



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

June 11, 2015

Chairman: John Benson

Members Present: John Benson (Chair), David Femia, Kristina Pedone and Jon Meindersma.

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

Members Absent: Charles Witkus and Paul Hennessey (Associate Member).

Mr. Benson called the meeting to order at 7:29 pm. He read aloud the names of members present and announced that Mr. Witkus was absent; he appointed Mr. Rajesh Kumar to serve as a full member at the meeting. He then read the first item listed on the agenda, discussion with Chris Lund and Richard Heaton regarding the Village at 94 North Main Street; Mr. Heaton would speak first.

Discussion With Chris Lund, Building Inspector, and Richard Heaton, Affordable Housing Consultant, Regarding the Village at 94 North Main Street:

Mr. Heaton began by stating that, from discussions with the developer and others involved with the project, such as the Town boards, that it was the consensus that it would be valuable for the ZBA to have a process to propose certain steps in the development process of the project, which could then be proposed or rejected. Mr. Heaton continued that he opined this project to be one of the most complex that he has ever worked with, with reasons including the history of three different owners, two different subsidizing agencies, two different ZBA boards, and multiple appeals to the HAC, so that the project is difficult to absorb; he proposed to use peer reviewers to go through the Comprehensive Permit, and these peer reviewers would look at different aspects of the project, separate what is important and non-important, and the board can decide to address the issues or not. He explained that the peer reviewers would meet with the applicant and others to obtain a clear, concise picture of the issues.

Mr. Heaton outlined three steps in the process that he summarized on a sheet for the board and applicant. The first, which he considered most important, is that the peer reviewer can tell the board what are best practices, what are changes that were made, and what is important to understand and those things can be discussed with the developer. One example that he gave was regarding the landscaping and lighting; the plans were approved before for 60+ units, not the final 96 that were approved, and in this case the consultant can be hired to review the documentation and make recommendations. Mr. Heaton also discussed three buckets on the aforementioned sheet, which describe the project, review of the final plans, and review of the supporting documents. He also said that the peer reviewers will determine what the Town will offer to pay to have done, and what the board and/or applicant must hire to do.

Next Mr. Heaton discussed the second step in the process, which was to go back to the beginning of the history of the project and look at it from that point, not just from the 2008 decision.

The third step that he discussed was, once all of the information is there and any issues are worked out, the board can advise the Building Inspector that he can issue the building permit, from their standpoint.

Mr. Benson asked Mr. Heaton if he has discussed this with the developer, Mr. Ali? Mr. Heaton replied that he had not reviewed the details previously, but Mr. Ali agreed that the process would be helpful.

Mr. Heaton continued that there is a cost associated with the peer review process, and understanding the cost is critical. He explained that, for a 40B project, the developer is expected to pay reasonable peer review fees, and if the Town does not have resources for that purpose, the developer is required to pay. Also, he continued, there is no cap on peer review fees. He added that, according to the 2013 Affordable Housing Rules and Regulations (on file), peer review fees cover all technical, engineering and plan review costs, and the ZBA will determine what professional services are needed. Also, Mr. Heaton continued, the ZBA may employ outside consultants, and if the applicant does not pay, the board may deny the Comprehensive Permit. Mr. Heaton added that this idea can be extended to include peer review fees for the building permit because the project is so complex and the board may need help deciding on it and opined that the applicant should pay; hopefully the applicant would agree so that the project can move along, or he can appeal this to the Board of Selectmen or HAC and that could tie up the project for quite a while.

Mr. Heaton then explained that, according to DHCD and HAC, if the number of units is changed, the board is denying the project; he continued that, if they deny, there is a burden on the Town which has a 10% affordable housing requirement, but if they approve with conditions, the

burden is on the applicant, and explained that DHCD defines anyone changing the number of units as denying the project. Mr. Heaton advised that, in principle, if HAC is wrong that the ZBA should appeal to them if they think it's reasonable, and they should set up a set of decisions and let others decide to defend or move forward; this decision should be made by the Town.

Mr. Heaton proposed that the board implement this process, where they review all available material with a peer reviewer as quickly as possible, bring in the 2008 decision and decide if it is acceptable or will the developer agree to changes, and then bring in others if they need to, such as Town Counsel.

Mr. Meindersma asked about the length of the peer review process, and the cost. Mr. Heaton responded that it could take six to eight weeks or three months, depending upon when the plans are ready from the developer, and when the peer reviewers are approved. He estimated that the cost would be between ten and twelve thousand dollars.

Mr. Benson continued, stating that the Town has an engineering firm for the engineering plans, but that what concerned him was the review of the regulatory aspects of the 2008 decision, and thought that guidance would be important regarding the issue of substantial or unsubstantial changes; he asked Mr. Heaton how he would propose who would do that? Mr. Heaton replied that, depending on the topic, that particular topic would be referred to the peer reviewer. Mr. Benson asked how many peer reviewers would be needed, and if they would include an engineering firm? Mr. Heaton replied that there would be two or three peer reviewers, and mentioned the name of one, PSC, that does engineering also, but added that their price is higher than he expected; he offered to the board to come back before them with who is available, what services they offer, and maybe be able to move ahead in a couple of weeks. Mr. Benson opined that a step-by-step plan makes sense, and that the board will probably ask Mr. Ali for funds for the peer reviewer and he will want an idea of the cost. Mr. Lund added that the Town has many resources to suggest. Mr. Femia asked Mr. Heaton if he will provide the board with a list and tell the board who will do peer review for each subject area? He said that he would do so.

After Mr. Heaton was finished addressing the board, Mr. Benson asked Mr. Ali for comments. Mr. Ali acknowledged Mr. Heaton's comments as being valuable. He asserted that the site plan had been viewed, with comments made, and the Comprehensive Permit finalized in 2010; he said that there will be new plans to review. He mentioned that building codes change so that in order for the building permit to be issued, codes need to be met. He said that the peer review fee has already been approved by HAC for \$25,000, and said that the Building Inspector deposited it (the ZBA deposited it, for the record), and asserted that it is the board's decision as to how the money is spent; he wanted to know who authorizes that? Mr. Benson responded that \$25,000 was approved by HAC five years ago, but noted that services are more expensive

now so it is questionable if \$25,000 is reasonable today. Mr. Heaton corrected the last statement, stating that HAC did not impose that amount, the ZBA at that time did so; but, he noted that the board can change the amount and that there is no cap on it.

Mr. Meindersma asked, in reference to the proposed process discussed before, how many tasks are within the scope of what an engineer should do? Mr. Lund replied that, on the sheet labelled, "Revision of Final Plans," all items can be taken care of by an engineer except for architectural drawings, which are taken care of by the building department.

Mr. Heaton next discussed the proposal for consultation submitted by VHB. They would review old plans, not the final ones, and would only address traffic, roadways and drainage but not the other issues. Mr. Heaton opined that their proposal of \$9,000 was excessive, considering what they would be addressing, and asserted that final plans would need to be reviewed.

Mr. Lund added that, in the proposal from VHB, in "Task 1" (on file), they would work with Burton Engineering on amendments from the review for a proper final set of plans that would meet all the specifications in the Permit. The first review would be of the current plan, and the second review would have our engineer meet with Ali's engineer to confirm that the plan has what it needs.

Mr. Meindersma asked why the plans are not final? Mr. Lund replied that the final set of plans still lacks significant information. Mr. Heaton verified that Ali is giving Mr. Lund a new set of plans; Mr. Lund responded that there are final plans from Hancock today with no changes in layout but there are issues such as that the utilities plan from 2010 is missing underground electrical, so there will be addendums to the plan.

Mr. Lund continued that Hancock did the peer review on the Marchionda plans, but the issue is changes to that. Mr. Lund then asked if the Town felt comfortable with the plan for VHB to do this work in conjunction with Burton Engineering? He explained that the landscape plan of 2006 had four buildings on it, and that Burton will clean up the plan, and VHB and the ZBA will tell them if the plan is proper. Mr. Heaton asked what the ZBA's role would be? Mr. Lund replied that they would utilize the peer review comments of VHB; they will review the current plan, which is the 18-page final set by Marchionda, that they are working from, which has a peer review date of 10/6/2010. He continued that this is a different set of site plans than what the final site plan will be, and opined that Mr. Heaton will need to be involved with several documents that they need to review; examples are exhibits involved in building construction as well as the final site plan, and whatever the applicant does compared to the plans has to be looked at. Mr. Lund then mentioned the binder (submitted by Mr. Ali at the May 28 meeting) with all documentation from Mr. Ali, and that the construction plans are not part of exhibits

that HAC has, and that they are similar, but have differences, and if they do not coincide, it must be decided if the changes are substantial or not.

Mr. Ali then asserted that the binder contains approved documents, and asserted that the ANR plan was submitted two months before; it shows changes to the façade of the building and to the bathrooms. He also asserted that a letter was submitted to the Town with the ANR. Mr. Benson responded that, at the last meeting, he asked if there were any other issues and that was not highlighted to the board. Mr. Ali repeated that the plan was already submitted to the Town and the architect changed and the Town was informed. Mr. Benson asserted that Mr. Ali had that letter at the last meeting and said that it was not before the board and did not tell them that they needed to act upon it. Mr. Benson then attempted to clarify the list of what was before the board with Mr. Ali. Mr. Ali responded that some of the items that were on Mr. Heaton's agenda (that he sent by e-mail - on file) were done, such as the landscaping and architect's plans, and if he has to make changes, he will do so, but does not expect to open another public hearing now, and claimed that the building plan has been before the board for a year (Mr. Lund denied this). Mr. Lund mentioned that the current plans have a modified hip roof. Mr. Heaton suggested to Mr. Ali that he furnish a list of plans and documents, with dates and reference numbers, so that they can be reviewed for completeness without confusion. He also opined that the 2008 ZBA decision, the plan of record, was flawed, and would like to look at the entire project again, not from the beginning, but from the standpoint of if that decision is still appropriate today. Mr. Benson agreed with that suggestion, and also added changes to the amended decision of 2010, and he asserted that Mr. Ali submitted a letter dated May 1, 2015, giving a list of changes made such as to the stairwells and bathrooms, but none were changed on the final site plan that Mr. Lund has with him. Mr. Lund explained that the 18-page site plan that he had only showed site work, and construction plans for Building C. Mr. Benson clarified with Mr. Ali that this site plan was the same as the 2010 amended decision, and that the changes being discussed now are to Building Plan C and the landscaping plan; Mr. Ali responded that there have been no changes since 2010 and that the changes being discussed are to Building Plan C and the landscaping plan. Mr. Ali added that the plans show only a generic façade of the building, not detailed plans, and said that Mr. Lund will receive detailed plans of that. Mr. Ali and Mr. Lund discussed issues that the Fire Department had with the stairwells in that building, and that the plan will be modified with wider stairwells. Mr. Benson and Mr. Heaton both expressed concern with the assumption that ZBA reviewed and approved the site plans even though they may not have seen them and that it is critical for the ZBA to have the documents making up the final site plan.

Mr. Benson asked Mr. Ali how he proposed to make sure that all the participants in this process are on the same page regarding plans and construction changes? Mr. Ali replied that the ZBA would have a set of plans, act upon them, discussing what has been supplied and what is still

required. Mr. Benson responded that the ZBA may have items submitted to them with changes, but they need to know what the changes are from; the board has plans, for example, for the wider stairwells, and will try to decide if the change is substantial or unsubstantial, but the plans that Mr. Lund has were not approved in 2008 or 2010 by the ZBA. Mr. Heaton added that he was concerned that the plans did not go through revision control; Mr. Lund mentioned the same concern, and suggested that the Town needs a consultant to tell them that this set is the original set of plans so that they can know what they are making judgment against.

Mr. Benson next discussed with Mr. Ali the statement by Mr. Ali that the previous building plan was just a rendering of the building's façade; Mr. Ali said that this was approved, with the number of bedrooms, and he added that the hip roof will have to be modified according to the decision, according to Mr. Lund; Mr. Ali continued that, when all work is done, there will be a final plan for ZBA. Mr. Benson expressed concern that there were documents before the board regarding the stairwell that they must act upon, but these were changed from plans that were never acted upon by them. Mr. Ali contended that everything was submitted to ZBA, and that all Town departments signed off on them. The board members disagreed that they approved the plans, and stated to Mr. Ali that they need to know the history of the plans, what was submitted and what was revised and that they need Mr. Ali and his participants to lay all of this information out so that it is clear for the board; they had concerns that he had not clarified what has been before this board or the previous one, and their consultant (Mr. Heaton) said that what was given to the board did not match what Mr. Ali was referring to. Mr. Meindersma continued to Mr. Ali that he needs to be clear as, otherwise, the process will be slowed down and the public might feel that information is being slipped in without their knowledge; he acknowledged that he sees Mr. Ali's frustration.

The discussion of the plans continued, with questions by the board, Mr. Heaton and Mr. Lund directed to Mr. Ali as to the plans before them being different from the exhibits given, with no electrical information being shown on the site plans. Mr. Ali responded that West Boylston Light and Power will send a letter to the board regarding this, and that they are working on them to be finalized. Mr. Ali asserted that the lighting and landscaping plans have been submitted to the board, although the board asserted that they did not have them. Mr. Lund continued that the engineer Burton revised them and they are under peer review of the Town engineer. Mr. Harrison, representing Mr. Ali, agreed that they need to shed light on previous plans and what has been approved so that there is a clear trail from when HAC made their decision.

Mr. Benson continued, that he wanted to know if the plans submitted to the board for their approval did not exist when the project was originally approved? In other words, what

authority does the ZBA have to approve plans that did not previously exist? Mr. Heaton replied that the regulations dictate that they should do that.

Next, Mr. Benson, Mr. Lund and Mr. Ali discussed the architectural drawings of the interior and the façade, with Mr. Lund opining that the façade in the exhibits differs from that shown in the aforementioned binder of documents provided by Mr. Ali at the May meeting.

The board expressed discomfort regarding the fact that all the documentation does not seem to align and that it would make sense for Mr. Ali and those working with him to provide the board with an outline of everything submitted to date. Mr. Ali expressed the feeling that whatever he does will not matter and that he has complied with all regulations and would not do anything to jeopardize his investment.

Mr. Benson opined that it would be best to step back, refer back to the plans before the board, and have guidance in what to do so that, when new information comes in, the board does not have to go back to the original plans; he explained that the board wants to reach a point where they are comfortable with the plans submitted so that if there is a change, they do not need to go back to the original ones. In other words, they want to be sure that they and Mr. Ali are on the same page regarding the first plans, and then changes can be made.

Mr. Lund cautioned that which plans are referred to are decision-specific, according to HAC's decision, and his interpretation is based on stipulations in the decision history; he can provide guidance to the board regarding what they need to focus upon, but they need someone who can tell them if the construction is going by the set of plans referenced in 2008, or were there other plans modified from those.

Mrs. Pedone opined that the board needs to put on the record a request for a peer reviewer on Mr. Lund's recommendation, and a request for funds from Mr. Ali for this purpose. Mr. Ali argued the need for this. Mr. Benson responded that he wants Mr. Ali to give an opinion as to the controlling set of documents that they are all operating from. Mr. Lund responded that there need to be checks and balances to confirm the information. Mr. Benson asked Mr. Lund if Town Counsel were to advise that the documentation was the final set to work from, would that be sufficient? Mr. Lund said "yes" and that he could say if it agreed with what has been presented to them. Mr. Heaton advised that the board does not need Town Counsel's assistance at this time; they do need from Mr. Ali a definitive list with dates and revisions of all documents to define the project. Mr. Femia asked Mr. Ali if Mass Housing has seen the architectural plans yet? Mr. Ali replied that it will be done the following week. Mr. Lund added that the ones currently submitted have no bearing on the previously approved plan because there are changes on it, for example the stairwells. Mr. Ali explained that he is supposed to get the construction plan finalized, obtain a final appraisal, financing, and appoint a Clerk of the

Works, and an engineer is in the process of reviewing the site plan, sewer plan, etc. Mr. Heaton told the board that Mr. Ali would receive a 3 to 4 page letter from Mass Housing when the building plans are approved and, based upon those, the appraisal is done. He added that their objective differs from that of the ZBA.

Mr. Benson opined that it would not be beneficial to advance on making decisions regarding the project, as the board needs to determine the controlling document for the project. Mr. Heaton explained to Mr. Ali that the board cannot give final approval without the documents behind the permit. Mr. Lund explained that the decision on stipulation in 2008 references specific plans and agreed with Mr. Heaton that they need a consultant to review the plans; who it would be and how it will be paid for are issues. Mr. Lund added that Mr. Harrison previously referenced documents that he does not have.

Mr. Frieden suggested to initially have Mr. Harrison submit all the documents to have everything out in the open; Mr. Benson agreed that Mr. Harrison should assemble the documents, what followed, where they are now, how they got there, and what is the last controlling document, and he should submit a letter explaining how they got to that point. Mr. Frieden asked that there be no punishment if there is any disconnect in information, and Mr. Benson and Mr. Heaton agreed with that. The board agreed to hold off on any other matters and have Mr. Harrison submit the requested paperwork, and have Mr. Heaton review it before the next meeting. Mr. Ali said that he could have the paperwork in a week, and he would copy it to Mr. Lund.

Mr. Benson next brought up the subject of payment for services; he explained that Mr. Heaton's services cost money, and asserted that the peer review fees must come from Mr. Ali. Mr. Lund responded that he recommends the use of VHB for the peer review (he submitted copies of their proposal to the board); they set aside 40 hours of time in the proposal to do the work, but it may not all be used. Mr. Benson asked Mr. Ali if he could add \$5,000 to the peer review fee so that Mr. Heaton can continue to work with them? Mr. Ali replied that he thinks the board should pay \$5,000, as he has been preparing all of the documents. Mr. Benson reminded Mr. Ali that it was decided upon years ago that he should pay \$25,000, so Mr. Ali agreed to divide it equally. Mr. Frieden added that, if they run out of money, they can talk about it again; Planning Board has this procedure. Mr. Benson asked Mr. Heaton if Mr. Ali would pay \$2,500, would that fund him through the next phase? He replied that it would. Mr. Frieden added that, if the money is not used, Mr. Ali will get it back.

Mr. Lund suggested that the board approve VHB so that they can start their review, and that way also find out if their work will require the full 40 hours. Mrs. Pedone agreed, and proposed that the board agree to accept \$2,500 but go on record that they requested \$5,000 and discuss

with Board of Selectmen if necessary. Mr. Ali agreed with these suggestions so that work can be done on the site. Mr. Lund reminded him that he presently cannot dig or fill on the site.

Mr. Frieden then opined that VHB review shouldn't start if the plan may change. Mr. Ali asserted that the final plan had been approved. Mr. Lund added that the ANR plan was a piece of the decision, and the plan submitted in March will be reviewed by VHB. Mr. Benson addressed Mr. Heaton, saying that the first step is to understand the controlling document, and next to have a meeting to act upon the changes. Mr. Heaton continued that they will review those items, be sure that they are consistent with the 2008 decision, and determine if the board thinks they are important. Mr. Benson agreed with Mr. Lund that there is presently enough money to fund Mr. Heaton so that he can review the documentation and determine changes if needed. Mr. Benson asked Mr. Harrison to provide the information to Mr. Heaton to review; Mr. Harrison replied that he would want to be able to come back to the board if anything is missing. Mr. Benson responded to Mr. Ali that Mr. Harrison will prepare the documentation, submit it to Mr. Heaton, and the board can re-evaluate if he thinks anything is missing. Mr. Ali asserted that only counsel can decide that, but Mr. Benson and Mr. Lund responded that Town Counsel is not needed if ZBA considers the consultant to be an expert, and added that VHB needs a two-week lead time for the peer review, so if anything comes up there is time to straighten it out.

Mr. Ali asserted that the site plan is final, but Mr. Heaton responded that he is not comfortable with it. Mr. Meindersma addressed Mr. Ali, noting a lack of specificity in the documentation and opined that the time spent now in order to move forward will avoid time in court. Mr. Benson repeated that Mr. Harrison will prepare the documents with a letter and submit that to Mr. Heaton, who will report back to the board. Mr. Ali asserted that ZBA should pay for Mr. Heaton to do the report. Mr. Benson responded that the funds for the consultant can initially be used.

Mr. Benson now asked the board to vote on several matters. First was to postpone the request in the letter dated 6/2/15 from Mr. Ali to vote on modifications to the comprehensive permit. Mr. Meindersma made a motion to do so; Mr. Femia seconded. All in favor. (The board members signed a vote sheet for this vote).

Next, Mr. Benson asked the board to vote on acceptance of VHB as the peer review engineer for this project. Mr. Femia made a motion to accept Mr. Lund's recommendation of VHB. Mr. Meindersma opined that this should be discussed. Mr. Heaton had questions regarding VHB's statement of work in their proposal and whether or not certain items that they included were necessary or worth the amount that they were asking for. Mr. Lund read verbatim from their proposal, and opined that the past peer review from Hancock and Associates was not what they

would like to obtain and said that VHB does this regularly for Planning Board and is trained to do this. He also said that VHB's \$9,000 fee is broken up into two phases of \$4,000 and \$5,200.

Mr. Heaton suggested to Mr. Lund to list the plans that Mr. Ali will provide and that VHB will review; he should take the list that Mr. Harrison prepares and check off the items that VHB will work on. Mr. Lund added that he will provide for a signature at the next meeting.

In summary, Mr. Benson listed the items discussed and to be discussed; the board approved VHB as engineer; Mr. Lund will obtain a revised statement of work; and the items of the second bucket on the "Process to Review" sheet submitted by Mr. Heaton (on file) which include obtaining full sets of plans pertaining to all areas of the project will be clarified. The board and Mr. Lund then discussed the third bucket of the "Process to Review" sheet, review of supporting documentation, and who would handle certain areas. Mrs. Pedone addressed Mr. Ali, instructing him to include those documents in what he will submit.

Next, Mrs. Pedone made a motion to approve VHB as the peer review engineer for this project. Mr. Femia seconded. All in favor. (The board also signed a vote sheet for this vote).

Final discussion of this subject included Mr. Ali's mention of submitting the "as-built" plan to the Conservation Commission (Mr. Heaton commented that the Commission did not feel that the plan was adequate), that three of the 40B units are under agreement, but not sold yet, and that Mass Housing is working on cost certification for the project.

ZBA Elections:

Mr. Benson made a motion to nominate Mrs. Pedone as next Chair. Mr. Meindersma seconded. All in favor. Mrs. Pedone was unanimously voted in as Chair.

Mr. Meindersma nominated Mr. Benson as Vice-Chair. Mr. Femia seconded. All in favor. Mr. Benson was unanimously voted in as Vice-Chair.

Mr. Benson nominated Mr. Femia as Clerk. Mr. Meindersma seconded. All in favor. Mr. Femia was unanimously voted in as Clerk.

Discussion of Afra Terrace and ZBA Minutes:

Due to the late hour, Mr. Meindersma made a motion to postpone the remaining agenda items to the next meeting, Thursday, July 16. Mr. Rajeshkumar seconded. All in favor.

With no further business to discuss, Mrs. Pedone made a motion to adjourn the meeting at 10:35 p.m. Mr. Femia seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____