



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

September 22, 2016 – Special Meeting

Chairman: David Femia

Members Present: David Femia (Chair), Kristina Pedone (Vice-Chair), Barur Rajeshkumar (Clerk) and Charles Witkus.

Others Present: Daniel Cronin (Associate Member), Nate Orciani (Associate Member) and Secretary Toby Goldstein.

Members Absent: None.

(At 7:40 p.m., following the ZBA training session, Mr. Femia announced that the agenda item of business would be the continued discussion of 94 North Main Street's request for extension of their Comprehensive Permit, which would expire on October 3, 2016. He also asked the audience to silence their phones).

Mr. Femia called the representatives for 94 North Main Street, Dean Harrison and Iqbal Ali, to come forward, and he referred to an e-mail from Town Counsel, dated 9/20/16. Mr. Femia explained that he contacted Town Counsel, Carolyn Murray, for her opinion on how to handle the request for extension of the permit; she e-mailed back a response to the board and the applicant. He discussed the fact that a building permit cannot be issued yet and that final approval from MHP had not been obtained yet.

Mr. Harrison brought up the question of the meaning of "construction" and whether or not it had been started yet. He said that he and Mr. Ali believe that, as site work had been done and sewer and water permits obtained, construction had in fact begun. He mentioned that he had additional information (regarding a case from HAC dealing with extension of permits). He said that they did not yet receive final approval from MHP but that it was in process, and that MHP indicated that it would most likely come in 4 to 6 weeks. He added that front end analysis was complete and there were no issues with that.

Mr. Harrison next discussed the aforementioned case; he said that DHCD revised regulations in 2008, and the time period tolled when an applicant was waiting for approval. He believed that MHP approval applies here. They want to extend the permit to receive final approval from MHP.

Mr. Femia then responded that he talked to David Rockwell of MHP that afternoon about the question of how long it might take for the developer to obtain MHP approval; Mr. Rockwell estimated 4 to 6 weeks. Mr. Femia suggested that, since a building permit cannot be issued yet and since there is not yet final approval from MHP, because the Comprehensive Permit was due to expire on 10/3/16, the board should approve the extension until 12/3/16, on the condition that the applicant receives final approval from MHP. (Mr. Femia then asked for any comments from the board; there were none, so he asked for questions/comments from the audience).

First to speak was Linda Isgro, 58 Scarlett Street. She discussed items which she thought to be important that were still needed from the developer. She mentioned needing sewer and water betterment fees before obtaining a building permit. She noted that there had been quite a few changes in the project over time, such as the percentage of affordable units. She suggested that if the board grants the extension, that they had been very generous to the developer over the years, given all of the extensions and changes over the 12 years of the project (although there were other owners in the past). Ms. Isgro asserted that there are too many uncertainties still and that the public wants definition and closure.

In response, Mr. Femia noted that Mr. Ali did get a permit from the Water Dept. to install water lines, and obtained authorization for sewer. He mentioned that the engineers, VHB, have not issued any negative reports from their inspections, and the Clerk of the Works has been issuing regular reports. He explained that Mr. Ali originally was to have financing from one bank, but they were not going to approve financing for the entire project at once but in phases; so he obtained other financing from a bank who would give the full amount at once, contingent upon MHP final approval. Mr. Femia added that David Rockwell from MHP asserted that Mr. Ali took care of any issues that he needed to, and that final approval should come in 4 to 6 weeks. It was Mr. Femia's understanding that, if MHP does not give final approval, the bank will rescind the loan. He acknowledged the concerns of the Town and the long history of this project for the Town and the ZBA.

Ms. Isgro responded, reiterating that Mr. Ali had not paid sewer and water betterments, which she mentioned as being part of the ZBA's settlement out of court several years ago. Mr. Harrison responded that his client will comply with the amended Comprehensive Permit, which has an extensive explanation of fees and permits. (Mrs. Pedone added that all documents are detailed in the Amended Restated Comprehensive Permit decision, which is on file).

Mr. Harrison requested to Mr. Femia that they have a 90-day extension, or until the end of this year, as they have no control over the other entities; they would rather have a longer extension.

John Owanisian of 8 Stillwater Heights spoke next. He described that he attended the last meeting, and said that it was mentioned that the Comprehensive Permit granted in 2008 was good for five years (2013), and the developer was entitled to one extension. He asserted that, if there is a vote tonight, the agenda for this meeting states that this is a discussion item, and the public did not anticipate a vote.

Next to speak was John Boyce (work address-Oriol Health Care, 52 Boyden Road, Holden, MA). He noted that it was said that water and sewer were approved, but he asserted that the water issue was far from solved due to the manganese problem discussed at the last ZBA meeting. Mr. Boyce said that the facility at which he works uses only bottled water now, and he thought that the high manganese level will only increase. Mr. Femia responded that the Water Dept. inspected the site and determined that there would be enough water pressure for the project. Mr. Boyce repeated his assertion that the water in Oakdale was contaminated. Mr. Femia asked why the Water Dept. did not say anything about that to the ZBA (Mr. Boyce's information about the manganese from the previous ZBA meeting was passed along to Town officials). Mr. Boyce asserted that the Water Dept. knew about this and questioned if this project has affected water and sewer in Oakdale, mentioning that they have tried to drill new wells but it has not helped the problem. (Ms. Isgro verified with Mr. Femia that a letter from the Water Dept. manager regarding this problem was part of the record).

Mrs. Pedone then asked Town Counsel Carolyn Murray if she could give her opinion on whether or not to continue the extension, how many extensions the developer is entitled to, how the topic is stated on the agenda, and if the ZBA has any oversight over the water situation? Atty. Murray replied that DHCD regulations do not have any limit on the number of continuations or extensions. She said that the board does not have to grant the extension, but if they deny it, the applicant has the right to appeal it with HAC. Regarding the agenda, she asserted that, since the topic was listed as a discussion of the applicant's request for extension of the permit, it can be inferred that a vote may take place, therefore the board did not post it incorrectly but perhaps could have included the words "anticipated vote". Atty. Murray also said that, regarding time frame, language in the regulations takes into account time needed to go through appeals. Regarding the water problem, she thought that the board should reach out to the Water Commissioner and perhaps should extend due to the October 3 deadline.

Mr. Boyce responded that he obtained his water quality figures from the West Boylston Water District, and noted that he is an architect; he agreed to provide a copy of his information to the board. (Mr. Femia then closed the discussion to public comment).

In response to a question from Mr. Femia, Mr. Ali said that he was not aware of the water contamination situation; he said that the Water Dept. tested the water in the pipes and the results were normal. Mr. Rajeshkumar asked him to clarify, and Mr. Ali explained that pressure

and quality of the water were normal. (From Mr. Ali's statements, it appeared to Mr. Rajeshkumar that no samples were sent to a laboratory, but only pressure and water flow were tested. Mr. Ali assumed that, if there was a problem with the water itself, residents would have been told not to drink it. (At Mr. Femia's request, Mr. Harrison agreed to give a report from the Water Dept. to Town Counsel on Friday).

Mr. Boyce then gave the board a water quality report from an independent testing lab; he said that he had a conversation with the Water Dept. and gave a copy of the report to them and the Town Administrator. Mr. Femia, looking at the report, said that he saw nothing about 94 North Main Street's manganese level in the report, only other addresses. Mr. Boyce continued that it explained in the report how the water had to be treated, with filters changed every two days due to the manganese. (Mr. Femia and Mr. Orciani looked at the report).

Mr. Harrison continued, that his client is asking for an extension of the comprehensive permit. He assumed that, if there is a water issue, a building permit will not be issued. Also, he felt that Mr. Ali obtained the proper permits, and needs the extension to obtain final approval; if any issues come up in 90 days, the building permit will not be issued. In addition, the extension of the permit is not considered a substantial change.

Mr. Femia responded that he asked Town Counsel if there needed to be a public hearing when the extension was requested; she replied that they did not have to have one. He said that it was his decision to open up the discussion to the public as a courtesy because of the length of time of the project so that the public could ask questions. He expressed concern about the high manganese level, and it bothered him that the Water Dept. did not say anything about it if they had seen that.

Mr. Harrison responded that, when they apply for the building permit, the Building Inspector will have the opportunity to talk with the Water and Sewer Depts., and he thought that they should focus on the extension at this time.

Next, Bob Perron of 79 North Main Street, asserted that the manganese situation was so bad that his new water system was blocked in three weeks from it.

Bruce Dickinson of 16 North Main Street asserted that that everything, including screens and filters, is packed with manganese; he claimed it was a problem for all the residents and was surprised that it was not known to be an issue.

(Some of the board members were having a discussion, and Mrs. Pedone asked them to speak up so that they could be heard by everyone). Mr. Femia then spoke to the board, asking why the residents did not address the water problem sooner with the Town and Water Dept.? He asked what they thought of granting the extension for 60 days, on the conditions that MHP

gives final approval and that the Water Dept. is contacted and the contamination question is clarified? Mr. Rajeshkumar asked why the board cannot delay a decision? Mr. Harrison responded to Mr. Femia that he understands the concerns, but noted that, under State law, the Building Inspector will not issue a permit if there is a danger to public health; he suggested making it a condition to the Building Permit that the water issue will be resolved. But he thought that the extension should be granted, preferably for 90 days. Mr. Ali asserted that he did all that he was supposed to do, and that he had the water tested and the situation had nothing to do with him but is the Town's responsibility. Mr. Rajeshkumar responded, asking if the water contamination could be due to the project? Mr. Harrison responded to this question, stating that Mr. Ali just recently hooked up the project to water, and he said that, in 90 days, they can obtain all relevant information; meanwhile, he believed that this issue was clouding what was in front of the board, because people were blaming the project for contaminated water. (Next, the board had questions and comments).

Mr. Rajeshkumar said that the board only had until October 3 to decide about the extension. Mr. Orciani thought that the board needed more information. Mr. Witkus asked Mr. Ali why the financing was not being approved? Mr. Ali explained that the original analysis was done for 96 units, then the amount was changed to 80 units, and they needed another appraisal and comments on the plans, but asserted that everything has been done. Mr. Femia asked the board if they wanted to make a motion, or continue? Mrs. Pedone asked if the board would need to advertise if it is continued? Atty. Murray replied that, as a public hearing is not needed for an extension, no advertisement or abutters' letters are necessary. (The board then discussed whether or not information from the Water Dept. would affect the extension; Atty. Murray opined that it was possible that, if the water was unsafe, that new construction might be stopped in that area; but, regarding the ZBA's role, they are not issuing any permits, only the extension-the Building Inspector would look at all issues affecting a building permit and would probably confer with the Water Dept.).

Town Counsel continued, that the board is allowed to deny the request for extension but based on a reasonable change of conditions. She did not know if the board had contamination information, but people have not been evicted from their homes. She did not know if the level of manganese could be considered a change, but did not know if the board had enough information this evening. Atty. Murray suggested that the board could bring this up with HAC, She suggested that the board could grant a small extension or have a meeting the next week.

Mrs. Pedone did not think that meeting the next week made sense, as there was data from two years, and the manganese had been a persistent issue; also, Board of Health or the Water Dept. should have issued a statement if they thought the project caused the contamination (the board reviewed the data; in June, when the hookup took place, the manganese level went up; it

was suggested that this spike was not based on the project, but may have been from a long term effect as water went through the pipes).

Mr. Witkus discussed that this project has been ongoing for 14 years, and asserted that Mr. Ali had fulfilled all that was asked of him; he added that the State said that the development will be built (referring to the aforementioned appeal that took place). Mr. Witkus surmised that nothing will stop the project, therefore he suggested giving Mr. Ali the extension. Mr. Rajeshkumar responded that the board had until October 3 and wanted to be sure of their decision. Mr. Harrison then said to Mr. Femia, that there had been the opportunity for the Town to address this issue previously and this was not part of the extension. He asserted that they have tried to work with the Town, and the extension of the permit is not a question of the manganese level; furthermore, the information being referred to about the water was not presented in a public hearing or shown to the developer before.

After discussion between the board members, Mr. Rajeshkumar made a motion to continue the discussion to a special meeting on the following Thursday, September 29, 2016. Mr. Orciani seconded. (Mr. Femia stated that the board will vote at that meeting either way). The board voted as follows:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Femia – “no”

Mrs. Pedone – “no”

Mr. Witkus – “yes”

Mr. Femia announced that the board will meet again at 7:30 pm on the 29th, and will vote on the extension. (He then announced a five-minute recess).

Minutes of August 18, 2016 Meeting:

The board reviewed the draft minutes previously; Mr. Rajeshkumar had submitted suggested changes on page two. Mrs. Pedone made a motion to approve the minutes with the changes submitted by Mr. Rajeshkumar. Mr. Orciani seconded. All in favor.

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn the meeting at 9:11 p.m. Mr. Orciani seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____

By: _____