

TOWN OF STOW
PLANNING BOARD

Minutes of the June 23, 2015 Planning Board Meeting

Planning Board Members Present: Lori Clark, Ernie Dodd, Len Golder, Steve Quinn,
Margaret Costello

Voting Associate Member: Mark Jones

Lori Clark called the meeting to order at 7:00 pm

Discussion of Meeting Minutes

Meeting Minutes of June 10, 2015
Ernie Dodd moved to accept the minutes as amended.
Steve Quinn Seconded.
VOTED: (5-0) Unanimously in favor.

Meeting Minutes of June 17, 2015

ED moved to accept as modified
Steve Quinn seconded.
VOTED: 5-0 Unanimously in favor

Correspondence Update

None.

Public Input

None.

Planning Board Member Updates

Planner's Report

Pompo Fire Station / Community Center

Jesse Steadman said he has an Application for Clearance Prior to Issuance of a Building Permit before him regarding the Fire Station / Community Center project. Jesse Steadman said while he does not have the final plans, he is aware that the plan modifications on the decision have largely been complied with and is awaiting the final plans and reports from Craig Martin. Jesse Steadman asked the Board if they would like him to hold off on signing until the updated plans are in the office or if they would authorize Craig Martin, Building Commissioner to finalize with the engineers, the required conditions and plan modifications. The Board agreed that Craig Martin can take on the task of finalizing the reports and getting the information to the Planning Board.

Meeting Schedule

July 1st

July 29th

Lower Village Water

Jesse Steadman updated the Board on the current status of discussions regarding Lower Village public water supply development.

Planning Board Member Updates

Mark Jones said he attended the Open Meeting session and noted that the Attorney General is very particular that the Open Meeting Law is strictly complied with. It would help to be reminded of the different ways that Committee's can comply. Len Golder asked about email and technological communication.

Collings Foundation Inc. Decision Deliberation

Lori Clark suggested to the Board that they first work through the case law to understand how it will direct the Board's interpretation on the definition of education as it regards the Dover Amendment. Lori Clark said, once that is done, it would be good to go through the activities one at a time and apply the definition.

Metrowest YMCA v. The Town of Hopkinton

Len Golder said as he reads the case, the YMCA activities are not in of themselves educational, as their mission is closer to fostering fellowship and building character, but not a necessarily a direct educational component.

Steve Quinn said what stood out is the quote that the YMCA was found to "confer[s] no diplomas or degrees on anyone using the Hopkinton site," and that the case provides some specific activities that could indicate what is considered educational by the judge. Lori Clark said what stands out for her is the Judge's acknowledgment of recreational and educational components, and that the Judge notes that once the fee is paid, the member can decide whether to participate in an instructional activity or not.

Ernie Dodd noted the Judge's discussion of education being defined broadly reading from the case law that:

"Educational activity has been defined fairly broadly by the courts in Massachusetts, and in several cases, the Supreme Judicial Court has cited to Mount Hermon Boys School v. Gill, 145 Mass. 139, 146 (1887), where the court took the view that "[e]ducation may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all..."

Ernie Dodd said, however, in Whitinsville Retirement Society, Inc. v. Town of Northbridge, the Judge suggests that the definition of education ought to be considered within the "plain

meaning” of the term. In that case, Ernie Dodd said it was found not to be Dover Protected use. Ernie Dodd said you have to think how the definition of education should apply in different circumstances. For example, Ernie Dodd said, given the way the Whitinsville nursing home was run, it would be hard to have a formal education component. Ernie Dodd said he does believe however, that for a use to be educational, it needs to have some type of program of instruction that provides for education that is meaningful or useful in life. Ernie Dodd said that instruction could be used for helping a mentally disabled child to cope with their disability or make their life useful but not just for entertainment, which is what he believes MetroWest is trying to say.

Steve Quinn said the way he reads is that the Whitinsville nursing home did not qualify for Dover protection despite the element of education, because the primary function is still a nursing home. Harbor School is more of a classroom setting that houses kids and allows for learning. Steve Quinn said that it would seem an apartment building that teaches classes is not a college, but it appears from the case law that a classroom that houses students is something more significant.

Ernie Dodd reiterated the Judge’s emphasis regarding the primary educational nature of a protected use, quoting the MetroWest case:

“in a broad sense, anything taught might be considered, to a greater or less degree, educational.” *Id.* The court must look beyond individual activities, some of which undoubtedly may in isolation constitute educational use, to see whether, in the aggregate, the overall use of the structures in question amount to educational use.

Len Golder agreed, saying the MetroWest case refers to some potentially educational activities but that it is important to look at overall dominant purpose.

Margaret Costello asked about the discussion in the case regarding how MetroWest YMCA advertised their services, and whether the advertisements, compared to the stated purpose of the facility should be emphasized by the Board.

Ernie Dodd quoted the MetroWest YMCA case, reading that no diplomas are conferred

“on anyone using the Hopkinton site. Nor is there a real possibility of failing any instructional program offered at MetroWest. No formal education of the sort required to be regulated by the Commonwealth takes place there.”

Ernie Dodd said that the mention of not having a pass/fail criteria implies that something is needed to show that a participant has made progress. Lori Clark said that whether or not something “formal,” per se, is required, it is acknowledged in the case that an educational component is offered but not required.

Ernie Dodd read from the MetroWest case, quoting:

“I find and rule that the predominant use of the existing facility and of the new ones proposed for the Site is for recreational and exercise purposes. The primary and driving intended use of MetroWest’s land will continue to be for swimming and for exercise and fitness center activities. These are the uses which predominate, and they do not fall within the educational purposes over which the Dover Amendment.”

Ernie Dodd paraphrased from the MetroWest case, saying that while undoubtedly there will be demand for the educational aspects offered by the YMCA, the primary and dominant use is non instructional family uses, including swimming and other recreational purposes. Lori Clark said it is important to note that the judge draws distinction between types of education, saying the judge “not consider that the kind of brief instruction needed simply to demonstrate, on a non-recurring basis, the safe use of this equipment and these facilities constitutes “education” for the purposes” of the Dover Amendment.

Whitinsville Retirement Society Inc. v. Town of Northbridge

Ernie Dodd said the issue of this case is whether the Plaintiff’s project will be used for a primarily educational purpose, reading from the case that “[e]ducation is a broad and comprehensive term. It has been defined as ‘the process of developing and training the powers and capabilities of human beings.’ To educate, according to one of Webster’s definitions, is ‘to prepare and fit for any calling or business, or for activity and usefulness in life.’ Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all.”

Ernie Dodd read that “While the campus concept as a whole is a scheme primarily to care for the physical needs of persons in their later years, there is an element of education therein.” “Of course, in a broad sense, anything taught might be considered, to a greater or less degree, educational.”. Merely an “element of education,” however, provided not by a formal program or trained professionals, but only informally gleaned from the interplay among residents of the nursing home community, is not within the meaning of “educational purpose” pursuant to [G.L. c. 40A, § 3](#).² Such an interpretation of the words “educational purpose” is not within the plain meaning of [G.L. c. 40A, § 3](#). We conclude that there was error in the judge’s determination that the purpose of the nursing home was “educational.”³

Margaret Costello said that footnote 2 was important to her in that it was noted that the plaintiff did not seek or request educational programs or funds from the School Committee or Board of Education for their proposed programs. Barbara Huggins said that the footnote does fall within the discussion of a Dover related matter which Ernie Dodd just quoted, and therefore is appropriate content for the Board to discuss.

Harbor Schools, Inc. v. Board of Appeals Haverhill

Barbara Huggins noted that the Master in this case is a court appointed fact finder. Barbara Huggins said it is not typically used.

Ernie Dodd noted that this case brings up the idea of how the educational aspects are delivered and the qualifications of those delivering them. Ernie Dodd read:

“(t)he facility lacks some of the sophisticated and modern equipment found in some public schools, but in its simple state, it offers an atmosphere of calm, home life, coupled with educational indoctrination in each case suitable and essential for the individual involved. In the educational process the facility attempts to tune in the wave length of the particular student’s intellectual capacity and to keep up with his learning ability and achievements.”

Ernie Dodd said it is also significant that the Judge further found that Harbor Schools, Inc.

“had two teachers who “are college graduates all with Bachelors degrees, some of them have Masters degrees. Most of them, if not all, have had specialized training in dealing with children having unusual emotional problems of psychiatric nature, requiring special knowledge and experience.”⁵ He also found that the executive director of the facilities was a “well educated man of vast experience in special education” and was amply qualified “to administer the program of these facilities which are devoted to the education and improvement of emotionally disturbed children.”

Lori Clark said that the case includes two statements regarding education that she feels are important to the definition. Lori Clark said the first is a reference to education as a “broad and comprehensive term,” and that “It has been defined as ‘the process of developing and training the powers and capabilities of human beings.’” Lori Clark said that in the next paragraph the Judge refers to Webster Dictionary definition, which says “as one of the definitions of “education”: “the act or process of providing with knowledge, skill, competence, or usu(ally) desirable qualities of behavior or character or of being so provided esp(ecially) by a formal course of study, instruction, or training.”

Mark Jones said he believes it is an easier case to understand because Harbor Schools, Inc. is providing a school like processes compared to the YMCA process and it offers the Judge a chance to provide a clear definition of what is considered educational. Lori Clark says she feels this is an important case to consider as there is discussion on the qualifications of employees. Ernie Dodd said it is also significant that it talks about the education provided as being tailored to the students.

Steve Quinn said this is clearly in regard to a school, however, the qualifications of the instructors may be relevant to their expertise, and the fact that one has a Bachelors or

Masters degree should not be the deciding factor. Lori Clark said that just because one may have knowledge of a tank does not mean they also possess an educational background to develop the information for educational purposes. Steve Quinn and Lori Clark debated that that expertise can be gained through various ways, with Lori Clark saying that merely the existence of a degree does not make someone qualified to educate someone. Steve Quinn agreed, saying a degree is not exclusive to qualify as an educator. Steve Quinn said that these cases can be argued either way. In regard to the definition of education, it mentions knowledge and that seems to be what a museum is offering. Len Golder said that from a big picture these three cases deal with a sense of an educational facility.

Kurz v. Board of Appeals of North Reading

Lori Clark noted that the Eleanor Kurz case is interesting because it demonstrates that someone can take instructional classes in subjects like dance rather than traditional school subjects.

Barbara Huggins said it is technically not a Dover case because it is construed under the local bylaw. However, it is relevant in some aspects and has been quoted in other Dover cases, but feels the need to caution the discussion given that it is not a direct link.

Lori Clark read from the case, saying

“Of course, in a broad sense, anything taught might be considered, to a greater or less degree, educational. But the teaching of the various types of dances advertised by the plaintiff, with the possible exception of the classical ballet, can hardly be considered educational use in the ordinary sense.”

Lori Clark notes the judge’s mention that the Plaintiff had no training in ballroom dancing although advertising for that instruction. Margaret Costello said she feels it is worth noting that the Judge suggests that the Plaintiff was not qualified to teach.

Timothy Hill Children’s Ranch Inc., v. Webb

Ernie Dodd noted that the articles of organization spell out exactly what the organization intends to do and it appears that is exactly what the organization does. Ernie Dodd read the stated purpose from the Articles of Organization.

Ernie Dodd said the case provides a description of what the educational programs consist of reading that

“We’ve just tried to kind of build, not from the secular sense, but from a spiritual sense what it means to be strong and courageous. And that’s been the core of the curriculum every year.” As to the activities at the camp, he testified “And then we do recreational activities. We do Bible studies. We do devotionals. We do other team building exercises that are all kind of

encompassed with this idea 'be strong and courageous' and what that means."

Ernie Dodd reasoned that although there are some seemingly unstructured aspects, there is also the presence of a curriculum and that the Judge finds that the Plaintiff said

"the programs were all incorporated together. So the umbrella of what we do from a spiritual standpoint is weaved throughout all the programs." The curriculum included a theme for each week that was "focused on the Bible."

Ernie Dodd said it is also significant to read the description on how the counselors were selected for their positions. Ernie Dodd said the camp lasts about a week.

Len Golder said that while it is a camp and not a school, it is considered that it is educational because there is teaching, such as Destiny Imagination, which his own son attended, and which has educational components although there is no test or grade. Lori Clark said there the Judge supports a broad definition of education, reading that:

"Case law illustrates that there are a broad range of educational and religious uses that are considered protected under the Dover Amendment and a strict reading of the words "education" or "religion" is not a proper interpretation of the statute."

Steve Quinn said they are concluding that the camp is a non-profit but are trying to figure out the predominant use. Barbara Huggins said that the central issue in this case is the conclusion that the religious and educational use is the primary purpose after looking at the uses on the site. Barbara Huggins said she would consider the case instructive regardless of the religious component.

Ernie Dodd said that on p. 8, the Judge provides specific reasoning for the conclusion of Dover Protection, saying that:

"the use at the Locus is focused on educating participants in vocational and religious subject matters for short, definite, periods of time, by trained professionals, with the intention that they will emerge as more productive and useful members of society. This is a clear and traditional illustration of education and religious teaching. Unlike the use in *Whitinsville*, where the participants were elderly residents with no intention of ever residing outside of the property, or using their new found craft skills for greater societal purposes."

Ernie Dodd further noted that the court looks into other uses on the property that are not subject to Dover Protection, especially in regards to the open advertising of secular entities to utilize the locus. Ernie Dodd read from the text that:

“An activity at Locus that, in and of itself, would not be considered educational or religious in nature may still be protected if it is an accessory use. An accessory use is a use “incidental” to a permissible activity that is “necessary, expected or convenient in conjunction with the principle use of land.” Renting Locus to secular entities for recreation is in no way incidental to the primary religious and educational purposes of the property which are protected...As a result, I find that if Plaintiffs permit secular, non-educational or non-religious use of Locus, for example, for a corporate retreat or a family reunion, they must follow all applicable Bylaw regulations and such use is not protected by the Dover Amendment.”

Margaret Costello said it was also noted the Special Permit findings on page 3, reading that the use:

“is eligible for a special permit as a non-profit camp for children...Since the land has been used as camp for children in the past (by previous owners, Girl Scouts of America, since at least 1949), there will be not be any significant changes in terms of the environmental impact (there is no adverse impact now nor will there be), and the general characteristics of the neighborhood, as well as the parking and traffic of the neighborhood, will be unchanged.”

Regis College v. Town of Weston

Ernie Dodd said this case again refers to education as a “broad and comprehensive term” and that the courts “have refused to limit Dover Amendment protection to traditional or conventional educational regimes.” Ernie Dodd said the courts also recognize two commonsense limits, that the “Dover Amendment protects only those uses of land and those structures that have as their bona fide goal something that can reasonably be described as “educationally significant,” and that the “educationally significant goal must be the “primary or dominant” purpose for which the land or structures will be used.” Ernie Dodd continued reading, saying that:

“Accordingly, we have concluded that the Dover Amendment applied to certain facilities for the disabled or the infirm, notwithstanding that the education afforded by such institutions differed markedly from that offered by “traditional” academic institutions. (residential facility in which “adults, with histories of mental difficulties, will live while being trained in skills for independent living, such as self-care, cooking, job seeking, budgeting, and making use of community resources”); (residential facility where adults with mental disabilities “would be taught daily living, as well as vocational skills”

Ernie Dodd read further starting with:

“In so doing, we have emphasized that the word “education,” as employed in

Massachusetts statutes and cases, “is a broad and comprehensive term.” We have refused to limit **Dover Amendment** protection to traditional or conventional **educational** regimes.

We have also, however, recognized two commonsense and interrelated limits on the statute’s application. The first is that the **Dover Amendment** protects only those uses of land and those structures that have as their bona fide goal something that can reasonably be described as “**educationally** significant.” The second is that the **educationally** significant goal must be the “primary or dominant” purpose for which the land or structures will be used.

A proposed use of land or structures may have an **educational** purpose notwithstanding that it serves nontraditional communities of learners in a manner tailored to their individual needs and capabilities. Accordingly, we have concluded that the **Dover Amendment** applied to certain facilities for the disabled or the infirm, notwithstanding that the **education** afforded by such institutions differed markedly from that offered by *286 “traditional” academic institutions.

These cases comport not only with the longstanding view in Massachusetts that “[e]ducation is a broad and comprehensive term,” but also with the legislative history of the **Dover Amendment**. As part of a general revision of the zoning statutes in 1975, the Department of Community Affairs proposed that **Dover Amendment** protection be limited to “school[s]” or analogous “place [s] or facilit[ies].” In rejecting this language, the Legislature chose not to adopt a statutory test that would limit **Dover Amendment** protection only to projects similar to “schools,” a term fairly read as denoting traditional **educational** institutions. Such a rejection “provides an indication that the Legislature did not want” the protection of the **Dover Amendment** to be limited only to those facilities closely analogous to traditional schools and colleges.

In light of the historically broad meaning accorded the word “**education**,” and the flexibility preserved by the Legislature in its 1975 rewording of the **Dover Amendment**, we are unwilling to conclude that a party seeking the protection of the **Dover Amendment** is required to show that its proposed use of land will be analogous to a traditional **educational** institution. Thus, there is no reason why, in principle, the promotion of “the cognitive and physical well being of elderly persons” through academic and physical instruction could not be an **educational** purpose under the **Dover Amendment**.

That conclusion does not, however, dispose of the case before us. In our prior **Dover Amendment** cases, unlike the present action, the parties did not dispute the primary purposes to be accomplished by the challenged projects, but rather questioned whether those purposes were properly characterized as “**educational**.” Here, the concern expressed both by the judge and by the defendants is that the project may not in fact operate as the plaintiff claims it will. In the zoning board’s view, the **educational** aspects of the Regis East development are so “amorphous, flexible and vague” as to suggest that they are mere “window dressing” for what is essentially a “luxury residential” complex.

It is well settled that purely residential and purely recreational projects are not

referred to in normal usage as “educational,” notwithstanding that the residences may be quiet and conducive to study, or that the recreation provided “be entertainment of the highest and most beneficial type. Further, we have required not only that a proposed use of land have educational purposes, but also that these purposes be “primary or dominant.” Thus, the plaintiff must show not only that Regis East will serve educational purposes, but that such purposes predominate over Regis East’s residential and recreational components.”

Lori Clark said that this case has not yet been decided.

Barbara Huggins said that the trial court found it was not educational but the Appeals court said that there was not enough evidence for summary judgment and is valuable for discussion, rather than for the conclusion.

Mark Jones said regarding Timothy Hill, it is called out that in regards to the decision that they strip out non educational uses, “if they permit non educational use of the locus...such use is not protected by the Dover Amendment.” Other activities have to follow the zoning bylaw and finds that very significant.

Steve Quinn said that he is under the impression that a museum is educational and that none of the case law on education has convinced him otherwise. Steve Quinn said the Whitinsville case concludes a nursing home isn’t protected, then in Harbor School case the court finds it is a school and the problem is that none of these cases are apples to apples. The Regis case says that elderly housing cannot be incorporated even though the applicant is a college, so it still comes down to whether a museum is educational, Steve Quinn said.

Lori Clark replied that the purpose of the exercise of going through the case law is to find guidance within the law that will allow the Board to make a determination on what the definition of education is. Lori Clark said that what she is trying to do is to get the Board to pick out which of the judges statements can be used as guidance. In an application with a museum involved, there is no precedent and case law similar to this application. However, case law is the only real guidance they can utilize to determine the meaning of education as applied to the Dover Amendment. Barbara Huggins added that their determination is not entirely subjective but directed and guided by the principles that are in the case law.

Steve Quinn said that the Harbor Schools case looks to the Webster Dictionary definition and says the definition of education is

“the act or process of providing with knowledge, skill, competence, or usu(ally) desirable qualities of behavior or character or of being so provided esp(ecially) by a formal course of study, instruction, or training.”

Steve Quinn said he believes the definition represents what a museum is.

Lori Clark said the entity has to provide knowledge for a purpose but not necessarily as a school would.

Mark Jones said that the Mount Hermon case comes up again and again, referring to the quote that "Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all." Mark Jones said that from his read, education needs to include the mental, moral development and activity that includes the growth of the human participating. Mark Jones further noted that the case states that education "has been defined as 'the process of developing and training the powers and capabilities of human beings,'" and that "education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all." Mark Jones said that many cases cite this and he feels that the nexus between education and human characteristics is a significant finding and foundation of his definition. Mark Jones said that his understanding of the definition would mean there is some type of programmatic activity that would carry the nexus forward and not necessarily something you can visit for a very short period of time and then go away, but rather there might need to be a halo of activities that surround the educational use and allow this character development to occur.

Steve Quinn said that is not his read, given that in the next paragraph states "The definition seems to us still serviceable despite the new jargon (e. g. "rehabilitation," "therapeutic") which has accompanied attempts to create new disciplines." Steve Quinn said he is more inclined to the definition cited from Webster's Dictionary on p.3 of the Harbor Schools Inc. case.

Margaret Costello said for her the formality of the process of instruction or training is important and that there should be some organized formality, such as a program or some kind of structure to the educational process if it is to be educational, including evaluation. Margaret Costello said there is no way to evaluate what people may take from a museum. Lori Clark asked Margaret Costello to Clarify. Margaret Costello said as with Regis, if there are only activities such as craft classes being offered, there is no way to fail and you don't get thrown out. Lori Clark read from Whitinsville case, asking if Margaret is calling out the quote that starts:

"Merely an "element of education," however, provided not by a formal program or trained professionals, but only informally gleaned from the interplay among residents of the nursing home community, is not within the meaning of "educational purpose" pursuant to G.L. c. 40A, § 3."

Margaret Costello replied that the quote is applicable.

Len Golder asked what if a school takes a field trip and is involved with the programs and then comes back to the school and although there is not a grade, is it an educational experience? Len Golder said it is difficult to determine what is being learned in a school as well. Ernie Dodd said that is what testing is for. Len Golder said some schools let the student direct their own education, however.

Len Golder said he does not see the need for a formal educational process, although something must be learned; something that develops ones mental or physical faculties but does not need to be in a formal process. Adult education does not use testing but has an educational component, he added.

Mark Jones said in regards to field trips, he remembers field trips being more about the organized aspect of a visiting place rather than what they take out of it. Museums, bakeries, sewer plants, a wildlife center and newspaper publishing plant are all field trips Mark Jones said he could remember. Regardless of the destination, he said, they would not qualify as educational only because the school goes there.

Steve Quinn said it could be that they learned at those places but that their primary purpose is not educationally dominant. In regards to a library, Steve Quinn said he calls that educational. Lori Clark clarified that the Board should not imply that the destination of a field trip cannot indicate the educational use. Len Golder said it is more about what happens at the destination. Lori Clark said the school trip example is not necessarily relevant to the educational nature because it is not the act of the school visit that makes something educational. Len Golder said that a field trip to something like a museum could be considered educational. Len Golder described instruction from a school that was supported by a trip to a mill that referred to that instruction. That trip was educational because it encapsulated everything they had learned prior to that he said.

Lori Clark asked Margaret Costello to make a statement that defined what she means by “formal” education. Margaret Costello said it could be described as a standardized process or program for learning, the gaining of a certificate, or a state sanctioned process. By program do you mean someone put together information in a standardized way to be taught, asked Lori Clark. Margaret Costello said that is what she means. Margaret Costello said that Len Golder’s example of being a taught and then making a field trip was secondary education because his teacher formerly taught and the teacher teaching was the dominant form of learning being provided. Steve Quinn said that a method for instruction is important. Lori Clark said what she is hearing from Margaret Costello and Steve Quinn is that education needs to include a method for relaying information in a standardized way. Meg Costello and Steve Quinn said that is correct.

Lori Clark clarified Margaret Costello and Steve Quinn’s agreement and turned the conversation toward elements of Ernie Dodd and Mark Jone’s definition saying that education is purposefully developing information and having a systematic way to relay it, but, Ernie Dodd and Mark Jones are saying the purpose has to be for human growth or useful knowledge to allow a participant to able to exist in the world. Mark Jones said he is saying that is correct because it is called out in many cases. Steve Quinn said that he sees that as even more subjective, since it is trying to define how what you may be learning can positively or negatively as you go through life. Len Golder said some formal classes do not have useful aspects.

Lori Clark asked if Len Golder agreed or disagreed if purposefully developing specific information to be shared in a standard or systematic way, represented a part of his

definition of education? Len Golder agreed. Lori Clark said that so far the Board is in agreement that purposefully developing information and having a systematic way to relay and share it is one aspect of the definition of education. Ernie Dodd said it has to be significant and more than a few simple facts.

Mark Jones said there seems to need to be some kind of community of effort involved with developing the information to be shared in a systematic way and there is a process that people undertake to get to that point. Mark Jones said the Mount Hermon definition mentioned human growth and moral faculties of people and something happens that allows people to change and grow and that change is the consequence of education. Mark Jones said that someone can know all the streets in the city and is that useful knowledge?. Steve Quinn said that that is too subjective. Mark Jones said it may involve what society believes is a value. Barbara Huggins cautioned the Board against narrowing the definition that is provided in the case law, saying that they should beware of not narrowing the definition to a subjective definition of what is of value.

Len Golder said it's the idea that education in its "broadest sense" is important to him, and Mark Jones said he picks out the developing and training of the mental and moral powers as where the word growth comes from. Len Golder provided a story on education regarding a visit to the Weston Observatory that was an educational experience and that it was the particular facility that made it educational. Len Golder said that this experience offered knowledge and education that can be used and applied at a later time.

Ernie Dodd said that he can go to Home Depot and it is educational for him but does not consider it an educational use. Every day and in many ways people can learn something, he said. Ernie Dodd clarified that just because information can be exchanged does not make it educational. Ernie Dodd said he likes the definitions provided regarding that "education may be particularly directed to either the mental, moral, or physical powers and faculties." Ernie Dodd said education should not include the exchange of a casual bit of information but something that can be taught and applied later on. Barbara Huggins said this aspect is only part of what should be discussed when discussing the educational aspects of events. Margaret Costello said that education needs to be about the mental, moral aspect as well as the definition of education as "the act or process of providing with knowledge, skill, competence, or usu(ally) desirable qualities of behavior or character or of being so provided esp(ecially) by a formal course of study, instruction, or training." That is the critical part of the definition of education.

Ernie Dodd said the word formal is misleading, and Lori Clark said that it is more about planned information developed and disseminated in a clear, systematic way, as they discussed.

Lori Clark asked whether a curriculum fits into that planned systematic idea of education? Mark Jones said it could be one component of the definition but not a necessity. Barbara Huggins noted that in MetroWest there is a suggestion regarding curriculum evaluation. Barbara Huggins asked the Board to consider whether everyone has to have the same educational experience, in reference to discussion in the MetroWest case.

Lori Clark asked the Board if they believe a curriculum is needed. Steve Quinn said that one method of education could be through the use of a curriculum, but it could also be called something else, he added. Lori Clark asked where does the Board stand on the need for evaluation? Ernie Dodd said that there needs to be some way to evaluate that the person has learned. Steve Quinn said a test or certificate is not necessarily necessary to be considered education however, in his view. Margaret Costello agreed with Ernie Dodd. Mark Jones calls out that there should be some process outlined to comply with the activity. Mark Jones said that after looking at the summer camp, though, it may or may not involve assessment and not sure if evaluation will always apply. Ernie Dodd said there may be some participants who do not pick up anything educational. Margaret Costello said the cohesion of the religious experience is something that reinforced the educational experience in the Timothy Hill Children's Ranch case. Lori Clark said that if there was evaluation it would be an indicator of educational activity but cannot be a requirement. Steve Quinn said he would agree.

Lori Clark said it appears some believe that evaluation is necessary. Ernie Dodd said that testing should be required. Meg Costello said if there is not some sort of evaluation then the educational use would lean into recreation. Lori Clark said is it about evaluation of the curriculum or of the individual? Ernie Dodd said that the evaluation can be a way of measuring usefulness of an educational program. Lori Clark said that if it is an educational use then evaluation of the curriculum is important. Ernie Dodd said that both the curriculum and the students need to be evaluated as content and the instruction interplays between each other. Ernie Dodd said there must be a goal to the education. Len Golder said evaluation can be applied but it does not have to and it could still have an educational component. Steve Quinn said that participation can be a form of evaluation. Lori Clark and Ernie Dodd disagreed. Ernie Dodd said teachers do receive evaluation.

Barbara Huggins said in the case law the evaluation is centered around the evaluation of the student, as in MetroWest, and it is not a requirement but a factor. Lori Clark said most agree there are cases where it would not be required and some believe that it is a strong indicator of educational activity. Steve Quinn agreed that evaluation is a plus but not a requirement.

Barbara Huggins suggested to the Board they look at the section of MetroWest where the Director

“acknowledged that there is no need or requirement for anyone who becomes a member of MetroWest to take any instructional courses whatsoever. Once a person pays his or her membership fee, he or she is free simply to enter the facility for any purpose, whether to participate in an activity which is in some way instructional, or not.”

Barbara Huggins said that a question to be considered is whether everyone has to have the same experience or can they have varying experiences and still be educational. Barbara Huggins clarified, saying the Board has come to some conclusions about systematic

presentation of the information and now on the receiving end - does the experience need to be uniform, as suggested by the MetroWest case?

Ernie Dodd said it depends on how many participate in the educational aspect of the activity. Lori Clark said that those who receive the systematic way of sharing information would be participating in the educational aspect of it. Margaret Costello, Steve Quinn, and Len Golder agreed. Lori Clark asked if the opposite is true and if those who do not partake in the systematic delivery are also partaking in an educational activity? Lori Clark said that uniformity is a means of participating in the educational aspect of it. Len Golder said that there could be other ways as well. Mark Jones said that it does seem that some cases noted that it does not have to be uniformly applied and that this is yet another measure but not a required one. Lori Clark said, however, in those cases where there is variation, the planned, systematic delivery or curriculum is tailored to the needs of the individual subject.

Len Golder asked if a person is involved in a summer reading program with required readings and they read some other books outside of the requirement they could also have gained an education because the focus on reading led them to seek out other books. Lori Clark said that would be an educational experience that they found on their own. Steve Quinn said that the Planning retreats that are put on by regional planning organizations offer various seminars, and planned curriculums. If some of the members do not partake in them does that make the use as a whole not educational? Meg Costello said this gets at the point of whether the use is primarily or secondarily educational.

Lori Clark clarified the Board's standpoint on the uniform application of educational material, saying case law suggests curriculum can be tailored to individual needs and does not need to be uniform over all. If it's not received in the systematic way then it is unclear whether it is achieving the educational purpose.

Lori Clark said that some aspects of the case law regard the qualifications of who created the curriculum or educational materials. Several cases call out that there are not qualified educators. As the Board walks through the case law, they also talk about qualifications of who is teaching and creating the curriculum.

Ernie Dodd said he thinks that there needs to be some qualifications, experience, and teaching experience behind the educators, and someone needs to know the capabilities of different age groups. Ernie Dodd said there must be some qualifications for those relaying educational information. They need to be able to be an expert for that age group they are covering he said.

Steve Quinn said that he agrees that the people relaying educational information should know what they are talking about but would not go as far as to say they have to have a Master's degree. Margaret Costello agrees with what was said. Mark Jones said that educational qualification is another strong indicator of an educational use in the case law. Mark Jones said he cannot think of an educational use that does not evaluate the teachers or leaders. Len Golder said the educator must have the ability to disseminate the information to the correct age groups in a way that creates a learning experience. Lori

Clark said there needs to be some sort of skill regarding the relaying of information and also the existence of some expertise on what information is being relayed. Len Golder said the information has to be attained through knowledge or training and then conveyed.

Lori Clark clarified that what she is hearing from the Board is that the development of information into a planned curriculum and systematic delivery of that planned curriculum by someone with expertise in the subject matter and qualifications for the relaying of the information, defines an educational use regardless of whether evaluation is involved.

Ernie Dodd said the time period in which the instruction is delivered is important and is a judgement the Board has to make. Lori Clark asked if there are any other categories or classes of issues that have not been covered under the definition they are working toward. Lori Clark said at the next meeting, the first order of discussion is whether any other types of classes or categories of education in the case law that will help the Board refine their definition.

Lori Clark clarified that the Board's working definition of education is the planned or systematic way of developing and disseminating information, which may include evaluation, through instructors that have both subject matter and instructional expertise.

Margaret Costello asked about the financial component to understanding the primary educational use. Lori Clark said that it is not a strong component in the case law, but even though it is not in the case law does not mean it cannot be discussed.

Ernie Dodd said they need to define what a student is. Is it casual or must you be enrolled, he asked? Barbara Huggins said that question may be encompassed in the discussion of uniformity of the educational experience.

Lori Clark said those who are delivered the planned curriculum are considered participants in the educational experience, and if they do not they may or may not get that same instruction. Ernie Dodd said that only a casual visit to a site is not enough without having regular attendees. Steve Quinn said if something complies to these four points we are assuming they can be considered a student, however, if they do not go through these parts of the definition it is difficult to say whether they have been educated or not. Barbara Huggins said that can be discussed during the dominant education aspect.

Ernie Dodd said that in MetroWest even if instruction is over a period of time as in a class or with regular students he does not feel a participant is necessarily a student unless there is a program. Can someone be an educated participant asked Steve Quinn? A one day or half hour course is not enough said Ernie Dodd. Steve Quinn asked what is the minimum amount of time it takes to be considered educational then?

Mark Jones read through Chapter 40A section 3. Educational uses can be on any of the entities that have been named. Mark Jones said that the educational purpose is what is being defined.

Lori Clark said there are three specific issues for Dover qualification: Non – profit educational, although purpose does not have to be primary, but, primarily and dominant purpose must be for education. Barbara Huggins said she reads the statute as saying all entities are equally qualified and there is no distinction for purposes of the statute.

Meeting Adjourned.

Next deliberation: July 1 – 8pm.

Respectfully Submitted,

Jesse Steadman