



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

127 Hartwell Street * West Boylston MA 01583 * zba@westboylston-ma.gov

MEETING MINUTES

August 16, 2012

Chairman: Philippe Chevalier

Members Present: Matthew Colangelo, Barbara Deschenes, Linda Isgro, and Charles Witkus

Others Present: Stephen Hart (Associate Member), and Secretary Toby Goldstein

The meeting was called to order at 7:02 p.m.

Request from Afra Terrace:

Mr. Chevalier presented 2 e-mails to the board members from Afra Terrace, one from Delphic Associates requesting a change in affordable units of their development, the other being a site plan, updated as of 5/7/10, prepared by Thompson-Liston Associates, showing the units and indicating which are affordable. The requested change would be from Unit 46 (115 Afra Drive) being affordable, to Unit 3 (6 Jasmine Drive) being affordable. Units 3, 4 and 45 are to stay affordable. Ten have been built, sold, and closed. No buildings have greater than 2 affordable units. Ms. Isgro discussed the facts that one of four units is to be affordable; they are entitled to 13 in total. She also stated that, although 10 are sold, the board only possesses 9 deed riders; she listed the deed riders that we now have, all of which are for affordable units. Mr. Chevalier also discussed the fact that the Town Administrator, Leon Gaumond, suggested that the \$50,000.00 housing trust originally agreed upon when the 40B was set up should be brought up-to-date. Apparently, the owners have not made payments to the trust as units have been conveyed. Ms. Isgro made a motion to declare this change in affordable units from Unit 46 to Unit 3 as an insubstantial change. Ms. Deschenes seconded. All in favor; none opposed. Ms. Isgro then made a motion to transfer affordable Unit 46, at 115 Afra Drive, to Unit 3, at 6 Jasmine Drive, and to maintain the commitment to 13 affordable units, with the condition that the owner bring his agreement with the Selectmen regarding payment schedule up-to-date. Mr. Witkus seconded. All in favor; none opposed. So voted.

Mr. Chevalier agreed to attend.

Discussion of State Attorney General's Letter, In Response to Alleged Open

Meeting Law Violation:

The above letter, dated August 6, 2012, was in response to a complaint from Ms. Isgro that she filed with the ZBA on or about 6/26/12 that two e-mails from Mr. Chevalier (on 3/12 and 4/11/12) were in violation of the Open Meeting Law. The Attorney General's office received notification and a response from ZBA on August 3. The letter stated that under the Open Meeting Law, a complaint is ripe for review by their office when the complainant files a copy of the initial complaint with the Division of Open Government, provided that at least 30 days have passed since the complaint was filed with the ZBA. They also stated that their office had no record of a complaint filed by Ms. Isgro in this way, and, unless they receive a request for further review and a copy of the initial complaint by September 19, they will close the file and assume that the action taken by ZBA was sufficient. Also, as was stated by Mr. Chevalier at the July 19 meeting, the complaint needed to be filed with ZBA, according to the Law, within 30 days of the alleged violation. He did not receive the complaint until June 29. In addition, he also stated that in consultation with the Town Clerk and Town Administrator, they both agreed that the e-mails in question did not violate the Open Meeting Law. Mr. Chevalier did enter the two e-mails into the public record at the July 19 meeting. Ms. Isgro still does not agree with the ruling.

E-mail From Ms. Isgro to Leon Gaumond Regarding 68 Newton Street Notice

To Abutters:

This notice involves the Public Hearing on August 23, 2012, at 7:30 p.m., on the Petition of Administrative Appeal of Douglas and Diane Meystre et al. In the notice that was sent to the abutters, the Petitioners' address was written as Goodale Street instead of Newton Street. However, the posting in the Telegram and Gazette legal advertisement listed the correct address. Ms. Isgro sent an e-mail to Leon Gaumond and Kim Hopewell on August 6, suggesting re-posting of the notice, corrected for the above and other items that were deemed incorrect. The Town Clerk and Town Administrator judged that this was not an issue, due to the correctness of the newspaper advertisement.

The above minutes were reviewed by the Board. Ms. Isgro requested a reading of the aforementioned complaint regarding violation of the Open Meeting Law, and would like the complaint to be filed. She felt that it was not clear, from the Attorney General's letter, what their response was for. Mr. Chevalier read the response, but stated that the complaint itself was never actually read. Ms. Isgro stated that the reason that she felt that the Open Meeting Law was violated was not written in the minutes, namely that the sending of e-mails to other voting members regarding a decision before the vote is taken is in violation. Mr. Chevalier replied that, if the Board wants, the complaint will be filed. Mr. Colangelo made a motion to accept the minutes as submitted. Ms. Deschenes seconded. Four in favor, one opposed (Ms. Isgro).

Minutes of May 17, 2012:

These minutes were taped; they were obtained by Mr. Chevalier from former Secretary, Melanie Rich. For the public record, according to the Town Clerk, the tape must be duplicated. The Board members listened to the tape. Ms. Isgro questioned the vote for Chairman during the ZBA elections at the May 17 meeting. According to Mr. Chevalier's understanding of the tape, Mr. Witkus nominated Ms. Isgro for Chairman, and Ms. Isgro accepted the nomination, but there was not a vote for her at that time, as she had thought. Mr. Colangelo made a motion to accept the minutes as submitted. Ms. Deschenes seconded. Four in favor, one opposed (Ms. Isgro).

Discussion of Procedure Regarding Meystre et al, 68 Newton Street, Petition

Of Administrative Appeal:

Mr. Chevalier discussed that the Board was awaiting opinion from Town Counsel on procedure regarding Administrative Appeal. There is question of if the petition is timely. Also, there is question of where is burden of proof. Ms. Isgro suggested that the Board should also wait to hear from the abutters, the petitioners and the Building Inspector. Mr. Chevalier felt that the burden of proof is on the applicant, and he is awaiting Counsel's opinion. The applicant must prove that there were not two houses on one lot. The Building Inspector said that they are separate dwellings, and that there was a building permit in the window of the dwelling in question.

Hacked E-mail Complaint By Ms. Isgro:

8/16/12, p.4

Ms. Isgro informed the Board that her e-mail appeared to have been hacked earlier in the day. This involved e-mails which were supposed to have come from her, but were not, that were sent to other Town e-mails. Mr. Colangelo made a motion to adjourn. Ms. Isgro seconded. All in favor. The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____