



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

140 Worcester Street * West Boylston MA 01583 * zba@westboylston-ma.gov

MEETING MINUTES

January 19, 2017

Chair: David Femia

Members Present: David Femia (Chair), Barur Rajeshkumar (Clerk), Christopher Olson, Nathaniel Orciani and Charles Witkus.

Others Present: Secretary Toby Goldstein.

Members Absent: John Benson (Associate Member) and Daniel Cronin (Associate Member).

Mr. Femia called the meeting to order at 7:15 p.m. this evening. He stated that all members were present. (All full members were present) and welcomed everyone to the first ZBA meeting of 2017.

(The Continued Public Hearing for 264 Prospect Street was scheduled for 7:15, but the Attorney for the applicant (David Brossi), Bob Cox, said that Stephen O'Connell, Engineer, was on his way, so the board proceeded to vote on the minutes of 12/15/16).

Minutes of December 15, 2016 Meeting:

After review of the minutes by the ZBA members, Mr. Olson suggested three corrections. With no further comments by anyone, Mr. Rajeshkumar made a motion to approve the minutes as amended. Mr. Orciani seconded. All in favor.

Continued Public Hearing, David W. Brossi, Petition for Special Permit, 264 Prospect Street:

(Representing were Stephen O'Connell, David Brossi, and Bob Cox). Mr. Femia began by informing those present that the board met with Mr. O'Connell informally at the 12/15/16 meeting, but Mr. Brossi was not able to attend and there were some questions that Mr. O'Connell was not able to answer; so, Mr. Femia requested that Mr. Brossi be present this evening. He said that the board received the results of the 21E (Phase I and II) study done on the property, and this has been reviewed by the Board of Health and Conservation Commission also. Mr. Femia mentioned the possible presence of botulism on the property as a major concern, but there was nothing in the 21E about it and he did not believe that it was even

tested in that study (the board all agreed). Mr. Femia continued that, in 2005, it was stated in the Open Space Advisory Committee (OSAC) minutes that testing was done by Dr. Tashjian on the property and the samples were sent to Dr. Whitlock of the Univ. of Pennsylvania veterinary clinic (he was a well-known authority on botulism), and he sent reports to Dr. Tashjian of the results. The tests showed one of five areas being suspicious for botulism, one of five being positive, and three more testing negative for botulism. Mr. Femia had asked Mr. O'Connell for a plot plan, showing how the lots were to be divided and roughly where the homes to be built would be located, and how far the Town well is from the property.

Mr. O'Connell responded, that he is providing preliminary plans to the board, subject to final house design. In response to a question from Mr. Femia, Mr. Brossi replied that the Town of West Boylston owns the property behind his property. (Mr. O'Connell then introduced Mr. Cox, who is Mr. Brossi's attorney). Mr. O'Connell explained that Mr. Cox was present specifically to talk about the zoning issues, but realized that there are people concerned about the botulism but he wanted them to be able to put that issue behind them. He summarized the applicant's position, acknowledging that the public would be afraid of the possibility of botulism, but asserting that nothing said that the samples were even taken on Mr. Brossi's property, there was no proof that the samples were taken when he owned the property, and he had no knowledge about the botulism. Also, he asked why the Board of Health of the Town, and the State, did not have any information about this, so there was no proof that this was a real problem. (Mr. Cox mentioned that this property had agricultural use for six years, and there were no problems with the cows that ate the hay from that property). Mr. O'Connell asserted that the last thing that the applicant wants is for there to be a botulism problem, and he is prepared to discuss this tonight and would like to put this issue to rest.

In response to questions from Mr. Femia, Mr. Cox replied that Mr. Brossi had lived on the property since 2001, and Mr. Brossi explained that on the property when he bought it was a house, some vehicles, and a small barn, and the house was taken down. Mr. Femia asked what was done on the property previously, and Mr. Brossi replied that nothing was done for many years, but for the last six, a co-worker used the hay fields and fed his cows. In response to other questions by Mr. Femia, Mr. Brossi replied that he cleaned the property when he bought it, and continued that he had other projects so he did not want to build right away, and continued to hay there.

Next, Mr. Cox introduced himself, stating that he practices environmental law in Worcester, and that he deals with contaminated property and how to deal with it. He said that he never came across a botulism issue before, and asserted that, regarding the allegations of elevated botulism levels in the Wachusett area, nothing had been said about that from DCR or DEP. He wanted to address the report by Dr. Tashjian, dated 1/20/04. He reiterated that there was one

positive sample out of five samples taken, and stated that there was none of the usual information that the samples would have, such as chain of custody, when they were taken, from where they were taken, how they were stored and shipped, and certification by the laboratory. Mr. Cox asserted that there was much difference between this report and the 21E report by CEA and that the CEA report assured reliable information. He explained that botulism is not a regulated substance, and noted that since botulism spores are in the environment it was not surprising that they can be detected. Mr. Cox opined that Dr. Tashjian's report should be rejected and a decision made solely on facts, and asserted that they should look at evidence that usually people look at such as what was mentioned previously.

In response to a question from Mr. Femia, Mr. Brossi replied that the 21E report was done before he bought the property, as someone had wanted to put a church there; the church was denied, but Mr. Brossi bought the report from the property owner. Mr. Cox added that he recommended a 21E, Phase I and II, report for any non-residential property owner, including agricultural property. He continued that he did see the opinion letter from Planning Board (on file), recommending that an additional special permit be granted by Planning Board. Mr. Cox disagreed with that opinion; Mr. Femia said that would not be decided at this time.

Next, Mr. Cox mentioned that the bylaw created in 1986 (amended in 1994) was designed to protect water resources so larger lot sizes were needed; but, since then, water and sewer were brought in and there was no longer septic used, so the extra space was not needed for septic. He asserted that this upgrading provided protection. Mr. Olson responded that certain parts of the Town do have sewer but the aquifer protection bylaw is still in place and the regulations are still there and must be followed. Mr. Cox responded that they are not suggesting ignoring the bylaws but there is a special permit process allowed for.

Mr. Rajeshkumar then asked how close the Town well was to the property? He asked, if there is some contamination of the property, will it leach into the well, how many would be affected, and have they looked into that? Mr. O'Connell responded that this is why the aquifer protection zone is there (and he pointed it out on the map).

Mr. Femia then asked Michael Coveney of the West Boylston Water District to point out where the well was on the map, and Mr. Coveney and Mr. O'Connell discussed the location of the well, the property and the aquifer area. In response to a question from Mr. Femia, Mr. Cox replied that he had no comments on the Water Dept.'s opinion letter (on file). (Mr. Coveney displayed a clearer drawing of where the well was located). He also pointed out the zone of influence. Mr. Cox responded that this cuts across a portion of the property. He added that botulism is not one of the parameters required to be tested for a public water supply.

Mr. Rajeshkumar then commented that he read an article describing that many children with botulism live in areas with soil disturbances. Mr. Cox responded that there is no rational basis to assume that there is botulism on this property. Mr. Rajeshkumar reiterated that the literature said that areas with soil disturbance have more chance of botulism contamination. In response to a question from Mr. O'Connell, Mr. Rajeshkumar cited an article from the Journal of Child Neurology. He discussed some facts about the botulism bacteria, and that there is a lack of a known antitoxin against one type. Mr. Rajeshkumar mentioned also that there is a possibility of contamination as the field was used for animals, and reiterated that the applicant was responsible to prove otherwise and stated that he was not comfortable with the situation. Mr. Cox disagreed and asserted that the applicant was responsible only when reasonable, and suggested that Mr. Rajeshkumar was not performing his duties on the board.

Mr. Olson then suggested that they look at the standards for the special permit, and he read the bylaw, Section 6.2E4, and said, to grant any special permit, the board must make written findings certifying compliance with the bylaws, including the following: that the proposed use will not create any danger of pollution to public or private water supply; he thought that the protection of the public water supply was heightened because of the APD, and thought that there was some burden on the applicant's part to prove that the work will not cause problems for the public water supply. Mr. Cox responded that they have no information to substantiate the claim. Mr. Olson responded that they need evidence to prove that the site work will not cause a problem. Mr. Cox responded that, by right, four lots could be produced, and questioned that two more lots would increase impact on the water supply. Mr. Olson responded that they must meet the standard in the bylaw. Mr. O'Connell responded that the property has municipal water and sewer, and they would not introduce anything unique in terms of building materials or processes (he then talked about his own property, and that codes were followed by professionals that he trusted, so they're certain that there will be no increase of pollution to the water supply on this property).

Mr. Olson asked what type of measures would be used considering the aquifer protection district? Mr. Brossi then explained that runoff of water during construction would be addressed by erosion controls across the back area of the homes that they would be building, and these are typically used to protect wetlands; he asked Mr. Olson if that is what they would be looking for? Mr. Olson replied that this was one of eight standards for the special permit, and did not know to what extent erosion controls would affect this situation, or if they would need to go above and beyond that in this aquifer protection area.

Mr. O'Connell then said to Mr. Femia that use is in the criteria, and asserted that, as a former zoning board member, he was comfortable with the knowledge of use, and that this property is

residential and the use is allowed in this zone and in the APD and that residential use usually does not cause contamination.

Mr. Olson then asked them how they would feel about being issued the special permit, but with limited residential use? Mr. O'Connell and Mr. Cox replied that it would be fine with them, and Mr. O'Connell asserted that the special permit would provide to the board authority to impose conditions that they would not have been able to impose such as control of fuel storage or placement of fertilizer.

Mr. Femia then noted that, in the bylaws, the board has the authority to reduce frontage and residential area and frontage minimums are given, but APD is not mentioned regarding reduction of frontage so it seemed to him as if the board might not have authority to change the size and frontage in an APD. He said that the board is responsible to protect the Town, its residents and the water supply. He noted that almost 192 feet of frontage would be lost with six lots, that botulism is specific to farmland, and that Dr. Tashjian's testing was the only data that they had seen.

Mr. O'Connell responded that he spoke with Attorney Hanrahan on Tuesday of this week; he is a land use specialist and he did not agree with this assessment, which was raised at the last meeting. He described the data as a footnote to a zoning table, and claimed that there was nothing specific in the aquifer protection bylaw to preclude the board's ability to reduce the frontage. Mr. O'Connell offered to give the board a more detailed written response if they wanted one. Mr. Olson commented that they all agree that there is nothing in expressed language that did not apply to an APD, but there is some ambiguity in the interpretation as to whether or not the board has the authority. Mr. O'Connell disagreed. Mr. Olson responded that, for section 4.2C to apply to an APD, the board would need not only the authority to reduce frontage, but also the lot size, and he was not comfortable reading into that. Mr. O'Connell responded that it would be best to put this into writing. Mr. Femia responded that the board will continue the public hearing so that Town Counsel can review and respond to Atty. Hanrahan's opinion.

Mr. Femia then asked Mr. Coveney how much impact there would be on the APD if there are six lots, five having 120 feet of frontage and one lot having 108? Mr. Coveney replied that he did not know, and commented that the Town and Water Dept. have looked into acquisition of this property for years. He said that they contacted the Greater Worcester Land Trust and they were not interested in selling the land to the Town or Water Dept. He added that he would like to see the board uphold the bylaw, and in response to a question from Mr. Femia, agreed that the main issue was the frontage.

Next, Mr. Femia opened the hearing to public comment, and instructed the audience, if someone wanted to speak, to raise his/her hand, rise, state his/her name and address. He added that there would be a ten minute time limit to speak.

First to speak was Jim Jardine of 8 Applewood Road; with his daughter, Jennifer, they brought maps up to the front of the board (Mr. Femia told Mr. O'Connell that Mr. Jardine gave the board some materials before the meeting, and he was giving them to Mr. O'Connell now). Mr. Jardine referred to a report by the Water Dept. from 2011, a source water protection plan. It was referenced in a letter from Mr. Coveney to the ZBA (on file), and Mr. Jardine gave a few quotes from the letter. He mentioned that the report was available also on-line and gave the address of the website. Mr. Jardine also stated some historical quotes relating to water source protection. He asserted that West Boylston had very good quality water and that it was a selling point to people wanting to live there. He mentioned that, at the last meeting, the zone of influence for a well was discussed (he showed the board the zone of influence for the Lee Street well as defined by DEP on a map). Mr. Jardine explained that half of the property is in Zone 2, and there is a reasonable Zone of Influence, over and above, to be protected. He commented to Mr. Coveney that there were four wells at one time, and now there is only one; Mr. Coveney replied that it was because of iron contamination. Mr. Jardine referred to another map, pointing out the Lee St. well and he opined that the property in question was a very important piece of resource to be acquired by the Town for protection of the well. He suggested that, for a fair price, the Town should acquire the property to preserve the resource for the future, commenting that it provides 40% of the Town's water supply. Mr. Jardine noted that he printed all of the documents at his expense to express his concerns, and opined that this parcel was probably the most important one in West Boylston at this time. Mr. Olson asked Mr. Jardine if he thought the petitioners carried a larger burden of proof of condition of the property? Mr. Jardine replied that the applicant cannot be forced to sell the land to the Town, but he thought the petitioners should do the right thing and protect the resource whatever the decision. Mr. Rajeshkumar asked Mr. Jardine if he thought that the property was contaminated? He replied that he was not qualified to answer that, and though he lives directly across from the property, he has only lived in the Town for two years, and noted that he has done a lot of research on this and talked with Mr. Coveney about it and provided the report to educate people.

Next, Mr. Femia called up Dr. Robert Tashjian of 363 Prospect Street to address those present. He gave a background of the botulism issue on that property. He discussed his involvement with open space issues and as Chair of the Open Space Committee at one time. He discussed his work on botulism, along with Dr. Whitlock of Univ. of Pennsylvania. Dr. Tashjian spoke about botulism itself as a toxin, a weapon of mass destruction, and its presence in soil. He described the presence of it locally (Sterling), possibly through blasting in construction of I-190,

and how cows were dying because of it and that it was detected in other animals in Holden. He discussed how DCR bought land on Prospect Street because of this problem and put stipulations on the land. Dr. Tashjian discussed how he took 500 samples of soil and sent them to U. Penn. In response to a question from Mr. Femia, Dr. Tashjian replied that there are botulism spores on that land. He opined that the botulism got into West Boylston and Sterling due to farms and blasting on I-190; also, farm owners in Sterling and the Antinarellas on this property fed their pigs raw garbage, and he thought this could have predisposed the botulism. Dr. Tashjian said that DCR drew their property line next to the barn on the property as they did not want to buy property with buildings on it. He also opined that birds and rodents could have transmitted botulism away from the property.

Mr. Femia asked Dr. Tashjian, if there is botulism there, why was there no record of anyone getting sick or dying from it? Dr. Tashjian responded that there are only two reputable blood testing labs for this in the country, so there may have been people that had it but were not diagnosed. He suggested that DCR pay for testing, and he offered to supervise it, and asserted that at least 50 samples would need to be taken. He also suggested that a representative from ZBA and Board of Health attend. He discussed how dangerous botulism is and how powerful. Dr. Tashjian said that he had all of the details on where the tests were taken before, but that he cannot get to those results as they are in containers on Prospect Street. In response to questions from the board, Dr. Tashjian replied that he could not tell them at this time that the samples tested in 2004 were from 264 Prospect St. or from the DCR land adjacent to it, because of the results being in the containers.

In response to a question from Mr. Olson, Dr. Tashjian discussed environmental conditions that also would affect botulism in the environment, such as locations of water and sewer and wetlands. (With no more comments, Dr. Tashjian's testimony concluded; Mr. Femia thanked him and added that there might be a discussion regarding the Town possibly purchasing the property).

Next to speak was Bernie Dow of 307 Prospect Street. He presented to Mr. Femia a letter from Mr. Duvarney, an abutter to the property. He agreed with much of Dr. Tashjian's comments, discussing the garbage used from restaurants to feed the animals at the Antinarella farm. He discussed concern with the infrastructure of the land, including the sewers; he mentioned that they are upgradient of downgradient wells, so even a small contamination could be extremely dangerous, infiltrating the soil and going into ground water. Mr. Dow said that he was in favor of building houses if the infrastructure is not destroyed, and asked the board to follow, not interpret, the law. He also described the history of the parcel, including the purchase of the land 300 to 400 yards away by MDC (now DCR), and how MDC wanted to protect the water feeding Boston (Malden Brook flows into Wachusett Reservoir). Mr. Dow asserted that this was

a very sensitive parcel of land due to its location in the aquifer area and near the well which provides 40% of the Town's water.

Mr. Femia then read the Duvarney letter aloud. (Mr. Dow informed the board, for the record, that he had conversations with Mr. Brossi). The letter recommended four conforming lots and one non-conforming lot, asserting that it was the most logical option, explaining that the non-conforming lot abuts DCR property, which will not be developed, and opined that this would be less likely to affect the water supply.

In response to a question from Mr. Femia, Mr. Coveney replied that he stood by his letter (previously mentioned).

Mr. Cox then said that they anticipated a continuance, so they wanted to set a date at this time. Mr. Femia responded that it would be continued to 7:15 on February 16, 2017. Ms. Goldstein provided the applicant with a Request for Continuance form to fill out at this time. Mr. Brossi asked Mr. Femia if he wanted change of use to be addressed also? He replied "yes."

Mr. Femia asked for a motion for the continuance of the public hearing for 264 Prospect Street to February 16, 2017, at 7:15; Mr. Olson made the motion; Mr. Rajeshkumar seconded. All in favor.

OTHER BUSINESS:

Vote for Local Preference:

Mr. Witkus, referring to discussion from the 1/17/17 joint meeting of ZBA with Affordable Housing Trust (AHT), commented that he was unhappy that local preference for local residents, employees, and business owners could only be granted once, not for long term. Mr. Femia responded that there is a waiting list, and the State has control over that rule and it is not up to the Town. Mr. Olson and Mr. Femia discussed that the general consensus at the meeting was to request 70% local preference, and they asked the board for input. Mr. Rajeshkumar and Mr. Orciani agreed with that.

Mr. Femia informed the board that, on February 2, the Town Administrator, AHT Chair, himself, Paula Stuart (Community Housing Specialist) and Dean Harrison will meet and discuss this, inform Mr. Harrison that they are seeking 70%, and he will tell MHP. With no further comments or questions, Mr. Olson made a motion to set the level of 70% for Local Preference from MHP for 92 North Main Street. Mr. Rajeshkumar seconded. All in favor.

VHB Correspondence Regarding 92 North Main Street:

Mr. Femia discussed correspondence from VHB regarding water runoff at the development. He and engineer Larry Galkowski visited the site the Friday before, and Mr. Galkowski showed several things to Mr. Femia. There were catch basins not functioning and not where they were supposed to be. He went back, some work was done but not completed, and he will re-inspect. (Mr. Femia commented that he had thought the catch basin work was already done, but it was not). Mr. Galkowski also said that water going down North Main Street was not going into the catch basin, and the DPW director was going to look into it.

Mr. Ali commented that he saw it, and there are silt bags to slow down the flow. Mr. Rajeshkumar responded by asking, if there is a lot of rain, can the bags be removed? Mr. Ali responded that there are two catch basins, there was some blockage by dirt in one which was addressed and it is functioning now. Mr. Femia responded to Mr. Ali, that based on a follow up visit on 1/17/17, the letter said that steps were taken to remedy this, and it was anticipated that the rest will be done shortly. He asked Mr. Ali at what point he was currently? Mr. Ali replied that they were putting concrete around the catch basins, and it was 50% done because of the snow. Mr. Femia asked him if he could tell him when it will be done by Monday? Mr. Ali said that he could.

Possible Change in Starting Time of Meetings:

Mr. Femia asked the board for their input, as to whether or not the meetings should begin at 7:00 p.m. as they did before? He explained that the board could cover Other Business at 7, until 7:15, and have public hearings begin at 7:15. There was no dissent among the board members, therefore going forward, the ZBA meetings will begin at 7:00 p.m. Ms. Goldstein will notify the necessary parties, including those involved in the continued public hearing on Feb. 16.

Upcoming Training Sessions:

1. **CPTC Training on March 18:** The Town Administrator had sent an e-mail about this. Mr. Femia mentioned in particular that one topic of discussion will be "Chapter 40B Handbook for ZBA's."
2. **Conflict of Interest Training:** This will take place on April 25, 2017 at 6:00 p.m. Mr. Femia will ask Nancy Lucier if the ZBA needs to post this, in the event a quorum of members attends the meeting. He also mentioned MIIA training, which would be of credit to the Town for insurance purposes.
3. **E-mail from Building Inspector Regarding 90 Sterling Street Project:** In this e-mail, the Building Inspector stated why he was in agreement with the ZBA decision to grant a Special Permit on August 18, 2016, and interpreted the meaning of Zoning Bylaw

Section 1.4B, Change of Non-Conforming Uses, and the standard for granting a Special Permit related to this issue (Section 6.2.E.2).

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn the meeting at 9:55 p.m. Mr. Orciani seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____

