going to discuss in Executive Session in respect to matters that are currently in litigation. With all due respect, you spoke extensively and I was more than happy to listen to all of your comments. I think the record is clear what your position was on this matter before we voted, we decided the case.

R. Machowski My intent is not to influence any changes, it is just a voice of concern that I hope the ball doesn't get dropped at this point. That is the only reason, my only concern. Thank you.

R. Ross made a motion to go into Executive Session to discuss the DiPietro litigation not to reconvene in open session after its conclusion; seconded by N. Abelson **and so voted unanimously by:** Ch. Grouke, Roger Ross, Keith Rondeau, Robert Read, and Neal Abelson

**VOTE: (Approve 5-0)**

### **Executive Session**

Executive Session under G.L. c 30A, sec 21 (a)(3): for the purpose of discussing litigation strategy relating to Ronald J DiPietro and Velta L DiPietro v. Seekonk Zoning Board of Appeals, Bristol Superior Court, C.A. No BRCV2013-00966 (ZBA Case 2013-12)

### **Adjournment:**

The public meeting adjourned at 7:52 PM to enter into Executive Session

Respectfully submitted by:

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Christina Testa, Secretary