

WAREHAM ZONING BOARD OF APPEALS MINUTES

Wednesday, March 9, 2011

Memorial Town Hall – Lower Level Cafeteria

54 Marion Road

Wareham, MA 02571

- I. **CALL MEETING TO ORDER** – The meeting was called to order at 6:35 p.m. by Chairman Kenneth R. Ferreira.

II. **ROLL CALL :**

Members present:

Kenneth R. Ferreira, Chairman

Richard Secher

Mary Scarsciotti, Clerk

David Sharkey

Wilma Engerman, Associate Member

Jon Witten, Special Counsel

Director of Inspectional Services

Myles Burke – present

Members absent:

Mike Martin (absent due to personal business)

Town Planner

John M. Charbonneau (absent)

Board of Selectmen Liaison:

Stephen Holmes (absent)

III. **PRELIMINARY BUSINESS**

- A. **Minutes to be approved:** February 15, 2011
The Minutes reflect a joint meeting of the Planning Board and the Zoning Board of Appeals for the proposed Wal-Mart (West Wareham) application. The Board members agreed that they will review the Minutes on April 18, 2011 with the Planning Board at the next scheduled continued public hearing and vote at that time.
- B. **Informal Presentation – “Rose brook Place”**
Chairman Ferreira informed the applicants that were present and the Board members that he did not want to get “too deep” into the issues because he did not want any appearance of a pre-discussion until the formal presentation is made at a public hearing. Mr. Jim Kane introduced himself, Tom Berkeley and Attorney John Twohig to the Board and stated that they understood the Chairman. The applicant will contact the Town Planner, John M.

Charbonneau, and anticipate an early May hearing date with the Zoning Board of Appeals. The applicant informed the Board that, in total, the site is about 14 acres. The presentation plan shows a hotel with a conference center and banquet, there are two identical buildings, about a 10,000 square foot footprint, one with retail on the ground floor and two stories of apartments above, the other with retail on the ground floor and offices above. There will be a stand-alone restaurant about 5,000 square feet and a stand-alone bank about 4,000 square feet and a pharmacy about 13,000 square feet. In total, it is a bit over 200,000 square feet. Discussion ensued in regard to site topography, elevations, parking, etc.; however, the applicant informed the Board that there are no potential tenants to date. The parking for the residential units will be out in the back and outdoors for now but the applicant is looking at the cost and this is just a quick overview and the plan has not changed very much at all from last fall. There is no potential tenant for the hotel, to date.

This is all a package of some of the initial sewer capacity that the Town granted to A. D. Makepeace, stated Chairman Ferreira.

We (the applicants) have talked to three different entities; however, people are not interested to talk until you have your liquor license. Member Richard Secher asked if they had restaurants in mind and the applicant stated they do but not that they wanted. Discussion ensued in regard to Fairfield Inn and occupancy being good in the surrounding area. There is an old bog house, of which, the applicant would like to restore/keep and tie-in with the cranberry industry.

The applicant did an analysis and what they see is a consolidated special permit for the hotel and variances and site plan approval. The way we read the Zoning By-Law, since we need a special permit for the hotel use, since we potentially may need some variances that it actually can all stay here at the Zoning Board with an informal review and commentary on the Site Plan. The Chairman agreed. The second one is that there are multiple buildings on one lot; whether or not it is a Commercial District it is not 100% clear that we actually need the Special Permit. Chairman Ferreira commented, as a Board, they have had the same problem with that because the Commercial District, it didn't make sense that an owner would have multiple buildings on one lot and why that was ever and you wonder why Town Meeting ever put that into a Commercial District and just to be fair, we, the Board, do not have a problem with that.

Myles Burke, Director of Inspectional Services, asked if a denial letter will be necessary.

Chairman Ferreira answered yes, a quick denial letter, giving Mr. Burke the opportunity to review it and make sure that the applicant has hit all the bases but it looks pretty comprehensive to me.

The applicant discussed parking, we don't want to build too much parking, we have a lot of shared uses, and so, we are looking at this.

Chairman Ferreira added that you don't want to build more than you need and that is what the issue is.

Chairman Ferreira commented that when the Board looked at Wareham Crossing, one of the things they did was to seek relief on parking space size. When you look at a lot of the spaces in order to reduce your impervious cover you can reduce parking space size in a lot of cases. The only big parking spaces at Wareham Crossing are in front of Lowe's and Target and that was a requirement of Target and Lowe's. The width is most important, not the length, thus, the length is slightly reduced.

The applicant said that the use analysis is not complete yet, however, there will be people living on the site, how they move about the site, safety, maybe some table top and cross walk areas, to slow people down. The height of the hotel is still being looked at and the building footprint will be bigger than 3,000 square feet and the maximum front yard setback, we are trying to figure out how exactly where you measure that from and what is your front yard and where we have multiple buildings on site....Chairman Ferreira said that the concept was a "village look" but this is a different scenario and not unique of the district. The Board would/may want to see the buildings closer to the front rather than the parking lot in front.

Discussion ensued regarding possible modifications, major or minor, with the applicant. The Board would condition the Special Permit so that if a modification was considered minor, a public hearing would not be needed and the Board would notify the Building Department of any changes to the plan. Chairman Ferreira indicated that the applicant will/should go before the Planning Board first, then the Zoning Board of Appeals, who will ultimately render the decision and conditions.

The applicant wishes to come before the Board on May 11th. Chairman Ferreira told the applicant that the Planning Board will meet on May 9th. Chairman Ferreira told the applicant that John Charbonneau, the Town Planner, has worked with him and will work with the applicant to schedule the meetings accordingly, also Hancock Associates, the Town's Consulting Engineer will look at Site Plan Review, traffic and additionally, the engineering component. Chairman Ferreira informed the applicant that the Board has to review the proposals from the different consultants and vote as a Board to hire the particular consultants. The Town Planner will consult with the individual Consultants and establish a 53G account to get the Site Plan Review process started.

Chairman Ferreira assured the applicant that given the fact that if it is well presented, the project will move quickly, it is not going to be slowed down by the Boards process because it is a Commercial District and it is good for the Community.

There were no questions from the Board members or the Director of Inspectional Services, Myles Burke.

- C. Discussion: CPTC Conference
There was no discussion and no action taken.

- D. Discussion – Legal invoice #86349

The Board reviewed the invoice received from Kopelman and Paige, P.C. Mary Scarsciotti recommended that the invoice should be charged to the Building Department. Chairman Ferreira stated that he had asked Ilana Quirk a question in regard to the 30-day period and recommends the Board pay that portion of the invoice.

Motion was made by Richard Secher to revoke the approval to pay Kopelman and Paige bill of statement #86349 thru services 12-31-2010 for \$725.25.

The Motion was seconded by David Sharkey.

Motion made by Richard Secher to approve the payment of \$102.00 dated for services rendered and dated 12-22-10.

The Motion was seconded by David Sharkey.

Discussion ensued, i.e., the other items on this bill thru 12-16-10 were letters, commentaries going back and forth to and between the Building Department and Kopelman and Paige, P.C., the item we are approving is the specific request from the Zoning Board is as to a question regarding the 30-day period, and the motion is to approve the \$102.00 (only).

Vote: Unanimous (5-0-0).

- E. Discussion - Engineering Peer Review –Tobey Road/Cranberry Highway
The Board chose to review the peer review received from Hancock Associates at the 4-18-11 continued public hearing with the Planning Board. No action taken.
- F. Discussion – Letters to be drafted in regard to 40B projects - no action taken.
Mary Scarsciotti informed the Board that Attorney Jon Witten is handling this.
- IV. PUBLIC HEARINGS
None scheduled
- V. CONTINUED PUBLIC HEARINGS
None scheduled
- VI. ANY OTHER BUSINESS
 - A. Discussion – Correspondence dated 2/28/11 regarding 854 Main Street
The Board reviewed the documentation received in their packettes with the Director of Inspectional Services. The Director informed the Board that he went out to the site with Conservation Agent, David Pichette, and the yard is abutting the Weweantic River and that there are trucks parked on the premises, there are a couple of small boats encroaching and there have been some small improvements made since then. There are questions regarding the lot lines and that would be a civil matter.
The matter concerning Sara Beth Lane matter is being handled by the Director of Inspectional Services with the Water Department and also enforcement action. The Board agreed that if something is being done, there will be no action taken by the Board.

B. 361 Main Street

Chairman Ferreira indicated that the issue regarding 361 Main Street is that the Board is trying to reach the goal of 10% and working with the State to do so and that it is extremely difficult. We have units that the State will not accept; we have units that the State has accepted and then kick off the list. We have great units that for some reason the State is ready to kick off the list because some paperwork was not filed properly, etc., and the Chairman recalls the plans that the applicant submitted that needed to be tweaked, the applicant had a good idea, it has progressed along and integrated some Commercial space and some residential space right in the Village and he thought the applicant did a great thing. However, the concern of the Board is to make sure that units get counted for affordability into our SHI inventory, so, this is what we are here to talk about tonight.

Chairman Ferreira asked if the applicant would like to tell the Board where they are in the process and then the Board will tell the applicant what the concerns are and that is why Myles is here so that we can make sure that everything is working properly. Chairman Ferreira asked the applicant if they had some subsidized funding.

The applicants/owners/developers, Ryan and Anne Correia, were present. Anne Correia responded and informed the Board that the funding was actually a loan through the Town which was a grant given to the Town from DHCD called the Heads Up Program, it's not a 40B, per say. It does have to meet an affordable housing regulatory agreement, a 20-year restriction and meeting the requirements as per CEDA has requested, rent requirements, leases, income and all other paperwork that the applicant has to do. The first time the applicant realized that this was an issue was back in August 2010, when the occupancy permit and the Building Department mentioned that there was an issue with the subsidized housing inventory.

Member Mary Scarsciotti stated that according to the permit that was issued in March 2009, there was a condition that states no occupancy permit for the residential units shall be allowed until proper deed riders are accepted by DHCD and is reported to ensure that the units will be counted into the town's affordable housing inventory. All eight of the residential units have certificates of occupancy and the only way that we (the Board) can get this corrected is according to the DHCD document (received 2/24/11 but dated 7/8/11), of which, is addressed to Chris Reilly (former CEDA Director) and it is from the woman who is in charge of the subsidized housing inventory units...*unable to hear name due to background noise. The document says Majestic Affordable Housing, your request consisted of eight rental units, and six were affordable at the development known as Majestic Affordable Housing at 361 Main Street. Unfortunately, said units are not currently eligible to be included on the SHI at the affordable use restriction, said units is only a term of 20 years. Pursuant to DHCD's SHI guidelines available at the website (not read into record) use restriction must run for a term that shall not be less than 30 years for a newly created unit for subsidized housing inventory eligibility purposes. As the housing units at 361 Main Street were newly

created through renovation and conversion of a commercial building, units must be subject to a use restriction term that is extended to 30 years in order to be reconsidered for inclusion on the subsidized housing inventory list. You may contact DHCD. I (Mary Scarsciotti) had a conversation and I talked to Chris Reilly and he had said to me that he was going to provide me with this piece of information and he never got back to me. I (Mary Scarsciotti) wrote to Mark Andrews (Town Administrator) and he had handed it off to someone named Jacqui Hickey, someone who works in the CEDA office and she was supposed to be taking care of this. Anne Correia stated that they know less than you (the Board) do. Mary Scarsciotti said that the only problem we have (the Board) is now this is effectively an illegal certificate of occupancy and the only way that we can get these issues resolved is to revoke them and then get all the documentation in order so that we can get the subsidized housing inventory updated to include these and I don't know how....Anne Correia interrupted Mary Scarsciotti and stated that they have a mortgage with a 20 year regulatory contract....Mary Scarsciotti asked if they had documentation from DHCD that says that these units are affordable and they have all eight (units). Anne Correia answered that the initial contract between the Town of Wareham and DHCD says you will provide the funds to us and in return we will provide affordable housing. It doesn't say anything about having to be on the list. It then goes into the Regulatory Agreement. Anne Correia discussed all other paperwork received and in-hand. Chairman Ferreira said that he wants everyone to understand that this is not a witch hunt and revoking occupancy permits, it's only a way to get this corrected. It seems like and this is not unusual for the Commonwealth of MA, the left hand doesn't know what the right hand is doing. You are talking to these people and you are doing what you are supposed to be doing and they are giving you things to sign and you are signing your life away, if you will, and as for the 20 or 30 year period, it sounds like what you are saying is your documentation always had 20 years somewhere in the paperwork and now they are telling us they have to be 30 years.

Anne Correia informed the Chairman that the requirements (DHCD) changed February 22, 2009. When the preliminary application to DHCD was for a 15 year restriction, the Town (CEDA) upped it to 20 years. Discussion ensued. Richard Secher asked if the applicant had to change all the loan documents as well. Anne Correia answered that they would have to get approval and they are not sure the bank will....*unable to hear....and it's not an option for them to change it; they have a mortgage on the property with the bank.

Mary Scarsciotti asked the applicant if they had copies of the documents and if she could obtain copies. Anne Correia said that she can email copies and that she had such a hard time getting any documentation from CEDA. Mary Scarsciotti asked why the certificates of occupancy were signed without anyone addressing this and this goes back to August; there was never any contact with back into the Planning Department or the Zoning Department to find out why that condition wasn't completed before any certificates of occupancies were issued.

The Director of Inspectional Services, Myles Burke, replied (to Mary Scarsciotti) that they were requested by CEDA, there seems to be a new regulation, this wasn't a comprehensive permit, it was a special permit and the condition(s) of the permit was that they be recorded and I imagine that they would be recorded by CEDA who was funding the project. Director Burke indicated that this goes back to what the Chairman was saying; sometimes the right hand doesn't know what the left hand is doing. It was noted in the file, it was noted on the certificate that it was by special permit and that there was a Zoning Board decision and if I have to take responsibility for not checking with the Board, I thought and was under the impression that the program was being run through CEDA for that particular development, that it was affordable and I also understand that the town is struggling and is at 8. something percent affordable even though they are not counting our 17 trailer parks...Discussion ensued regarding the trailer parks.

Chairman Ferreira said that there are a bunch of units that were put through Marilyn Whalley's program, a rehab program, that supposedly those should have got counted. Now that is not going to get us to 10%, but, the whole idea is that if you can spread your affordable units throughout the town in different locations as opposed to giant projects, it's probably a better mix to have these spread out. But, in any case, there was a list that the Board went through with Mark Andrews (Town Administrator) on March 17, 2010 and again in September of 2010 and again by email more recently asking why aren't these units getting counted and we are now working with Attorney Jon Witten to try and get them counted. Now, suddenly, this 361 Main Street pops along and when it's a rental property you are supposed to be able to count all units, but only 6 of them are rented out at an affordable rate.

The Board discussed, for example, The Retreat at Union Pond. There are a total of 144 units, they are not all affordable units, but they are spread out. The Director, Myles Burke, expressed to the Board that the applicants were trying to get the tenants housed as well as the units counted and recorded and when we (Building Department) talked to Jacqui Hickey (CEDA), she was insisting that they get signed off, then, moving forward, we also talked to Mr. Charbonneau (Town Planner), as far as both projects, The Retreat at Union Pond and 361 Main Street. Mary Scarsciotti stated that the only thing the Board needs from the Union Pond project is, as soon as the building permits are issued, they need a copy of the building permit right away to give to DHCD. Member Scarsciotti also states that right now we (the Town) are in danger of losing the units and Member Scarsciotti has spoken to this woman (name not on tape) and she is fairly reasonable if you keep in touch with her. Chairman Ferreira and Mary Scarsciotti discussed with Director Burke that they actually need to see the building permits issued, in hand, (Phase II) and once the permits are issued this lady will keep them on the list. Discussion ensued regarding the program(s) involved, 20 vs. 30 years and accepted units, contract law, changing the rules in the middle of the game, etc.

Chairman Ferreira explained that one of the issues that we (the Board) is working with Jon (Attorney Witten) now is that DHCD comes up with rules

that violate State statute and they make their own little rules that they can't do, they don't have the authority to overrule State law. So, they come out with these regulations and sometimes there are actually regulations that favor the developer so the developers jump all over them and say, hey listen, we can do this, the regulation from DHCD says we can do this and then our attorney is telling us that DHCD rule is totally illegal and they do not have the authority and totally violate the State law.

Chairman Ferreira told the applicant that he has no qualms with what the applicant has done, it looks great, and he wants the applicant to understand that whatever motions or whatever we (the Board) do tonight is not against you, it is not against Myles, its not against the project, its making sure that we can get these units to count and I think maybe the documentation that you have that you can email to member Mary Scarsciotti will get us to count. Chairman Ferreira said that when you talk about construction, new, substantial, improvement, there are so many CMR and the CMR Regulations get developed from the law and from the agency. So you have CMR Regulations for instance, DEP, DOT, Building Code, Flood Plain and as you start going back and forth and they quote each other, they flip flop back and forth and gave examples of each to the Board. Mary Scarsciotti agreed and said that she thought they are also looking at the conversion of a commercial building and a change of use and that is one of their issues. Chairman Ferreira answered that he did not understand that because that should be something they should be happy with, a commercial use became a mixed use of commercial/residential as the Rose brook property is doing and in the downtown village. I understand your concern is that your mortgages are all signed and we can't undo your loan agreements. However, Chairman Ferreira informed the applicant that the Board is under a time schedule. Member Mary Scarsciotti said that his (who?) indication was that this needs to be done in a manner of revoking this and reissuing a conditional certificate of occupancy until the terms of the permit are met. Ryan Correia asked how this will affect our building and that he has never had this happen. Chairman Ferreira said that he didn't think it would affect anything. Chairman Ferreira asked that the applicant let him explain further and then we will make some motions and discuss it as a Board, but what Mary has talked to Jon and I about, "and Jon have sent us down some motions. The problem is, the Building Commissioner, the Building Department, whoever signed it, I don't really care, Mark Andrews or whoever signed it. Mary Scarsciotti stated Mark signed it and Myles. Myles said that he did not think Mark signed it; he thought Andy Williams signed it. Mary stated no, these aren't the ones from August, these are the ones from February 23rd and he signed it. The Chairman said that the Board can't go back to the certificates of occupancy issued in August, that's the problem. Director Burke stated that the certificates of occupancy were sent upstairs and either Jackie, in the absence of the Director, brought them to Mr. Andrews. Chairman Ferreira answered he did not know who brought what to who, but Mr. Andrews signed them. Mary Scarsciotti asked the applicant when they got the last two occupancy permits and Anne

Correia answered that it was a couple of weeks ago.

Chairman Ferreira said that the problem is that, similarly, if someone doesn't like something that the Building Inspector says, you go out and you go to the Building Inspector and get a decision from him, if you don't like what he said and you don't agree with it, you have 30 days to appeal to us to say, we think he is wrong and we want you to overturn his decision. If you wait 45 days and mull around, lose sleep over it and complain about it and then suddenly its 45 days, we have to go to the Zoning Board and overturn his decision. Too late, you lost out. So, the occupancy permits issued in August for the first units, that is a long time ago, we can't do anything about those. All we have now is two permits from two weeks ago, which affects the whole building, but these are the two permits that are more recent and we need to revoke these permits and issue conditional permits or temporary certificates of occupancy by this Board, because we are doing this within our 30 day window. We have a 30 day window to do that and meanwhile we issue temporary certificates of occupancy and once we get this resolved, we simply withdraw the temporary certificates of occupancy and issue the permanent certificates of occupancy and that's all we are doing here. We don't want to take the position of overruling or becoming the Building Department and going out and inspecting them. They have been inspected, staff has signed off, water, plumbing, sewer, electric, Board of Health, and I am sure you have done everything correctly. So, our (the Board) revoking of these is simply to create this window of opportunity to go back to DHCD using your documentation to try and get these counted and it doesn't affect anything else. The rents that you are getting are all tied in to the affordability and this is not a witch hunt to try and shut anything down, it's simply that these two permits have been issued in the last two weeks. We are probably going to take a vote tonight to revoke that permit and issue conditional permits and so, conditional permits will allow people to live there and your documentation, perhaps you can work with Mary, exchange email and telephone numbers, because Mary has been the spearhead to try and get these things done and it takes a lot of time and I am sure you can appreciate that with your one little project how much time you have been on the phone with different people.

Anne Correia stated that her only fear is that DHCD says well, I never agreed to put these on the list because they didn't and that wasn't the terms.

Chairman Ferreira said that this is our (the Boards) problems to worry and argue and say listen, and if he has to go over certain peoples heads at DHCD to a Commissioner, Jon Witten, has made a career of being a 40B attorney for towns and he has been pretty successful at it in Marion, Middleboro and Duxbury. A lot of the attorneys play both sides of the fence. Jon has always historically just represented towns and quite a number of them so just because we have someone on one level who says I am not going to agree to count these, and then he will go over their heads if it is proper. But we want to make sure we have control and once we lose those two certificates of occupancy that were issued two weeks ago we don't have any more control anyway. Mary Scarsciotti said that even through that whole process we (the

Board) were all under the impression from the time Marilyn (Whalley) was dealing with this and it was being approved through the Board of Selectmen, it was technically a LIP, which is, a local initiative project and is supposed to qualify for the subsidized housing inventory.

Anne Correia agreed with this but her only fear is when you go on DHCD's website and you look at the different LIPS and the different subsidized housing programs that qualify, HDSP says but not all the time.

Hopefully, the attorneys will be able to work that out.

Chairman Ferreira said there is a balance as to how much it cost you to get these units on a list. We recently had a case where we lost a unit because it was sold illegally. Jon, successfully, after waiting a period of time, and asking what is it going to cost us to go to court and try this case and find out whether or not it was wrong. It was so much in our favor, we had to say, go for the shot, and not only did we get an award of \$58,000.00 from the insurance company, won the case, we also got a decision for another \$175,000.00 against the owner of the property who illegally sold the house but that person is in another State and probably will never own anything again in her life. The \$58,000.00 is going towards affordable projects like yours. But in some cases, you weigh it out and say do we want to spend the money in legal fees and maybe get the units to count.

Mary Scarsciotti added that a lot of the rehab money that was qualified to be counted on the subsidized housing inventory list is to bring some of these trailers up to code and renovate them and they count for various.....

Chairman Ferreira asked if there was a motion or any questions.

Ryan Correia asked if they don't grant the request for affordability, what happens to the two permits, do they get reissued or are they always that way.

Chairman Ferreira stated that they will go back to regular permits. We are not trying to hold you hostage.

Mary Scarsciotti assured the applicant, don't think we are not moving on this aggressively, I found out about this two weeks ago and here we are.

Chairman Ferreira said that if for some reason we can't get them counted and the motion tonight is to revoke your permits and issue temporary certificates of occupancy, we are obviously not going to hold those hostage forever, what's the point, so, we would say, reissue permanent certificates of occupancy and that is the end of it. Effectively, whether it's a temporary or a permanent certificate of occupancy, you go about your business renting it and people are living there and that is not an issue. This is only administrative, this is our legal remedy that we have within 30 days administratively to try and get them counted and you have your homework and other than giving us the paperwork, we are not asking you to do anything else, we are just trying to find out what the problem is and why they (DHCD) are not counting these.

Anne Correia stated she contacted DHCD today and has a contact because he said he was going to look into this and she will sent the information to Mary.

Mary Scarsciotti made a Motion that the Board of Appeals request the Building Commissioner revoke the two certificates of occupancy for the residential units issued to the property located at 361 Main Street dated

February 23, 2011, as, said certificates of occupancy were issued without compliance with the special permit #004-09 dated March 25, 2009 granted to authorize said dwelling units specifically but not limited to the unequivocal terms of condition #5 of said special permit and further move that the Board of Appeals pursue all legal remedies available to which if the Building Commissioner failed to revoke the above noted certificates of occupancy in a timely manner.

The Motion was seconded by Richard Secher.

David Sharkey had a question. In his opinion, as an amateur lawyer, when we revoke these permits and put them on temporary, technically, we are putting them in violation of the terms of agreement with the bank on their financing. You have changed the basis of the contract with the bank.

Mary Scarsciotti answered that they would be conditionally reissued until they come into compliance with the permits.

Richard Secher said that if you give them temporary ones, why isn't that ok.

David Sharkey replied that theoretically, the bank has the right not to have issued them their financial arrangement on the basis of a temporary permit; so, you are technically changing the terms to a lesser stage on which the loan is based.

Mary Scarsciotti responded that the loan is also based on the affordable units, the conditions and the financing.

Chairman Ferreira replied that the bank should have been more concerned that Condition #5 of the special permit had been signed off on, did the bank pay attention, and did they ask if it was counted. But I see David's point, your final funding and your final loan documentation, the fact that they don't have real certificates of occupancy, they are in default of their loan agreement.

Myles Burke said that on certain temporary certificates of occupancy, it is a certificate to occupy at least temporarily, and I think that the bank was looking to protect their investment as far as the building being able to be occupied and rents paid.

Chairman Ferreira stated that there is a Motion on the table and would it make sense to amend that motion which specifically would allow the units to be occupied because there are temporary certificates of occupancy and there are temporary certificates of occupancy, some say you can occupy the structures and others say.....

Myles Burke gave examples of each.

Richard Secher added that you do not want them to have to go back to the bank because they have enough issues.

Chairman Ferreira agreed.

Wilma Engerman asked how long the temporary certificates of occupancy are good for and Richard Secher asked if a date could be put on them, a time limit.

Chairman Ferreira assured the applicants that understanding David's concern, that, if for some reason, something came up, a legal issue or if your bank found out about this, we would issue permanent certificates of occupancy.

This is just a Motion that we need to take within the 30 day period in order to

protect our interest, get back to DHCD and try to get this done. The Motion we are making is directing the Building Commissioner to do something. If he refuses to do it because he doesn't like what we are saying tonight, then we need to decide whether or not we need to sue the Building Department, which is something we obviously do not want to do. Chairman Ferreira asked the Building Commissioner, "Are you comfortable with the Motion we are making tonight and the reasons we are making it."

Myles Burke replied "Yes, but I would need you to clarify which two units. Mary Scarsciotti stated F and G which were dated 2-23-11.

Vote: Unanimous (5-0-0)

Chairman Ferreira explained that the Building Commissioner understands what we are doing and we are not trying to overrule the Building Department, but we are just saying ok, so, he now has to provide copies to Brenda and she can send them to Mary to send onto Jon. Chairman Ferreira thanked the applicants.

- C: Daley & Witten Invoice - WHZBA 11-01 dated 3/9/2011 in the amount of \$4,160.00

The Board reviewed the invoice of 13.5 hours on the Bartlett Pond issue. A Motion was made to approve by Richard Secher.

The Motion was seconded by David Sharkey.

Vote (5-0-0) to approve payment to Daley & Witten Invoice WHZBA 11-01 dated 3/9/2011 in the amount of \$4160.00.

Discussion: Chairman Ferreira advised the Board that they are still working on legal consulting fees to be paid out of the 53G account. There may be an opportunity to collect the legal fees paid by the Town in the future. If that project becomes approvable and we come down to a sum of monies, we may be able to recoup.

The Board discussed and agreed that the 53G account for the Bog Wind legal services should cover Jon attending two (2) meetings and approximately eight (8) hours to draft, review and revise decision. The Board did not feel that he should have to attend the 3-23-11 meeting. It is possible that he maybe needed to attend the 4-27-11 meeting.

VII. ADJOURNMENT

The meeting was adjourned at 8:40 p.m.

Attest: Mary Scarsciotti
Mary Scarsciotti, Clerk

WAREHAM ZONING BOARD OF APPEALS

Date signed: 5-11-11

Date copy sent to Wareham Town Clerk: 5/12/11

