



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

August 26, 2014

Chairman: John Benson

Members Present: John Benson (Chairman), Jon Meindersma (Vice-Chair), Francis Cahill (Clerk) and Charles Witkus

Others Present: David Femia (Associate Member) and Secretary Toby Goldstein

Members Absent: Kristina Pedone and Paul Hennessey (Associate Member).

The meeting was called to order at 7:16 p.m. by Mr. Benson.

Mr. Benson then read aloud the names of the members of the board who were present and absent, and others present.

Mr. Benson next clarified the first item on the agenda, the scheduling of the continued public hearing of the 94 North Main Street Administrative Appeal; a continuance was requested for this in a letter presented to the ZBA at the July 29 meeting, therefore the continued public hearing would be continued, and Mr. Benson explained that the only discussion that would take place that evening would be that of the scheduling date of the continued hearing; no evidence or discussion would be taken that night. Mr. Benson added that it was his understanding that Mr. Bobrowski, attorney for the petitioners, was aware of, and agreed to, this request for a continuance, and Mr. Benson also added that at the July 29 ZBA meeting, the board was given an extension until November 1 to act upon the petition. After discussion between the board members, Mr. Benson announced that the board will reconvene on Monday, September 22, at 7:15 pm at the same location to continue the public hearing, and that would end any discussion on the 94 North Main St. matter at this meeting. One resident interjected that the Town website stated on the agenda posted that there would be a hearing on this matter this evening. Mr. Benson replied that the agenda read "Scheduling of the Oakdale Zoning Enforcement Continued Public Hearing," but apologized for wording that may have been confusing to the public. Another resident asked why the hearing was continued, and Mr. Benson replied that Crescent Builders had asked for more time at a previous meeting to produce evidence and it

was his understanding that they reached out to Mr. Bobrowski regarding this and that he was consulted on all these matters. Another resident asked what the status was of permitting at that site and if there have been any changes? Mr. Benson replied that there have been no changes as far as he knew, but he was not going to discuss that at that time.

Informal Discussion with Afra Terrace Board of Trustees:

(Regina Brodeur of 135 Afra Drive, one of the Trustees, requested that this be added to the agenda by e-mail). Ms. Brodeur explained that (5) residents of the Afra Terrace development were elected to be Board of Trustees members. She stated that Iqbal Ali is still in control as property manager and has not yet turned over the property to the Board of Trustees. She continued that the Trustees met with the Conservation Commission on August 4, and they agreed to look at the site (August 5) to see if Mr. Ali was within regulations or in violation of several matters of concern to the residents, and the Commission did issue a letter to Mr. Ali on August 6 stating their findings (a copy was sent to ZBA at the time and is on file); Concomm did find him to be in violation of a few different matters. Ms. Brodeur said that she did not know if Mr. Ali has responded to the Commission yet, but the Trustees were now before the ZBA to ask them what Mr. Ali needs to do at Afra Terrace in order to turn it over to the Board of Trustees.

Frank Marhefka of 121 Afra Drive spoke next. He mentioned a list of conditions in the comprehensive permit granted to Mr. Ali and said that they do not know if the ZBA has approved that the conditions have been met, and if not, does the ZBA come to the Trustees for that, or does Mr. Ali have to complete them before the ZBA gives approval? He continued that there are unrented and unpurchased units, and asked if it was the Town's or Mr. Ali's responsibility to fill them? He also commented that Mr. Ali told him that he has had difficulty obtaining qualified workmen and various permits will be withheld until the work is done. Mr. Marhefka asked, if the work is not approved and completed, would the Board of Trustees be held responsible for completing the work? He said that it was his understanding that the ZBA gives final approval of the project and the conditions given; in the residents' opinions, some things were not done. He asked, if the Board of Trustees for the Condo Association takes over, if there are conditions not met, will the ZBA hold the Board responsible, or the builder; when does the ZBA say that the project is done and it is owned by the Condo Association? That, Mr. Marhefka said, is what the trustees are trying to find out.

Mr. Witkus next asked Mark Brodeur, Building Inspector, to speak. Mr. Brodeur stated that 40B projects (such as Afra Terrace) are, by law, governed by ZBA actions. The 40B law allows the developer to reduce the impact of zoning bylaws and site plan review by the Planning Board; the Planning Board has not been involved in this project. Mr. Brodeur added that this project was approved and some permits issued prior to his service as Building Inspector. He said that, at that time, the ZBA had a permitting process through the state in Chapter 40B, Mass. General

Laws, that allowed the project to move forward as a 40B (affordable housing). (Mr. Ali interjected that there are 13 affordable units in response to a question from Mr. Brodeur). Mr. Brodeur asserted that the ZBA traditionally would have had engineering money set aside for the Town to protect the Town's interests, but it did not appear to have been done for this project, the reason for which he does not know. He continued that, to the best of his knowledge, no performance bonding was done either, and because of this, the ZBA looked to the developer to inform them that the project was completed and to provide them with an "as-built" plan, which would include all infrastructure of the development, including the retention ponds and drainage issues concerning the Conservation Commission; there has been no "as-built" plan so far, and the Board of Trustees requested Conservation Commission involvement. Mr. Brodeur continued that, once Concomm is satisfied, ZBA must look at the Comprehensive Permit and determine if Mr. Ali has fulfilled his obligations and if the Condo Association can take over ownership of the development because there would be no more expectations from the developer. Mr. Brodeur thought that, without engineering money, the DPW director could be of help to them as an engineer by looking at the "as-built" plan and commenting as to whether things had been done correctly. Mr. Brodeur said that he spoke with Mr. Ali as Building Inspector and Code Enforcer, and he told him that he is working on the "as-built" plan and he is aware of the Conservation Commission's concerns about the retention ponds; a different engineer is working on it now than on the original site plan for Crescent Builders, and he will walk the site and compare the two plans and comment on whether or not it is in accordance with the plan that was originally approved by the ZBA; all parties will then move forward from there.

Mr. Meindersma then clarified that the decision dated 9/15/2005 was the one to which Mr. Brodeur referred. Mr. Marhefka then commented that Mr. Ali cannot make any money; he is not allowed to make more than 20% profit, the rest goes to the Town. Mr. Brodeur clarified that the regulation comes from the State as to what profit the developer of the 40B is allowed to make, and the town is allowed to profit also.

Mr. Femia asked how many of the 13 affordable units for sale have been sold, and Mr. Marhefka replied that there are 3 left.

Mr. Meindersma asked if all the conditions were accepted; he noticed that there was an appeal and asked if all 37 conditions were left intact? Mr. Ali replied that there was an appeal, and some of the conditions were taken out. Mr. Benson noticed that one condition was that change in management or ownership was subject to board approval. After mention of the condo documents by one of the Trustees, Mr. Brodeur responded that the condo documents don't apply until the board ratifies them. Mr. Ali added that change of ownership is not done until the project is completed. He said that all utilities (such as sewer and water) are under the

supervision of Town officials. And, he said that an “as-built” will be furnished when the capacity of the retention ponds is fixed, with drainage calculations. Mr. Benson asked when that will be ready, and Mr. Ali replied that it should be ready in 3 weeks. Mr. Witkus also asked Mr. Ali if he was working on the issues and when they would be resolved, and Mr. Ali again replied “3 weeks,” and also added that the project is not complete in that 3 units are still to be sold. Mr. Benson then clarified with Mr. Ali that he is not seeking transfer of ownership to the Condo Association until the units are completed and sold, and Mr. Ali responded that ownership and the condo association are different, and explained how they differ. Mr. Marhefka then explained the history of the board of trustees. He explained that, at a meeting of all the condo owners, the Condo Association voted for a Board of Trustees to run the day to day business of the development when they take over ownership. At this time, Mr. Ali is still owner and sole trustee of Afra Terrace. The Trustees’ question is, when they take over ownership, are they responsible or is he for any deficiencies that need to be addressed? Mr. Ali responded that he is the trustee, and the Condo Association will be the owners; Afra Terrace is liable for all work to be done; the Trustees handle the management.

Mr. Witkus then asked for clarification, and asked if Mr. Ali owns Afra Terrace? He replied that no one owns it, Afra Terrace LLC owns it, and the Trustees are for management. Mr. Witkus then asked Mr. Ali why he cannot just go through the list of deficiencies, correct them, and then move forward, to which there was no reply.

Next, Linda Isgro of 70 Prospect Street spoke. She discussed some of the history of the Comprehensive Permit process for Afra Terrace, as she was a ZBA member/chair previously. She mentioned that currently the Town has credit from Mass Housing, the funding and oversight agency for subsidized housing, for (9) deed riders from Afra Terrace, but needs (4) more. She mentioned Order of Conditions issues with the Conservation Commission, but regarding the ZBA, she asserted that the ZBA considered the developer to be able to proceed. Ms. Isgro then discussed that the development was originally planned for (9) units; Mr. Ali needed to upgrade his plans to increase the number of units.

Mr. Benson asked if a site plan would include everything, and Mr. Brodeur replied that there was no oversight from ZBA; they were looking for the contractor to provide an “as-built” and accept or reject it; if the site plan is complete, and the conditions are acceptable to the board, the developer can go forward. He continued that the Condo Association does not want to be held responsible for deficiencies in the “as-built” and asserted that the ZBA should enforce on the contractor what needs to be done. Mr. Brodeur further added, that when the project is complete, Mr. Ali will provide to Mass Housing an accounting of everything spent and sold, and he can only, by law, make 20% profit at most; once the accounting is approved, it is complete, and then the Condo Association will maintain the infrastructure as owners of the project. Mr.

Benson then asked if the Condo Association is looking to meet with the ZBA before the ZBA approves anything? Mr. Marhefka replied "yes."

Ms. Isgro opined that this is a premature step, and mentioned that, when she was chair of the ZBA, Mr. Ali came before the board with claims that he could not sell the property. Mr. Benson responded that the residents' issues at present are not with the Comprehensive Permit, and unless they want to discuss that, what she is bringing up is not relevant.

Mr. Marhefka continued that the Trustees wish to simply be able to run the facility harmoniously and have the correct responsibilities. Mr. Benson clarified that the Trustees do not want the ZBA to approve the "as-built," find it deficient, and then find that they are responsible for correcting them. Mr. Marhefka gave water retention as an example. As Trustees, they cannot maintain a plan that they have not seen; they need the opportunity to do so. Mr. Benson then asked him if he agreed that they did not have anything to present to the ZBA at this point? Mr. Marhefka replied that he agreed. Mr. Benson asked him if he is concerned that the ZBA might act but the Trustees will not be part of the discussion? Mr. Marhefka agreed, but added the concern that they might not believe that the work should be approved. He discussed an example of the shrubbery, and a landscaping plan has not been seen.

Referring to the minutes of a site visit by the Conservation Commission on August 5 (on file), Mr. Femia mentioned the maintenance complaints listed in those minutes and the letter to Mr. Ali sent with the minutes, stating that the Concomm needed a response from Mr. Ali by August 25 and that they wanted an "as-built" for the retention basins by the September 8 meeting, a maintenance plan, maintenance performed, and application for Certificate of Compliance also.

Mr. Brodeur responded that the Conservation issues should be addressed in the final site plan. Mr. Ali is obligated to the Concomm to do the requested items in the letter, and an engineer will inspect the work and see if it complies. Mr. Femia asked Mr. Ali if he had an engineer doing this. Mr. Ali responded that any changes will be stated on the "as-built."

Mr. Benson then asked Mr. Marhefka if the trustees are asking the ZBA this evening to do anything in the near future? Mr. Marhefka responded that he has been living at Afra Terrace for 5 years, and construction has been going on for 8 to 10 years; he is wondering when it would end. Mr. Marhefka asserted that Mr. Ali has not presented anything indicating that the project was coming to an end. The Board of Trustees does not want to be held liable for inconsistencies from what was supposed to be done, but can the ZBA tell them that the contractor will be liable? Mr. Benson replied that he would not feel comfortable with any assurances without consulting with Town Counsel, and also Richard Heaton, the 40B Housing Consultant.

Mr. Marhefka continued that, as Trustees, they would hire maintenance people, enforce rules and regulations, and control monies to take care of the condos, not things that were not done correctly, and when the ZBA approves everything done, the Trustees will take over. He mentioned as an example, that a landscaper should come in once a year. Mr. Benson asked who is financially responsible for the landscaping, and Mr. Marhefka replied that the contractor is responsible. Regina Brodeur also replied to this question, and asserted that the landscaping is not done and commented that the roads are deteriorating; she mentioned that condo fees pay for snow removal, and that Mr. Ali handles payment for all the maintenance and the residents do not see any of that, but at a meeting, he gave them an accounting of it all. However, she commented, this accounting took place once in 6 ½ years of living there. Mr. Marhefka then commented that they are becoming Trustees in order to have control.

Mr. Femia commented that he liked the idea of having DPW look at the “as-built” because there would be an engineer’s opinion, and Ms. Isgro asked why the original engineers who worked on the Comprehensive Permit can’t be consulted? Mr. Brodeur responded that the ZBA never received funds for payment of the engineer. (Mr. Benson and Mr. Meindersma then interjected that the comments were getting off track). Mr. Benson continued that there were issues to be addressed by Town Counsel as to responsibility and what the ZBA is concerned with. He added that expenses, engineering and fees are discussed under the new Comprehensive Permit rules, which ZBA voted upon, but which do not apply here. Also, the Trustees have questions for ZBA, but they are not ready today to act upon enforcement. Mr. Benson said that he would reach out to the Town Administrator, Leon Gaumond, regarding Town Counsel advice, and advised Mr. Marhefka to return before the ZBA if they have any more questions. Mr. Marhefka asked how to do this, and Mr. Benson replied that the ZBA would place them on a future agenda for a public forum. Ms. Isgro then commented that, regarding the sale and transfer from Mr. Ali to the Board of Trustees, if the (4) units are sold for profit, there is additional cost involved, and Mr. Benson replied that this was not relevant to the matter at hand.

Next, David Eckhardt, P.E. spoke, who identified himself as an associate member of the Conservation Commission. As a follow-up on the aforementioned correspondence regarding the Concomm site visit of August 5 and letter to Mr. Ali, Mr. Eckhardt stated that the Concomm expects to hear from Mr. Ali at the September meeting, and stated that it is important for the work requested in the correspondence to be done. Mr. Benson requested that the Commission come to ZBA with any concerns that they need to be aware of. Mr. Eckhardt replied that Concomm will copy ZBA and Town Counsel on correspondence regarding this matter.

With no further questions or comments regarding Afra Terrace, Mr. Benson announced that the board would now be addressing minutes of previous meetings.

Minutes of April 28:

Mr. Benson informed the rest of the board that Mrs. Pedone, who could not attend this evening, e-mailed him, informing him that she had no corrections to suggest for these minutes, and no one on the board or the secretary received any suggested corrections by anyone else. However, Mr. Benson had quite a few corrections and felt it to be advisable to distribute the corrections to all, and continue the vote on them until the next meeting.

Minutes of May 19:

Mrs. Pedone had no corrections to suggest for these minutes, either, and there were no responses from Mr. Hennessey. Mr. Meindersma, Mr. Benson and Mr. Femia did not attend that meeting, therefore they could not vote on these minutes. Mr. Cahill and Mr. Witkus were the only members present at the May 19 meeting who were also at this evening's meeting, so it was decided to continue the vote on these minutes until the next meeting.

Minutes of July 29:

Mr. Meindersma did not attend the July 29 meeting and could not vote upon those minutes, but there were (3) others present to vote. Mr. Cahill moved to accept the minutes as written. Mr. Benson seconded. All in favor.

With no further matters to discuss, Mr. Meindersma moved to adjourn the meeting at 9:01 p.m. Mr. Cahill seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____

