



Town of West Boylston
140 Worcester Street, West Boylston, Massachusetts 01583

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting	Thursday, July 25, 2019/7:00 p.m./Selectmen's Meeting Room (POSTPONED FROM JULY 18, 2019)
Members Present	Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia, John Benson (Associate Member) and Secretary Toby Goldstein
Members NOT Present	Nathaniel Orciani (Clerk), and Andrew Feland, Charles Witkus, and Mark Wyatt (Associate Members)
Invited Guests	Denise Cataldo, CPA

Welcome – Call to Order Time: 7:11 p.m. (by Mr. Olson)

Approval of Previous Minutes Executive Session of May 16, 2019: Continued to August 15 meeting
Open Session of May 16, 2019: Continued to August 15 meeting
Minutes of June 20, 2019 (approval this evening)

Motion Originator Mr. Femia (approved as written)

Motion Seconded Mr. Rajeshkumar seconded (Mr. Benson abstained)

Treasurer – Financial Report Mr. Olson reviewed the latest financial statement, dated 6/30/19

Motion to Accept N/A

Seconded N/A

At 7:11 pm, Mr. Olson called the meeting to order.

Update on Sajda Gardens Cost Certification Review by Denise Cataldo:

(Ms. Cataldo was continuing her discussion from the June 20, 2019 meeting). Ms. Cataldo explained to the board that she spent seven hours at Iqbal Ali's (developer's) office to obtain information that she was lacking

at the June meeting. The first issue that she discussed with him was the cost of the land for the 40B, which she opined was wrong at the June 20 meeting; she said that Mr. Ali produced a Purchase and Sales agreement (which she distributed this evening to the board) between Crescent Builders and Sajda Gardens, for 6.87 acres for the \$800,000 amount, which he said is why the amount is \$800,000 for the valuation. She disagreed as it was never recorded at the Registry of Deeds. She explained that what was recorded, dated March 18, 2014, was a Quitclaim Deed between Crescent Builders and Sajda Gardens for the property that was granted on a deed from Barre Savings Bank for 9.82 acres, recorded July 14, 2015; Mr. Ali signed the Quitclaim Deed. She opined that, if the cost that Mr. Ali gave was true, it would have been recorded and everything would have checked out. So, she still questioned the value of the land because it still includes the property of the three-family home, but noted that what was recorded Mr. Ali had signed.

In response to Mr. Benson, who opined that the unrecorded document was meaningless, Ms. Cataldo replied that she explained to Mr. Ali that, according to Town records, Sajda Gardens owns the three-family house and its property. She explained that, for the last two years, real estate tax bills for the home were paid by another entity of Mr. Ali even though the entity does not own the house. She continued that the ZBA allowed the separation of 92 and 94 North Main Street. Mr. Benson asked if there were any actions to divide the property, and if so was that action recorded? Ms. Cataldo replied that the ZBA voted to have two separate addresses for the 40B and the house, 92 and 94 North Main Street, respectively, but she did not know if that was recorded at the Registry. Mr. Femia stated that the board did an ANR plan to split the two properties. Mr. Benson asserted that, if that was not recorded, then it is still one property.

Ms. Cataldo then responded to Mr. Femia, that she went to the Assessor's website and obtained property cards, which showed that Sajda Gardens owns the three-family house and its property. Mr. Femia responded that it looked as though Mr. Ali sold the property and house to Sajda Gardens from Crescent Builders for \$100 (Ms. Cataldo confirmed that and said that this was on the Quitclaim Deed of 7/14/15), and in fiscal year 2019, for 92 North Main Street he paid \$175,952.80 in taxes, and for 94 North Main taxes were \$7,985.73; Sajda Gardens was listed as the owner of both properties but Mr. Ali paid the taxes from different companies. Ms. Cataldo responded that she informed Mr. Ali of what the Town records showed, and that she did not consider this Purchase and Sales agreement to be a viable document as it was not recorded, but wanted the board to know that the value of the land was the first discussion that she had with him, and it was up to the ZBA how they wanted to handle that.

Ms. Cataldo continued, that she then asked for vendor invoices to compare to the general ledger that was given to the Town. She opined that it was challenging because there were multiple companies working out of one office at one location and she could not assume that the invoices were or were not for construction on that property. Due to time and cost restraints, she said that she did not go through every bill (for example, from National Lumber). She said that she found some small invoices for items shipped to various locations. She noted that, although she did not go through every invoice, she assumed that certain ones were not related to this project because of "ship to" dates. In response to a question from Mr. Femia, Ms. Cataldo replied that there was backup to their invoices, and said that they shipped to 94 North Main Street, but the original accountant doing the report just obtained notes from them saying how much was spent. Mr. Femia opined that they should have had those to show how much was actually spent for 94 North Main Street. Ms. Cataldo responded that she went by shipping dates, and those seemed to agree. She continued that she looked at various supplier bills and vendor bills. For example, she looked at the rough plumbing expenses and the finished plumbing, and found them to agree. She also found that the person doing most of the electrical work had very thorough, professional records and there were no issues. Also, one vendor who supposedly could not produce invoices had seven invoices over \$13,000.

Next, Mr. Femia asked about the countertop company that was discussed at the June 20 meeting. Ms. Cataldo replied that \$346,000 was paid out to them (including \$255,000 discussed at the last meeting), but no invoices were available for him. She said that some payments matched what other people charged. She explained that other people did some of the kitchen installations and the amounts of their invoices agreed with what he paid them, and one vendor provided all the granite countertops, which explains a large portion of the cost; the kitchen installations were given smaller checks. Ms. Cataldo noted that Mr. Ali offered to call the countertop company for invoices, but she told him that he did not have to do that. Ms. Cataldo responded to Mr. Femia that the original CPA asked why the Town needed to look at the invoices.

Ms. Cataldo continued, that she looked at five American express bills, and commented that again there were multiple companies for one account; she opined that Mr. Ali's bookkeeper was very thorough. She found that, on two of the five bills were expenses of other entities belonging to Mr. Ali, paid by Sajda Gardens, and that

\$15,483 more was paid than American Express allocated to Sajda Gardens, and it was not put against Mr. Ali's equity account but under "miscellaneous expenses". She also found an excess of \$12,520 being paid by Sajda Gardens for expenses of other entities. In response to Mr. Femia, she replied that she did not talk to Mr. Ali about this, she was only going through invoices. In total she found that \$28,000 of "miscellaneous expenses" were paid by Sajda Gardens that belonged to other properties, but she opined that these were minor amounts compared to the total of the entire project; she said that it was wrong, but opined that would not make a difference. Ms. Cataldo replied to Mr. Femia that she did not ask again for Mr. Ali's Quickbooks, and she explained to him that usually she gets a Quickbooks file when she requests it, but she can work with or without it.

Next, Ms. Cataldo discussed her review of information from Percy's Appliances, from which Mr. Ali obtained all his appliances. From the numbers of each appliance, she found that some dishwashers were possibly stolen, as there were five more purchased and there were eleven more microwaves than what there should have been (one went into Mr. Ali's office), and noted that Mr. Ali has a finished kitchen in his office. She opined that these were minor expenses also.

Ms. Cataldo continued explaining her procedures with the invoices. She would pick a vendor to look at; if only half of the invoices that were shown on the general ledger were in it, the folder was incomplete. She mentioned other folders, where she was told there were no invoices, but now they were there. She said that there was one vendor that Mr. Ali was paying by man-hours, and it would list a work description, man-hours and rate, but did not total the amounts paid by the vendor. She asserted that, overall, she did not find anything major, and there were some discrepancies but thought there was not a huge amount that could be done.

Mr. Femia then opined that it was odd that the CPA who did the original Cost Certification was not able to get these records or ascertain information. He also opined that it seemed that accountant did not do justice to this process, and reiterated that, if the board has to sign anything to verify this report, he cannot sign anything with this many questions remaining. Mr. Olson did not think that the ZBA had to sign anything; Mr. Benson's and Mr. Olson's understandings were that the board only had to cite errors and it was up to MHP to make a decision. In response to comments by Mr. Benson regarding the \$800,000 value of the property and its significance, Ms. Cataldo opined that the cost should be significantly lower since it includes the three-family house, and she explained that, when Mr. Ali purchased the properties, he purchased them as one property. Mr. Femia then reiterated that he sold the property which contained the house for \$100. In response to a question from Mr. Benson regarding a recorded deed, Ms. Cataldo reiterated that there was a Quitclaim Deed from Crescent Builders to Sajda Gardens for the whole property, dated July 14, 2015. She said that the Purchase and Sales Agreement was never recorded, and Mr. Ali said that this was supposed to be the document that explained why the 40B should be valued at \$800,000. Mr. Benson asked if anything was registered dividing the two lots? Ms. Cataldo replied that the Quitclaim Deed, which was recorded, states that Crescent Builders granted to Sajda Gardens the Quitclaim covenant for the premises granted to Crescent Builders by Barre Savings Bank (according to the Quitclaim Deed from Barre Savings to Crescent Builders, dated 1/31/14, for 9.82 acres). Mr. Benson noted that the deed indicates Barre Savings Bank. On the Quitclaim, she said 9.82 acres was listed (1/31/14). In response to Mr. Benson, Ms. Cataldo replied that the Assessor's office does separate 92 and 94, but both were owned by Sajda Gardens. She explained that usually the owner forms a separate entity for the 40B (Sajda Gardens). The members of the board then discussed with Ms. Cataldo that they did not know if the ANR done to split 92 from 94 North Main Street was ever recorded at the Registry. Ms. Cataldo responded to Mr. Benson that the Assessor considers them to be two separate plots. Mr. Benson brought up some points about this. He mentioned that the entire plot was originally sold for \$800,000, and the Assessor divided the two plots after the fact (Ms. Cataldo responded that construction started before the split). Mr. Benson continued, that the large property was \$800,000, and the 40B is the smaller portion but Mr. Ali claims that it has the same value (Ms. Cataldo agreed, stating that the 40B report shows that). Mr. Benson opined that, for Cost Certification purposes, the 40B property should not be valued at \$800,000, and explained to Mr. Femia that Mr. Ali is claiming full value even though he sold it to himself but could sell it for a lot more. Ms. Cataldo agreed with that opinion. Ms. Cataldo responded to Mr. Benson that Mr. Ali told her that it was not recorded, and that the Assessor's office shows that Sajda Gardens owns the three-family house and property. Mr. Benson opined that this was not a fair report of the cost, and the property was not the same.

In response to Mr. Femia, Ms. Cataldo replied that the Cost Certification has to give a value of the land; she explained that the State did a valuation of the property in December, 2013 before construction started, but they could not tell her what it was, and could not answer her question about whether or not the valuation was for the 9.28 or 6.82 acres (Mr. Femia opined that they should have a valuation).

Mr. Benson then surmised, that if it is based on the 9.2 acres, \$800,000 is accurate but part of it is the home, which is not part of the 40B. Ms. Cataldo added that Mr. Ali is getting rent for apartments. Mr. Femia opined that MHP should know that there are two separate properties, there should be two assessments, and the \$800,000 valuation split up. Ms. Cataldo responded that she thought it was wise to discuss with MHP that the board has an issue with the cost of the land, and to also ask what is the typical procedure when someone cannot produce invoices or expenses related to the property. She noted that she did get a lot of invoices and they agreed, but couldn't find them for some vendors. She gave as examples that she looked at some (but not all) bills for American Express, equipment rental, National Lumber, Home Depot, painters, plumbers and electricians, but she was limited by time and cost. Ms. Cataldo responded to Mr. Femia that, for National Lumber, perhaps \$1,000 went to different addresses and opined that one has to assume it when there are multiple entities in one location. Mr. Femia opined that Mr. Ali should have separated invoices showing how many went to this project. Mr. Benson gave as an example if projects are similar it might be more cost effective to ship them all at one time even if they are for different projects. Ms. Cataldo responded that she compared invoice to invoice, and the totals made sense, an example being garbage disposal; she was given answers that made sense. Mr. Rajeshkumar opined that Mr. Ali knows how to do his work, but that the bookkeeping was not up to what it should be. Ms. Cataldo opined that the bookkeeper does a good job but the vendors do not keep accurate records.

In response to Mr. Femia, Ms. Cataldo replied that she did not know if MHP knows about the division of the land. Mr. Femia suggested to Mr. Olson that he contact MHP and ask them about that. Mr. Femia then mentioned an example, that of the cost certification for the Afra Terrace 40B project, and he opined that, when the North Main property was divided, there should have been an adjustment of the valuation; he opined that MHP should have that figure if they knew that it was divided, and if they don't know about it then they should be told. Mr. Olson continued, that the first concern in his opinion was the issue of the \$800,000 valuation, and whether or not MHP was aware of the two pieces of land; he asserted that the valuation of the land did not appear accurate, and the division of the land must be included in the final determination.

Ms. Cataldo continued, that the \$2 million worth of invoices for National Lumber may have included other properties. She replied to Mr. Femia that Mr. Ali had all the yellow slips for National Lumber, and she checked the addresses on them of locations and most of them came to that property. She also replied to him that Mr. Ali gave her the invoices and she assumed that they went to that project.

Mr. Femia then discussed the subject of \$225,000 received from the countertop company "for work being done in exchange for Crescent Builders"; she explained that Mr. Ali had agreed to build a house for the company's owner, and \$225,000 was the down payment. Ms. Cataldo replied to Mr. Femia that there were no invoices for that vendor, but \$346,000 was received by them for this project, and \$225,000 was credited against Mr. Ali's equity account because it had to do with another entity of his.

Mr. Olson then asked Ms. Cataldo if the board could request another extension even though they already obtained one to July 31? She replied that the board had an obligation to review the report, and thought it would be enough to fulfill their responsibility for them to tell MHP that they disagree with the valuation in order to ask for another extension.

The board then discussed whether or not the aforementioned ANR was ever recorded; Mr. Benson thought that was irrelevant because Mr. Ali claims valuation of \$800,000 for 9.82 acres, but only 6.82 belong to the development. (Ms. Cataldo and the board then discussed the board's re-statement of the Comprehensive Permit to reflect the modification that revised the address of the project to 92 North Main Street, and Ms. Cataldo noted that it bothered her that the re-statement for 80 units was done on 2/4/16 for a 9.82 acre parcel, but only built on 6.8. Mr. Femia mentioned that there was no ANR at that time. Mr. Benson suggested that either Mr. Ali misrepresented it to the board, or the board made an error perhaps, but Mr. Ali built on less than what he purchased and reiterated that \$800,000 valuation was not correct.

Ms. Cataldo also mentioned that it bothered her that the house itself has value, not just the $\frac{3}{4}$ acre that it is on. In response to Mr. Benson, Ms. Cataldo replied that she only found out now, not before. She said that the assessed value now is \$417,300. Mr. Benson summarized that the total property was 9.82 acres, and when the house was sold, Sajda Gardens sold a piece of property worth \$400,000; he opined that this should be deducted from the \$800,000 valuation. He added that the Cost Certification indicates that Mr. Ali made some money in the 40B project and he asserted that he needs to account for that. Mr. Femia continued that the percentage profit allowed to the developer cannot be greater than 20%, and he asserted that he was told that this amount applied to rental properties also. Ms. Cataldo thought that it was 10% on rentals, and 20% on homes. She explained that

the 40B permit has the percentage that he is allowed to make, which is 10% of the owner's equity. Also, she said that from the rents come his expenses and net profit. Mr. Femia reiterated that home ownership allows 20% profit and differs from rentals, and asked Ms. Cataldo how that works? She said that her understanding is that it is looked at yearly, but wondered how that was tracked, and if the Town did this every year over the 15 years that the development has existed, and what is the Town's obligation? Mr. Femia opined that the Management Company should re-certify them each year, and send a copy to the subsidizing agency and one to the Town. Mr. Benson suggested reaching out to the Management Company. Ms. Cataldo responded, wondering what the Management Company's responsibility is as the State wanted the 40B there? Mr. Benson responded that the company had to be one of an approved group, one that is approved by the State. Ms. Cataldo continued, that equity has to do with all the costs, and it is the obligation to get the financials every year to see. Mr. Femia informed her that Mr. Ali obtained his loan from Middlesex Savings Bank. Ms. Cataldo responded that it was paid off in full, but increased somewhere. Mr. Femia asked why he needed an extra \$1,000,000? She replied it was because of the cost of the project and how much Mr. Ali had to put into it. In response to a question from Mr. Benson, Ms. Cataldo did not think it was relevant to the board, so he suggested focusing on the Cost Certification this evening.

Mr. Olson then said to the board, if he can work with them on the language regarding valuation questions of the land, he will forward a letter to MHP's attorney to read it. Mr. Rajeshkumar suggested also providing supporting documents, such as the ANR, property card and quitclaim deed, but Mr. Benson opined that too much documentation would cause confusion and that, if MHP needs clarification, the board can provide more information. Mr. Femia opined that the ANR would be crucial regarding the \$800,000 valuation questions. Mr. Rajeshkumar suggested that they can provide the background and ANR; Mr. Olson suggested one paragraph, mentioning the ANR by the board, which approved two different lots. Mr. Benson mentioned the Assessor's records. Mr. Femia mentioned the two tax bills that are issued for both lots. Mr. Olson mentioned that the Town Administrator over the past two months had reached out to MHP so he thought that they should have her submit the letter to MHP. He then told Ms. Cataldo that he would be in touch with her.

Minutes of May 16, 2019 Executive Session:

The board decided to continue them to the August 15 meeting, as Mr. Olson was not at the Executive Session (he recused himself) and there was not a quorum of members presently to approve those minutes.

Minutes of May 16, 2019 Open Session:

These were continued also to August 15

Minutes of June 20, 2019 Meeting:

After review of the draft minutes by the board, Mr. Femia made a motion to accept the minutes as written. Mr. Rajeshkumar seconded. The vote was 3 "yes", 0 "no" (Mr. Benson abstained).

Reorganization of ZBA Board:

Mr. Femia nominated Mr. Olson as Chair for the coming year. Mr. Benson seconded. All in favor. Mr. Femia then nominated Mr. Rajeshkumar as Vice-Chair. Mr. Benson seconded. All in favor. Mr. Rajeshkumar then nominated Mr. Femia as Clerk. Mr. Benson seconded. All in favor. (The board instructed Ms. Goldstein to inform Nancy Lucier about this vote).

Question Regarding Executive Session Regarding Gabriel vs. ZBA:

Mr. Femia asked if the board was going to hold an Executive Session for the above? Mr. Olson replied that there were only two members present this evening who attended the last Executive Session for this subject on May 16, 2019. He opined that it seemed reasonable as the next meeting was scheduled for August 15, but wanted to confirm when the entire board is available.

Treasurer's/Financial Report:

Mr. Olson looked over the latest report, dated 6/30/19.

Next Scheduled ZBA Meeting – THURSDAY, AUGUST 15, 2019

Miscellaneous Mail and Paperwork Needing Signatures/Future Agenda Items/ZBA Reports:

Mr. Olson looked over mail given to him by Ms. Goldstein; none of it was discussed with the board.

Other Business:

Mr. Femia asked Mr. Olson if he had a chance to ask Mr. Ali about an “as-built” plan for Sajda Gardens? Mr. Olson replied that he wanted to take care of the Cost Certification first. Mr. Femia opined that having the “as-built” would be the only way that the board could release the rest of Mr. Ali’s money held in escrow.

With no further discussion taking place, Mr. Femia made a motion to adjourn the meeting at 8:29 p.m. Mr. Benson seconded. All in favor.

NEXT MEETING **Thursday, August 15, 2019, 7:00 p.m.**

MOTION TO ADJOURN

Motion Originator **Mr. Femia**

Motion Seconded **Mr. Benson**

Time of Adjournment **8:29 p.m.**

Signatures **David M. Femia**

Submitted by: **Toby S. Goldstein**

Date Submitted:

