



Zoning Board of Appeal Meeting Minutes

January 18, 2023, at 5:30 PM

Wescustogo Hall & Community Center

Call to Order: (29:30 – 30:43) Board Member Thaddeus Day stated that the meeting started at 5:30pm and that they did the pledge of allegiance. Board Member Day stated that bylaws were addressed and approved as amended. Board Members present, Jim Briggs, Norman Smith, Thaddeus Day, Mike Mallory; James Katsiaficas, Board Attorney. Kevin Robinson, absent.

Minutes: (30:43 – 31:15) Unknown Board Member, seconded by Board Member Briggs, moved to approve minutes from the November 28 and the December 14 meetings. Vote 4 yes/0.

Continuation of Appeal Public Hearing: (31:20 – 2:25) Board Attorney Katsiaficas announced the continuation of the public hearing. He stated that at the 11/28/22 meeting the public hearing came to a close but the parties asked for a continuance which was granted on 12/14/22 and at this meeting the board reconsidered the closing of the public hearing.

Motion by Board Member Briggs, seconded by Board Member Smith, to waive the Board's Bylaws pursuant to Section 7 and to authorize Board Member Day to serve as Acting Chair for meeting. Vote yes 3/0. Acting Chair then recognized Mr. Mallory's continued participation in appeal as a Board Member.

Board Attorney Katsiaficas stated that points 1 – 4 had been gone over.

Board Attorney Katsiaficas stated that 15 arguments had been raised. The second one had been retracted. One issue to go through was grouping some of these arguments together to be more efficient.

Board Attorney Katsiaficas mentioned that one concern was the scope of any remand to the Planning Board.

Board Attorney Katsiaficas stated that if something was seen and relied upon by the Planning Board then it should be part of the record. The plan should be shown to the applicant and the

appellant's attorney's and if there is no objection then the plan should be made part of the record and given to the board.

Attorney Keith Richard, Appellant Attorney, stated no objection to plan.

Attorney Kristin Collins, Applicant Attorney, stated no objection to plan.

Board Member Day opened the floor to the Appellant Attorney and the Applicant Attorney.

Attorney Richard addressed the board and requested to submit a letter dated 11/29/2022 (39:10 – 47:18). He proposed that the applicant provide various information to the Planning Board to get ahead of the remand. He also respectfully requested, on behalf of the appellant, that the remand include instructions on how to re-open the record and how to re-open the public hearing.

Attorney Collins objected to the letter from the appellants (47:18 – 49:15).

Board Member Smith mentioned that the 7-day requirement was put into place because paperwork was being submitted the day before a meeting and as a result did not give the board ample time to review.

Board Member Smith, seconded by Board Member Briggs, moved to not review the letter. Vote 4 yes/0 to not accept late filing.

Attorney Collins addressed the board (51:11 – 53:50). She informed the board that the State approved of the wastewater system and that there was a letter from the Yarmouth Water District that had been submitted to the Planning Board. She asked that the board consider authorizing the Planning Board to accept the two previously mentioned documents in to the record, take them into account, and to provide feedback to the ZBA.

Board Members questioned Attorney Collins on why she wanted the information submitted to the Planning Board.

Members discussed.

Attorney Richard objected to the new information brought up by Attorney Collins (1:13 – 1:15).

Attorney Collins stated that the applicant had no concerns with issues remanded to the Planning Board if a limited public hearing would be allowed for those issues.

Board Member Day began the discussion of the 8 Groupings presented by Attorney Richard (1:15 – 2:25).

Members discussed the previous decision to remand this back to the Planning Board due to inability to determine how the Planning Board came up with the \$100,000 figure.

Board Members discussed the violation of the 7-day submission deadline by the applicant where they submitted an amended plan to flip the septic system.

Attorney Collins consented to a remand on the issue of the 7-day submission deadline violation for the purpose of holding a limited re-hearing on the amended sheet to allow appellants to comment on it (1:47 – 1:48).

Board Members discussed the failure of the Planning Board to follow the Land Use Ordinance regarding the creation of the waiver and why it was given.

Board Members discussed the protection of the groundwater overlay district.

Attorney Richard did not dispute that 527 LLC owns the parcel. He stated that the issue of setbacks requirements is a question for the Planning Board. Board Members discussed the boundaries of the property on the plan (1:12 – 2:17).

Attorney Collins stated that the applicant demonstrated a deed that described the property of the application. She stated that there is no property dispute regarding the boundaries as shown on the site plan. She also stated that the problem with the deed was already brought to the Planning Board and as a result should not be remanded back to them (2:17 – 2:20). Board members discussed whether to remand this issue back to the Planning Board or not.

Attorney Richard asked for clarification that there was no conclusion that his clients waived the argument that the applicant has not shown right title and interest sufficient to meet certain setback requirements (2:24 – 2:25). Board Members discussed that there were no findings of fact related to this.

Board Member Day announced break at 7:40pm.

Break: (2:26 – 2:37)

Continuation of Appeal Public Hearing Resumed: (2:37 – 2:40) Board Member Day announced that Board Attorney James Katsiaficas would be drafting a decision for Board Members to discuss in another meeting, on 02/01/23, and to sign.

Board Attorney Katsiaficas resumed discussion on the categories presented by Attorney Richardson (2:40 – 3:58).

Board Member Day questioned if we knew what the superintendent of the schools indicated. Board Member Smith stated that it does not matter what the superintendent indicated because the building cap would automatically phase the building process.

Attorney Richard stated that he attached a letter from the superintendent to the record (2:45 – 2:45). Board Member Day asked Attorney Richard if the Planning Board indicated that they considered the information.

Attorney Collins referenced condition 5 as it imposed phasing. She pointed out that the recording of the previous Planning Board meeting showed that this was discussed at great length, and she objected to the fact that the ZBA had not reviewed the videos as it could prevent a remand of some information (2:46 – 2:48).

Board Member Mallory stated that the Land Use Ordinance says that no more than 6 permits be issued to any entity in a given year and that projects should be phased to prevent school overcrowding.

Board Attorney Katsiaficas stated that the question for the ZBA is if there is evidence in the record to support the decision. He stated that it does not matter who supplied the information, just that the information is in the record.

Board Member Smith, Board Member Briggs, Board Member Mallory, and Board Member Day all agreed that there was no error in regard to phasing.

Board Members discussed the parking lot requirements.

Attorney Richard stated that the ordinance provisions, 10.34 C A and 10.14 B 2 b, speak to the issue (3:00 – 03:01).

Board Member Smith, Board Member Briggs, Board Member Day, and Board Member Mallory, all agreed that there was no error with item number 9.

Board Member Smith stated that item number 10 is not applicable as people would not have to back into the road as they could turn around in the parking lot.

Attorney Collins stated that the movement of the septic system would not affect the landscaping (3:08 – 3:09).

Attorney Richard referenced a letter dated 8/30/22 from SJR Engineering that was in conjunction with the revised septic design. He read item number 3 from the letter which stated that there would be relocation of landscaping away from the disposal system (3:10 – 3:13).

Attorney Collins stated that the updated plan shows no change to the landscaping (3:13 – 3:14).

Board Member Smith, Board Member Briggs, Board Member Day, and Board Member Mallory agreed that there was no error in argument 10.

Attorney Richard argued that the “islands” shown in the plan are actually “peninsulas” as they are attached to the outer perimeter of the parking lot (3:18 – 3:19).

Board Member Smith stated that the “islands” are islands according to the standard of architecture. Board Member Day asked what evidence Board Member Smith of these islands being up to the standard of architecture. Board Member Smith stated that he has an associate’s degree in architecture and was a Code Enforcement Officer.

Board Member Briggs stated that he does not think they should be considered islands.

Board Member Mallory questioned if the islands would be big enough and felt that they would be gone after the first plow.

Board Members further discussed the islands.

Board Member Smith, Board Member Mallory, Board Member Briggs, and Board Member Day found no error with item number 11.

Board Member Mallory, seconded by Board Member Briggs, motioned to extend the meeting beyond the 3 hour limit (3:25). Vote 3 yes/0. Board Member Smith abstained.

Attorney Richard questioned if there would be tree clearing beyond the clearing of trees on Parsonage Road. He also questioned if the finding that minimal tree clearing led the Planning Board to believe that buffering would be adequate (3:26 – 3:28).

Board Members discussed item number 13. Board Member Briggs stated that this should be remanded back to the Planning Board. Board Members discussed further.

Attorney Collins stated that the Planning Board has not allowed the applicant to go meet with them and announce their decision on whether it would be one owner or multiple owners. She also stated that she believes the statement means that it should not be an open spaced “subdivision” (3:35 – 3:37).

Board Member Mallory questioned if the borders around the building would make the rest of the property a common lot of some kind.

Members discussed.

Board Member Mallory, Board Member Briggs, Board Member Day, and Board Member Smith agreed that the Planning Board needs to give clarification on who will own the units. Board Members remand this item.

Attorney Collins asked for clarification that the Board of Appeals would allow for the information on who owns the units to the Planning Board (3:41 – 3:42).

Board Members Mallory, Board Member Briggs, Board Member Day, and Board Member Smith agreed to remand item number 15.

Board Member Day questioned if this was an application for affordable housing and if it was approved.

Attorney Collins informed Board Members that some of the units will be limited to affordable housing (3:44).

Board Member Day argued that there needs to be a finding of fact that the Planning Board makes to be compliant with the affordable housing section of the Land Use Ordinance.

Attorney Richard referenced LUO 11.2b stated that provisions around affordable housing must be approved by the Planning Board through site plan review or subdivision review (3:54 – 3:55).

Board Member Day, Board Member Smith, Board Member Briggs, and Board Member Mallory agreed to remand the issue of affordable housing back to the Planning Board.

Board Members and Board Attorney Katsiaficas discussed trees not shown on the site plan would not be considered.

Board Member Day announced that the next meeting would be on February 1st at 5:30pm.

Adjournment: Board Member Briggs, seconded by Board Member Mallory, moved to adjourn the Board Meeting at 9:13pm.

Board Member Smith stated that the next meeting would not include a public hearing.

Unknown Board Member, seconded by Board Member Mallory, motioned to the amended motion. Vote 4 yes/o.

Meeting to Adjourn and Hearing to close announced at 9:15pm. Vote 4 yes/0.

Acting Chair/Secretary, Kevin Robinson



Thaddeus Day

Norman Smith



Jim Briggs



Mike Mallory