



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

## **[Zoning Board of Appeals] Meeting Minutes**

<b>Date / Time / Location of Meeting</b>	Thursday, December 17, 2020/7:00 p.m./ <u><b>NOTE: THIS MEETING WAS HELD REMOTELY (ZOOM), ACCORDING TO GOV. BAKER'S INSTRUCTIONS, DUE TO THE CORONAVIRUS AS TOWN HALL HAD REMAINED CLOSED. PUBLIC ACCESS TO THE MEETING WAS ALLOWED THROUGH ZOOM INSTRUCTIONS GIVEN ON THE POSTED MEETING AGENDA.</b></u>
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<b>Members Present</b>	Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia (Clerk), John Benson, Nathaniel Orciani and Secretary Toby Goldstein
<b>Members NOT Present</b>	<b>Andrew Feland, Mark Wyatt and Charles Witkus (all Associate Members)</b>
<b>Invited Guests</b>	N/A

**Welcome – Call to Order**                      **Time: 7:00 p.m. (by Mr. Olson)**

**Approval of Previous Minutes**            **Minutes of November 19, 2020 – CONTINUED TO JANUARY 21, 2021 MEETING**

**Motion Originator:**                      **N/A**

**Motion Seconded:**                      **N/A**

**Treasurer – Financial Report**            **N/A**

**Motion to Accept**            **N/A**

**Seconded**            **N/A**

At 7:00 pm, Mr. Olson called the meeting to order. Mr. Olson then read aloud Governor Baker’s statements regarding the Open Meeting Law and remote meetings, which was posted on the agenda, and reminded everyone that instructions for joining the Zoom meeting were posted on the agenda on the Town website 48 hours in advance of the meeting.

**Minutes of November 19, 2020 Meeting:**

At Ms. Goldstein’s request, Mr. Olson informed the board that this was continued to the January 21, 2021 meeting.

**ZBA Meeting Schedule for 2021:**

Mr. Olson instructed Ms. Goldstein to be sure all board members receive a tentative meeting schedule by January, as she was having technical problems emailing the schedule to all members. He mentioned that, except for September, 2021, all meetings were on the third Thursday of each month, but the board will review that in January. Ms. Goldstein added that she would put hard copies of the schedule in the ZBA mailbox. It was suggested that Ms. Goldstein contact the Town Administrator regarding having the computer experts look into this problem.

**Continued Public Hearing, Glenn Sciarro, 24 Sterling Place, for a Special Permit to convert an apartment into a fourth unit with the property constituting a nonconforming use within the meaning of Section 1.4.B of the West Boylston Zoning Bylaws. – PETITIONER REQUESTED CONTINUANCE TO JANUARY:**

Mr. Olson informed those present that the petitioner requested a continuance to January 21, 2021 in an e-mail. He said that he did not see a problem with that, but asked the board if they had any issues? Mr. Femia replied that the petitioners needed to be sure to give any new information to the board by January 11. Mr. Olson responded that this was in their request for the extension (that they would submit any new information ten days before the meeting). Mr. Femia also noted that they need to give the board the authority to go beyond the 65 days, and if the special permit is approved, the board needs 14 days to submit a decision and 20 days for the appeal period. Mr. Olson noted that the petitioner already sent the board a letter (he read it aloud), which stated the extension date, materials due date (on or before January 11, 2021), and deadline date for submission of the decision to the Town Clerk (February 4, 2021). Mr. Femia added that, if they are not able to vote on the 21<sup>st</sup>, that the board needs permission for further extension. Mr. Olson responded that he spoke with the petitioner about voluntarily accepting further continuation. With no other comments, Mr. Benson made a motion to continue the continued public hearing for 24 Sterling Place to January 21, 2021, at 7:05 p.m. Mr. Rajeshkumar seconded. Mr. Olson took a roll call vote:

- Mr. Femia – “yes”
- Mr. Benson – “yes”
- Mr. Rajeshkumar – “yes”
- M. Olson – “yes”
- Mr. Orciani (who had just come in) – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain”, therefore the continued public hearing was continued to January 21, 2021 at 7:05 p.m.

**Continued Public Hearing, Branded Realty Group II, LLC, for a Special Permit under Section 3.2.F.4 of the Zoning Bylaws for the construction of a new 2,400 square-foot food service building with drive-through window with a 180-foot drive-through lane at 262 and 264 West Boylston St., to replace the existing Dunkin’ on the adjacent lot at 244 West Boylston Street:**

Mr. Olson informed those present that the petitioner requested earlier in the week to continue the public hearing, and he suggested that they continue this to the February 18, 2021 meeting. Mr. Femia noted that the board would have until March 4 to issue a decision, but Mr. Olson responded that the petitioner agreed to continue the public hearing to February 18 and agreed to a time extension to February 28 for the final decision to be submitted to the Town Clerk. The board also discussed that they received the traffic study discussed at the last

meeting and no one recalled any other materials that the board needed to receive. With no further comments, Mr. Rajeshkumar made a motion to continue the continued public hearing for Branded Realty Group II, LLC, to February 18, 2021 at 7:05 p.m. Mr. Femia seconded. Mr. Olson took a roll call vote:

Mr. Femia – Yes”

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Olson – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain”, therefore the continued public hearing was continued to February 18, 2021 at 7:05 p.m. (Mr. Olson added that the January 21 meeting will be held remotely, possibly the February meeting as well).

**Public Hearing, Michael Coveney, on behalf of the West Boylston Water District, for Special Permit, for the construction of a MassDEP required water treatment facility for removing manganese from the West Boylston Water District’s existing Oakdale Well, at 699 Thomas Street (located along Central MA Rail Trail west of Thomas St.). This request is made per Sec. 3.2.E.2 of the zoning bylaws:**

(Mr. Olson asked Mr. Femia to read the public hearing notice aloud). (Mr. Olson then told the petitioner and the public present the rules for the public hearing; the petitioner will present their information and from what they are seeking relief, the board will ask their questions then the hearing will be open to public comment). Representing the petitioner were Scott Simpson and Michael Coveney and Mr. Olson noted that the Building Inspector, George Tignor, was also present. Mr. Simpson began by explaining that the petitioner is seeking a special permit for a proposed water treatment facility to treat manganese from the Oakdale well, which MA DEP required. He noted that the location is along the Central MA Rail Trail, as close as possible to the existing Oakdale Well pump house to have enough land for the facility. Using a map, he pointed out the site layout and areas of importance; he pointed out the Rail Trail, the existing pump station, and the location of the proposed treatment plant on what he referred to as Parcel A. Mr. Simpson said that the Town gifted Parcel A to them. He noted that they went before Planning Board last month and Planning Board approved an ANR plan for transfer of the parcel, and this transfer is going through its final phases. Mr. Simpson pointed out more detail of the placement of the proposed plant on a map of the site. He pointed out the existing pump station and where Oakdale Well is located. He indicated that the treatment plant will be located to the west, in Parcel A. Mr. Simpson described how the facility will be pushed up against the slope to the north of the Rail Trail as tightly as possible without it being in the riverfront area. He explained where the infiltration basin for decanted backwash water and stormwater management practices would be located. Mr. Simpson indicated the location of an existing access road which the Fire Dept. uses, which they propose will be used to reach the facility. In response to Mr. Rajeshkumar, he said that the facility size would be 46’ x 71’. In response to Mr. Femia, he explained that a blue dotted line on the map indicated an access easement, which includes the aforementioned gravel road that the Fire Dept. uses. He explained to Mr. Femia that water lines will connect the pump station to the treatment plant so water from the well will go to the plant, be treated, then pumped out. In response to Mr. Femia, Mr. Simpson asserted that this treatment facility would completely resolve the complaints from numerous citizens regarding manganese in the water in Oakdale, although Mr. Rajeshkumar opined that nothing is guaranteed. Mr. Simpson said that hopefully the project will be out for construction early 2021, and replied to Mr. Femia that it should take less than two years to complete, which would mean the end of 2022. In response to Mr. Femia, Mr. Simpson replied that the pumping station still works well. He also replied that he did reach out to abutters and has had no comments from them, noting that most of the land belongs to DCR, the cemetery, and the Town, including the Housing Authority. Mr. Femia said that he was surprised by lack of comments as there were many complaints previously regarding brown water from the residents.

Mr. Olson then asked Mr. Simpson to elaborate on ingress to, and egress from, the parcel, using a similar right-of-way to what the Fire Dept. used for a number of years. Mr. Simpson pointed out the entrance to the Rail Trail from Thomas St. and explained that currently the Oakdale pump station is accessed through that road, and maintenance is done regularly. He described that the path (which the Fire Dept. uses for training) continues to the railroad cars, and he said that 40 to 50 feet of driveway will be added from the Fire Dept. access road to access the treatment plant. He added that the Fire Chief issued a letter confirming the ability for access to and from this road. Mr. Olson then verified, that in the petition packet, the petitioner testified that the Fire Dept. had been going there basically every year for more than a couple of decades but never really had any problem accessing or moving large trucks through there. Mr. Simpson noted that the deliveries will be on a small scale, and there will be no large equipment except during construction. Mr. Olson asked, once the facility is built and functioning, will it emit noise or anything else from the building or the site? Mr. Simpson replied that the operation should be pretty silent and invisible beyond the treatment plant, and he described that the pump in the existing well house will push water through the facility so there will be no major pump in the facility, just small ones for backwash water. He described that a backwash lagoon will periodically receive water and infiltrates but not be visible from the Rail Trail, and beyond appearance of the building there should be no impacts. In response to Mr. Olson, Mr. Simpson replied that he would not expect the facility to emit considerable noise.

In response to Mr. Femia, Mr. Simpson replied that, once the facility is working and the water goes online, color change to the water should happen almost immediately, and he also asserted that water pressure will remain the same. In response to Mr. Femia regarding filing with the Conservation Commission, Mr. Simpson replied that they had not yet filed for a Request for Determination of Applicability because they believed that this was pending ZBA approval; they plan to submit the Request and will get it on the next Concomm meeting agenda. He explained that probably most of the work on the facility will be within the 200-foot riverfront protection zone, but the building will be just outside of the riverfront protection zone, along with the infiltration basin and stormwater controls. He noted that they tried to put as much as possible outside of that zone, and the gravel drive and some grading are the only things that will be within that zone. In response to Mr. Femia's question regarding the residents, Mr. Simpson replied that they have been to a few Town meetings and said that, at the spring Town Meeting, they started the process of the Town donating the land to them for the water treatment facility. Mr. Femia reiterated that residents complained about the manganese in the water, and he opined that the petitioners should be telling people about this project and that the problem will be solved within about two years with the completion of this project. Mr. Simpson responded that he can follow up with Mr. Coveney about this.

Mr. Femia then discussed a comment from Mr. Tignor that the special permit should have, at a minimum, a covenant that states the new facility should never be released or sold from the Water District without Planning Board approval per zoning bylaw 5.3.2.E2 (public utility facility). Mr. Olson responded that they can ask Mr. Tignor for feedback on what he was thinking of, but first went through the factors for consideration for any special permit. First was ingress/egress, and he noted the driveway to be constructed for access to the building through the easement access shown before, and asserted that there was no issue. Second was noise. Third was any type of refuse disposal when the facility is up and running, such as trash and manganese. Mr. Simpson responded, explaining that filters will collect the manganese that comes out of the water; that will be backwashed off the filters. He explained that solids will go to the bottom of a tank and will be periodically pumped into the Town sewer for disposal. Clean water from the surface will be pumped into an infiltration basin and just be clean water. He said that it will be mostly automated because the building will not be designed for permanent occupancy, and asserted that refuse will be fairly low, with periodic garbage disposal. In response to Mr. Femia, Mr. Simpson replied that they also have to make a report to the EPA on their results and MA DEP will review the work to be sure it meets their requirements. Mr. Olson also asked about impact on the surrounding lots in the area, noting that many have wetlands or wooded areas. Mr. Simpson described that, north of the parcel (shown on the aforementioned map), it is very steep, uphill, on an incline, and then is located the cemetery and housing units to

the northeast. Surrounding the property to the south and east is Town-owned land used for the Rail Trail itself, and DCR land is further east and they own the parking lot on the Rail Trail. Mr. Simpson asserted that none of the properties will be affected by this project.

In response to Mr. Orciani, Mr. Simpson replied that the road itself will be restored to existing conditions to protect the river as well, and added that erosion controls will be in place. He also replied that the contractor will be responsible for maintaining it during the two years of work. In response to Mr. Femia, Mr. Simpson replied that a pipe will follow the existing gravel road, right under the road, and a line will connect the pump station to the treatment plant, and the treatment plant will have another line for clean water to go out and back to Thomas St. to connect to the distribution system and a line to the sewer as well because of the bathroom in the facility. In response to another question from Mr. Femia regarding DPW comments, Mr. Simpson replied that they will sequence the construction so that, for the most part, the road will be clear, and that construction of the treatment plant and pipe connections can be done independently of each other so that road impact will be minimized.

Mr. Olson then asked the board if they had any more questions? He noted that the petitioner previously appeared before Planning Board and this lot was created, and noted that the proposal does include a plan for the building on this parcel, so he did not know if Planning Board mentioned that site plan review was necessary due to new construction of a nonresidential building? He also asked if the stormwater plans will be reviewed by the Building Inspector or Planning Board, if they were aware of any plans with more detailed review of these things? Mr. Simpson replied that Planning Board did not indicate the next steps for site plan review or anything like that, but the entire site plan needs to go to DEP of the whole design package and DCR is also currently reviewing the site layout because of activities within the riverfront area. He added that they will file a Request for Determination of Applicability from the Conservation Commission, and noted that these bodies will be independently reviewing stormwater aspects and infiltration near the riverfront zone.

Mr. Rajeshkumar then reiterated that this project was before Planning Board, and they approved the ANR, and his understanding was that they did not go further than that. Mr. Olson responded that it was his understanding that the Building Inspector has to determine if site plan review is needed, or if it is under his purview to review, and that ZBA must be sure that they are comfortable that all zoning bylaws are conformed to. Mr. Femia mentioned from Planning Board's opinion letter that so long as MA DEP opined that the proposal would improve the quality of the water they were in favor of it so long as zoning bylaw 3.3.C1 was met (special permit for public utility facility with exception of wireless communication tower). Mr. Olson also asked if details for screening and landscaping for an attractive appearance were in the plans? Mr. Simpson replied that they were not at this point, and mentioned that there will be a fence around the premises but probably not landscaping of the property. In response to Mr. Olson, Mr. Simpson replied that the building will probably be visible from the Rail Trail, but will be pretty far back, and opined that box cars will probably obscure it. He also opined that the brick construction of the facility will fit in with the surroundings. In response to Mr. Femia, Mr. Simpson replied that he thinks there will be a sign and he does not see it in the plans now but the existing pump house has one.

Mr. Olson then asked Mr. Tignor to speak regarding what his review results of this site were. Mr. Tignor responded that, as far as his statement regarding the covenant, he wanted to protect the property from ever being sold to someone for the purpose of having an individual own it and run a filtration plant; he wanted it to stay in the control of the Water District. He said that the ZBA can request whatever they want; once he gets the plans, he will do a thorough review and decide if the petitioner has to go to Planning Board for site plan review or if it is not necessary. In response to Mr. Femia, Mr. Coveney replied that the Water District does not own the property outright yet. Mr. Coveney commented that he thought that, regarding site plan review, it was only required on a subdivision. He said that the Board of Selectmen signed the deed. He noted that they do have engineers designing this building and it has to go through many approvals and, if the Building Inspector determines that it requires site plan review, they will do it. Mr. Rajeshkumar clarified that a quitclaim deed was signed by the Selectboard at their meeting, but he was not sure in which stage it was. In response to Mr. Femia, he explained that the Water District

appeared before the Selectboard asking for this property, at Town Meeting the giving of the property to the Water District was approved, then the lot was divided by the Planning Board by ANR, and now the quitclaim deed was signed, so he thought that everything was taken care of properly. Mr. Femia asked Mr. Olson if the covenant is needed so that Water District does not sell the property because the Water District is separate from the Town? Mr. Olson replied that he was not sure that the ZBA had the authority to prevent the owner from selling the property in the future and said that he saw Mr. Tignor's point and saw the issues. As an example, he suggested that this special permit would only apply so long as the land is maintained and used for water filtration purposes. Mr. Femia suggested that the board could include a clause stating that, if the owner ever sells the property, the Town would be given first right of refusal. Mr. Tignor responded that he thought there was case law out there that would allow the ZBA to make that kind of a covenant; he did not have that but read that other communities have done this to protect their investments. Mr. Femia commented that he thought Planning Board would have requested this with the ANR, and that the only thing he would ask is for the Town to have the first right of refusal. Mr. Tignor responded that ZBA can make whatever covenant that they want on this property, and noted that the property is landlocked, so an ANR was required, and talked about the covenant so that the parcel would be kept safe but that the board did not have to use that if they did not want to. In response to Mr. Femia, Mr. Benson noted that the board had put restrictions in permits granted in the past, but he never saw a covenant. He opined that it could be a problem, but thought perhaps right of first refusal for the Town could be promised. He also opined that this might be a moot point, as the property is landlocked and probably not commercially viable.

Mr. Olson then said he was interested in the opinion of the board members regarding when they vote, if they would want restrictions on either who can own the property or the property use in the future, or if they would want to vote without restrictions? The board members then discussed who they thought would enforce a covenant and make sure it is recorded at the Registry of Deeds, and thought that the worst thing that could happen is that a court could assert that the board did not have the authority to make that restriction and strike the covenant. In response to Mr. Femia, Mr. Coveney replied that he had no issues with any restrictive covenants, and made a suggestion that the restriction be that the parcel would be used for a public water supply facility only. He opined that they have no intent to ever sell the property, as they are investing a lot in it and plan to remain there for a long time. In response to another question from Mr. Femia, Mr. Coveney replied that the project's estimated cost will be 6 million dollars, funding of which will be through a State revolving fund, called an SRF loan; they are taking out a 20-year loan through the State funding project.

Mr. Femia suggested to Mr. Olson that he had no objections to the condition of the land never being used except for a public utility facility, and that the Town would have the first right to refusal if it was sold; he opined that this would protect the owner and the Town. Mr. Benson responded that he had no objections to that but that he would still vote to approve the special permit regardless, opining that there was a small risk of there being any other use there. Mr. Olson opined that the board had the authority to include the condition of the property being only used for a public water facility, but he was less confident regarding the restriction of the Town having first right of refusal. Mr. Benson thought that the transfer of property should have been the time for restrictions and a covenant to be discussed. Mr. Rajeshkumar replied to Mr. Femia that it was never discussed at a Selectboard meeting. Mr. Olson opined that the Town had the opportunity to discuss this, so he was comfortable not having restrictions for this vote. Mr. Olson and Mr. Femia agreed on the condition that the property be used for a public water facility.

With no further comments by the board, Mr. Olson opened the hearing to public comment, instructing those present to state their names and addresses; there were no comments from the public. Mr. Femia then made a motion to close the public hearing. Mr. Orciani seconded. Mr. Olson took a roll call vote:

Mr. Femia – "yes"

Mr. Rajeshkumar – "yes"

Mr. Orciani – "yes"

Mr. Benson – “yes”

Mr. Olson – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain”, therefore the public hearing was closed.

Mr. Olson then asked for the board to deliberate; there were no comments, therefore he entertained a motion from the board. Mr. Femia made a motion to approve the special permit for the water treatment plant at 699 Thomas Street, with the condition that this property cannot be used for anything other than a water treatment facility. Mr. Rajeshkumar seconded. Mr. Olson took a roll call vote:

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Olson – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain”, therefore the special permit was approved.

**Next Scheduled ZBA Meeting – THURSDAY, JANUARY 21, 2021 AT 7:00 P.M.**

With no further comments by anyone, Mr. Femia made a motion to adjourn at 8:20 p.m. Mr. Orciani seconded.

The roll call vote was as follows:

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

Mr. Olson – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain”, therefore the meeting was adjourned at 8:20 p.m.

Submitted by: \_\_\_\_\_

Date submitted: \_\_\_\_\_

Approved by: \_\_\_\_\_





