



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

May 14, 2015 – Interim Meeting

Chairman: John Benson

Members Present: John Benson (Chair), David Femia, Kristina Pedone and Charles Witkus.

Others Present: Barur Rajesh Kumar (Associate Member) and Secretary Toby Goldstein.

Members Absent: Jon Meindersma (Vice-Chair) and Paul Hennessey (Associate Member).

Mr. Benson called the meeting to order at 7:18 pm. He read aloud the names of members present and announced that Mr. Meindersma would be absent. He then read the only item listed on the agenda, a discussion of letters and plans submitted by Iqbal Ali regarding the Village at 94 North Main Street. One letter states that Mr. Ali is requesting that the board approve certain changes to the Comprehensive Permit for this project. Mr. Benson added that Mr. Ali requested that Town Counsel attend the meeting, but that was not possible due to late notice. Mr. Benson then asked Mr. Ali to address the board.

Mr. Ali first announced that Dean Harrison accompanied him at the meeting for the discussion. He said that he was waiting for the subsidizing agency to be approved from MHP, and he now has one. Mr. Ali stated that his percentage of affordable units in the project was 25% affordable, 75% at market rate. He also proposed that the board approve the subsidizing agency, according to the instructions in the 2008 decision and 2010 amended decision. Mr. Ali also requested that the board sign to okay an ANR plan that he submitted previously. He also informed the board that the architect, Jerome Dixon, was submitting new architectural plans for the 54-unit building for the Town to review.

Next to speak was Dean Harrison, a consultant for Mr. Ali. He distributed his resume to the board and discussed his involvement for many years in affordable housing, including working with Richard Heaton of the Affordable Housing Trust previously regarding other 40B projects. He reiterated what Mr. Ali said regarding MHP commitment (their letter is on file), and

Rockland Trust is providing the first payment as the lender. He added that MHP is the primary mortgage lender for affordable housing in Massachusetts, and that he is working with them to obtain final approval in a project eligibility letter. Mr. Benson then asked him, did he not say that they were not doing a project eligibility letter? Mr. Harrison replied that, as part of project eligibility standards, the subsidizing agency issues a project eligibility letter; after ZBA issues their permit, the subsidizing agency will issue final approval. Three things that they need for final approval are: 1. A property management firm; they will use Peabody Properties, which will handle fair housing, marketing and management.

2. Ali must retain a Clerk of the Works; they have one in mind, who is an independent inspector, and the lender's inspector will also be working with the project.

3. Ali also needs an updated appraisal.

Mr. Harrison then summarized the housekeeping items explained earlier:

1. ZBA to recognize MHP as the subsidizing agency.

2. There must be a commitment letter, listing the borrower as Sajda Gardens LLC, and Ali will guarantee the loans from MHP.

3. ZBA must approve Ali's architect, and sign his submitted ANR plan.

He added that Ali met with the Fire Department, and that previous architectural plans cannot be used as the architect has changed (Jerome Dixon).

Mr. Benson asked if there is a regulatory agreement yet? Mr. Harrison replied that there is not one at this time, but they can provide a draft, as that is usually done at closing. Mr. Benson then asked if the names will be the same on the regulatory agreement as the Comprehensive Permit? Mr. Harrison replied no, that DHCD will not do a regulatory agreement, MHP will. Mr. Benson asked why it has not been done yet? Mr. Harrison replied that it will not be done until closing, and that they need commitment from Rockland Trust, and other items, and before they can close, they need a \$10 million loan from MHP. So, he continued that the regulatory agreement will be provided as a draft, and the final one will be executed near closing and registered. Mrs. Pedone asked when it was received, and Mr. Harrison replied on March 25; she asked if it was submitted to the Town Clerk? He replied that it normally does not have to be done. Mr. Femia asked why the board was just seeing it now for the first time and did not have a chance to review it before? Mr. Harrison replied that it was a miscommunication between Ali and himself, and they have also been working on some issues. Mr. Ali added that, at the last ZBA meeting, when they were working with Mr. Heaton, he recalled that Mr. Heaton had a copy and the Building Inspector had a copy.

Mr. Benson commented that, with the highly technical matters before them all, which are time-sensitive and there are questions of substantial and not substantial changes, that it would benefit both Mr. Ali and the Town to request that Town Counsel meets with them; he opined that it would help prevent issues that might be easily handled from becoming difficult, and he thought it would be helpful to set a date to have knowledgeable people attend to advise all concerned. Mr. Benson questioned ZBA being able to act this evening; he wants input from Mr. Heaton and to think about meeting again and who should meet with them. Mr. Harrison asked if he and Mr. Ali could speak with Town Counsel prior to that meeting to go over some issues? Mr. Benson replied that they should speak with the person most competent in this subject area.

Mr. Heaton spoke next with some general comments. First, he discussed some of the history of the project. He mentioned that it is not really a large project, but complicated; it has been a 12-year process, with three major litigations and multiple HAC rulings; there have been three owners in 12 years; there have been 2 different ZBA boards involved with the project. Mr. Heaton estimated about a \$3 million profit for Mr. Ali and his partners eventually, and opined that their objective is to complete the project as soon as possible. Regarding the Town, Mr. Heaton mentioned that the project brings the Town closer to its goal of 10% housing being affordable units, bringing the percentage from 5% up to 8%, and brings in much tax revenue yearly for the Town. Mr. Heaton added, however, that significant infrastructure may cost the Town \$1 million, such as for sewer and water. He opined that the project might have a negative impact on the neighborhood, and probably will not be beneficial to Town residents- local residents are supposed to get preference to 77 units, but he thought that this probably will not happen. However, he continued, 40B is a law in MA, the Town negotiated the Comprehensive Permit in 2008, and the developer purchased it and has a right to develop it. Mr. Heaton continued that once a Building Permit is issued, the bank inspector, Clerk of the Works, MHP and the Building Inspector will make sure that the development is built to plans; but it is important to be sure that the plans agree with what was decided.

Mr. Heaton discussed next several concerns that he had. First of all he mentioned the changing name that the project has had, for example, it was called the Villages at North Main Street in the 2008 decision, and Villages at Oakdale at other times, explaining that the name must be consistent in all documentation.

Next, Mr. Heaton discussed issues involving other departments, including Planning Board's offer to give advice on the ANR plan as an option. He mentioned a landscaping plan from April, 2006, that cannot be found today, the importance of which is that lighting cannot be reviewed without the landscaping plan. Mr. Heaton said that a lighting plan was never done, and that in a note from the engineer who reviewed the plans in 2010, it was said that there was a landscaping plan, but no one can locate it. He also mentioned some issues that need to be

addressed but that are not 40B requirements, but are requirements of other Town departments, such as the location of hydrants and snow removal sites. He explained that snow removal is a matter of public health and safety. He added that signage needs to be looked at; due to Fire Department input, stairways need to be wider; underground electrical needs to be understood. He also added that the property management company, Peabody Properties, should have drafts of the regulatory agreement and management agreements, and the development should be in the same name on all documents. Mr. Heaton mentioned that, in a summary by Hancock and Associates in 2010, they stated the objective being to go through the conditions in the Comprehensive Permit and identify all open issues.

Mr. Heaton explained that the Comprehensive Permit decision stated that the board must select one of four engineering firms to review and report; Hancock and Associates was selected. Mr. Heaton found it disturbing that of 37 items, 12 were identified as “not applicable” but they were important to the board and neighbors, such as developing a policy as to when work will be done so as to not disturb the neighbors, for example, times of truck deliveries, and erosion controls, dust and noise are key parts of the agreement. Mr. Heaton said that Hancock and Associates said it was not their responsibility, but Mr. Heaton believed that it was.

Mr. Heaton opined that PSC specializes in working on Comprehensive Permits; they look at all issues and determine what actions they believe need to be taken and once that is done, ZBA can waive certain items or proceed further. Mr. Heaton suggested using PSC rather than the previous engineer, and opined that the developer should take care of the expense. He suggested that the board consider three motions:

First, that ZBA should hold a public hearing to consider changes, within the next 30 days.

Second, he is concerned that pieces of information gradually appear that he and the Town are not aware of; Mr. Benson added that documents did not seem to be filed in an organized fashion.

Third, Mr. Heaton said that the following must be retained, and this is written in the Comprehensive Permit Rules and Regulations: an independent third party to review documents (paid by the applicant), and the ZBA must retain special counsel at the applicant’s expense, who will review and report to the board. Mr. Heaton recommended Dan Hill, who has done work before for the AHT. Mr. Heaton suggested that the board meet him at the next meeting. In summary, Mr. Heaton described the project as complex with a lot of history, but opined that this was the opportunity to be sure that everything is done correctly.

Mr. Benson then addressed Mr. Ali, explaining that he did not want Mr. Ali to feel as if he is being inundated, but that AHT has its own concerns, and ZBA has its own obligations that are separate.

Mr. Ali responded, that Mr. Heaton had some valid points, such as the landscaping plan and need for snow removal areas. But he said that he is not going to file for a public hearing without substantial change, as he claimed that this was stated in the Permit decision. He continued that he has a consulting engineer, and will speak to him about snow removal and signage. Regarding electrical plans, Mr. Ali indicated that the electrical department in the Town will review the plan and instruct him. He discussed the naming of the deed, that it is under the name Sajda Gardens LLC, was Crescent Builders, and that he provided the Hancock and Associated engineering letter(on file).

Mr. Harrison acknowledged that Mr. Heaton explained his concerns, but he must follow conditions of the Permit; if the applicant violates any conditions, the Town has the right to call him back. He mentioned that Mr. Heaton does not agree that the report was done correctly, but Mr. Harrison and Mr. Ali believe that it was done correct. Also, conditions were not addressed that they had no say in. But, Mr. Harrison did agree with Mr. Heaton that, over time, the amount of information seems to be lacking, and he said that he and Mr. Ali will prepare a package for the next meeting of letters, drawings, etc.

Mr. Benson then responded, that he respected the applicant's feeling about unnecessary hearings not being fruitful, but making sure that the board is properly informed is important, and as an example mentioned that there is now a lighting plan where there previously was not, and he considers that to be a substantial change. (Mr. Ali interjected that the lighting plan is required by building code for safety of the residents, and that Mr. Lund could explain that). Mr. Benson repeated that, although Mr. Ali had concerns about another public hearing, the lighting plan appears to him to be a substantial change. Mr. Ali responded that, if it was approved already and he makes an improvement, it is not substantial. Mr. Harrison then, acknowledging that the board has not had the chance to speak with Town Counsel, he and the applicant would accept it and wait if the board wants to speak with Town Counsel first. Mr. Ali then interjected again, saying that he was not asking for approval that evening, but that he needs the ANR plan signed. Mr. Heaton responded (to ZBA) that Planning Board offered to review the ANR plan and advise them if they should sign it or not.

Mr. Harrison continued that, from the October, 2008 decision, the board promptly approved the ANR plan, that it was straightforward and submitted before, with no modifications. Mr. Benson asked if the one submitted this evening was the same as the one from 2008? Mr. Harrison replied that no one knows if it is. Mr. Femia said that he was not comfortable if they do not know if it's the same plan or not, and opined that Planning Board should advise them. Mr. Harrison commented that, in the boundaries of the permit, ZBA signs the plan but it is not a Planning Board issue. Mr. Benson responded that the purpose of Planning Board input is because they are knowledgeable about ANR plans. Mr. Ali asked the Planning Board members

present if they have an engineer that sits on the board, because an engineer must review it. Marc Frieden from Planning Board responded to this, explaining that they have the background and make sure that the ANR is what it's supposed to be. Mrs. Pedone also expressed concern at not knowing if the ANR is the same as 2008. Mr. Heaton advised that the board should sign it on an engineer's advice, and ZBA's approval is done before the building permit can be issued. Mr. Benson added that the board is not suggesting that Planning Board will approve anything, just that they have specialized knowledge that would be helpful. When Mr. Witkus asked Mr. Harrison if they agree to having Planning Board look at the ANR and give their opinion to the ZBA, he responded that they can if that is part of the normal process, and if they give it to the consulting engineer. Mr. Ali asked when the ZBA meets next, and Mrs. Pedone asked him if, prior to the next meeting, he could provide ZBA with the information that they need? Mr. Harrison replied that they may not have the regulatory agreement.

When Mr. Heaton referred to ZBA Rules and Regulations that were adopted in 2013 to provide documentation for questions asked, Mr. Ali expressed reluctance at following that document as the amended decision for his project came in 2010. Mr. Heaton replied that everything in the document is standard, and offered to review it if he has issues with it.

Mr. Ali reiterated to Mr. Benson that he did not want another public hearing, and that he would not pay to retain Attorney Dan Hill; Mr. Harrison added that he did not agree with Mr. Heaton's recommendation for Mr. Hill to be the attorney, as he had worked with him in the past. (Mr. Heaton then referred to Option A, Motion 3 in his handout which is on file). Mr. Ali added that they have had a P.E. already; Mr. Lund added that consultants are on board in the process. Mr. Harrison added that they have hired an independent third party through MHP and Rockland Bank, and that within two weeks they can let the ZBA Secretary and Mr. Heaton know what they have determined.

Mr. Frieden then reminded everyone that they still need an attorney to determine if there would be substantial change or not. (Mr. Benson then referred to Motion 3, paragraph A). Mr. Benson suggested that Daniel Hill be retained as a special counsel at the applicant's expense. Mr. Ali reiterated that he did not want to pay for that. Mr. Harrison opined that the Town should use Town Counsel, but Mr. Benson replied that he did not know how knowledgeable she is regarding 40B projects. Mr. Harrison commented that Dan Hill used to work with Kopelman and Paige, and that he does not think that Mr. Ali should pay for special counsel, but agrees that an attorney should decide if there is a substantial change or not. Mr. Ali added that he has qualified people to look at the plans; they have retained a structural engineer and two attorneys, and he does not want to pay for another person. Mr. Harrison suggested that the Town contact MHP's attorney and discuss this first with this person as an independent third party to review the Comprehensive Permit and say if the changes are substantial or

unsubstantial; Mr. Ali argued that it is the board's decision whether or not something is substantial, and if it is good for the project, they should see it that way. Mr. Benson responded that they need the special knowledge from the attorney so that they do not sign off on something that is not good for the Town. Mr. Benson gave as an example the proposal to change to two baths in a unit from one, and asked how might that affect the sewer system? Mr. Ali responded that an engineer can determine that; Mr. Harrison responded that they are open to talking with whomever ZBA chooses, whether it's Town Counsel or someone from MHP. Mr. Ali expressed the desire to get started with the work, for example, to get Planning Board to review the ANR plan. Mr. Benson responded that he wants to have a meeting dedicated to those issues. Mr. Frieden discussed with Mr. Ali and the board that the engineer who stamped the plan back in 2008 might be the best person to ask questions, and perhaps he could come in? Mr. Benson responded that, if they can contact the original engineer, then the board will set a date for a meeting.

In a discussion about additional fees and funds, Mr. Harrison asserted that they will hold off discussing that for now as there is no Public Hearing set as yet to look at the issues. Mr. Benson told him that the board wants any new information a week before the meeting that they need to review or anyone who is advising them will be needing to review. He explained that, with a combination of legal and technical questions, they will have more confidence if there are experts with which to consult. Mr. Harrison thought that review of the Building Permit application, drawings and other documents may be covered under the \$20,000 Technical Review Fee. (Mr. Lund corrected the amount to \$25,000). Mr. Lund continued that the engineer has not been retained yet by the Town; the Town has a choice of three engineers, and since the payment for that goes into the ZBA bank account, ZBA approves the engineer. Mr. Lund estimated that the engineering review could be a 24-month project involving review of plans but mostly on-site inspection, and the chosen engineer could begin in one to two weeks. Mrs. Pedone asked who approves the three engineering choices and does ZBA make the final decision? Mr. Lund replied that yes, ZBA does make the final choice; they need to approve the proposal of the engineer that they feel is best and have the person come in. The board instructed Mr. Lund to send the names and proposals to them. Mr. Harrison added that there will be a lenders' inspection report from MHP and Rockland Bank. Mr. Benson asked the applicants what the less complicated matters are that need to be addressed? They replied: the approval of the subsidizing agency, the approval of Sajda Gardens LLC as the applicant, with Crescent Builders as the sponsor, and to approve the ANR plan. Mr. Benson said that those items can be addressed on May 28, at the next ZBA meeting; they will discuss those three bullet items only, and added that they are concerned with proper notice to the Town.

The meeting was now open to public comment. First to speak was David Marcoux of 95 North Main Street, an abutter to the project. He discussed several concerns with the project. First he

discussed the lighting plan, which he said was important to the residents for several reasons, including the fact that residents' backyards were private, and the lighting plan does not show shadowing or direction of the lighting. Mr. Benson agreed that this was his concern also, to be sure that it was done properly. Some other concerns that Mr. Marcoux discussed were that he design of the buildings changed within the last year, such that the anticipated character and attractiveness has been removed; he has not seen sidewalks in the plans; and it did not appear in the plans that the residents had the rights of private backyards, especially where there would be large buildings but the trees would have no leaves in the winter so that they would not give any protection from view. Mr. Marcoux continued, addressing Mr. Heaton, that, in Condition 34, regarding site disturbances, the wording of "best manageable practices" bothered him because the requirements were not clear and there were no guidelines, such as for dust, noise or working on Sundays. Mr. Heaton replied that they were only reading conditions; they can modify the conditions to be more acceptable, and they will submit something at the next meeting to clarify what the applicant will do during construction. Mr. Ali then added that the Town's bylaw gives certain conditions, and Mr. Harrison continued that if the conditions are not waived in the original permit or modified. Mr. Benson opined that the language is vague. Mr. Heaton referred to the October, 2008 decision, which states that the Town must waive any bylaws at the applicant's request. In response to Mr. Marcoux's comment about the wording, Mr. Harrison responded that they can clarify the wording.

Mr. Marcoux's last point of discussion was regarding the size of the buildings and their location at the top of a hill, what the impact would be on abutters and if anything could be done to reduce the buildings by perhaps a floor in height. Mr. Benson responded that the approval has been made and the board must act within it; the residents' concerns will be received and the ZBA is open to ideas but the board has limits to its actions. Mr. Marcoux continued that they are willing to hire PSC to review and would like the Town as a financial partner in this, even for part of the money; a report from the firm would identify substandard areas and give suggestions for improvements. Mr. Benson responded that the Town Manager would have to agree to this. Mr. Ali added that the approval has been done already, and it will cost \$25,000 again, and opined that it should have been done before. Mr. Benson replied that they will make a decision on the engineer at the May 28 meeting. Mr. Harrison then argued to Mr. Benson that the three recommended engineers are all professionals and asked him how many reports he needed? Mr. Benson replied that they do not just want an engineer, but one that has knowledge of 40B projects. Mr. Harrison asserted that the updated drawings are consistent with the Permit. Mr. Heaton continued that a third party will review all of the material presented today and be sure that it is consistent with the agreement. Mr. Heaton asked the board, if the neighbors fund the engineering review, would the ZBA accept their findings? Mr. Benson responded that more information would be better, but they do not have authority to do so; they must present the idea to the acting Town Manager, who may have to go to the

Board of Selectmen for approval. Mr. Marcoux added that he thinks it would benefit the Town because the work that was done was done five years ago, and there have been some changes and this engineer would give an objective opinion.

Mr. Benson said that he would pass this along to the acting Town Manager, and said to those present that the board would consider any input regarding the previous discussions. Mr. Frieden suggested that, when the board consults with Town Counsel, that they should include the fact that the landscaping plan was incomplete and the lighting plans did not exist before, and opined that the board would need a hearing for these items. Mr. Benson agreed that the lighting plan was of concern to the neighbors and the board.

Next to speak was Russell White, of 45 Waushacum Street. He discussed the situation where, when Stillwater Heights was built, the rock in the ground was disturbed, which was believed to cause a water problem; also, he opined that the landscapers were not too careful in their work and that they tore out endangered species of plants. He does not have confidence that they are doing the job properly. Mr. Benson responded that they will allow the experts to be sure that the requirements are followed.

John Owanisian of 8 Stillwater Heights spoke next. He discussed the three recommendations that Mr. Heaton made previously, along with the need for more comprehensive records, and wanted to know if those items are being tabled for now? Mr. Benson replied that the board will need a public hearing to determine if the changes are substantial or unsubstantial, and will get input from Town Counsel and others. Mr. Owanisian asked if they are considering a specific attorney? Mr. Benson replied that they can recommend someone but have no authority to allocated funds so they must pass the request along to the acting Town Manager.

Mr. Frieden asked Mr. Harrison for his concerns regarding Daniel Hill as attorney? Mr. Harrison replied that there are many qualified people, and Mr. Ali added that it is up to the board to hire the person. Mr. Benson responded that he will pass along to the acting Town Manager a specific request for Mr. Hill, as Mr. Heaton recommended him, and it would be at the Town's expense, as ZBA wants legal input.

Mr. Marcoux, referring to the engineer, wanted to clarify if he is to review the plans or only do site work, as they understood that the scope of his work would be to review plans. Mr. Benson responded that the Building Inspector said that he is reviewing the plans, mostly to monitor the construction phase; PSC would look at the permit and see if the plans agree with it. Mr. Heaton added that the scope of the work needs to be clear, and he will work with the Building Inspector on that and make recommendations to the board.

Mr. Frieden referred to the comment regarding basement water, and mentioned that Planning Board does Stormwater Review, and that the engineer should see that this is done; Mr. Heaton responded that it is not clear if that was done.

Referring back to the comment on the condition of the records for this project, Mr. Benson asked Mr. Ali to provide at the next meeting whatever paperwork that he has. Mr. Heaton asked Mr. Ali to provide six copies of each item. Mr. Benson then summarized what will take place at the May 28 meeting - the three bullet items to cover which were mentioned earlier, the choosing of an engineer, and the provision by Mr. Ali of six copies of all of his documents.

With no further business to discuss, Mrs. Pedone moved to adjourn the meeting at 9:35 p.m. Mr. Femia seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____