

ZBA Minutes Meeting of June 20, 2007 – McElroy(Grolex)

Members Present: Alison Manugian, Bob Cadle, Jay Prager, Megan Mahony, Chase Duffy

Chairman Cadle read the public notice and opened the hearing.

Mr. McElroy presented information – he has been an abutter since 1991:

- GroLex founded in 1948 by White as metal fabrication of industry specific parts,
- 1994 Business turned over to Williams, with property held by White,
- 2004 Business closed – no activity,
- 2005 Equipment sold & removed – 21E (haz mat inspection) performed, no report to date.

Concerns presented regarding Ch 218-6 A, B, and D:

- Continued use of existing business,
- 2 years of non use – loses grandfathered status,
- Conversion from old to new business.

The Chairman requested articles of organization. Mr. McElroy reported they're not available online.

Mr. Prager asked if the building is in use now. Mr. Lagasse said he moved in April'07.

Mr. Prager clarified that the alleged two years of non-use were 4/05 – 4/07.

Mr. Gosselin, President of Gosselin Group Realtors and realtor for sale to Lagasse, said that the business was active through the summer of '05. He noted that equipment was sold at auction on 10/18/05 and that workers and a secretary were on site until this date. He said that Mr. White's affidavit provides evidence of activities on site.

Mr. McElroy pointed out that Mr. White dissolved his on site involvement in 1998 and no annual report has been filed for years beyond 2004 and Mr. Williams is unavailable to provide information about site use after 1998.

Mr. Ferrell, abutter reiterated Mr. Gosselin's involvement in the RE transaction.

Discussion ensued regarding file dates for the Annual Reports and lack of availability of invoices, POs etc to show activity during 2005.

GELD letter presented allegedly indicating 'significant' quantity of use for the period in question. (Bob has this??)

Discussion ensued between Mr. Gosselin & abutters regarding the presence of cars on site and use in 2005.

Discussion ensued regarding removal of auctioned equipment in Fall 2005.

Mr. Gosselin clarified that 21E was done and the site is non-hazardous. He said that the report is not available because it belongs to Mr. White, who isn't authorizing its release. Mr. Lagasse has requested addition review and will make this report public. Tyghe and Bond studied site in 2005 and filed report at Town Hall. All agreed that the 21E is not relevant to this hearing.

The Board discussed information regarding date that use of site stopped, noting that without records etc. from Williams things seem circumstantial. The Board felt that even with more in-depth electrical records, we can't determine use.

Mr. McElroy presented additional reasons for appeal:

Mr. Lagasse's use is not similar to site usage for the last decade , which prompted a discussion of primary uses,
Truck use and traffic are different, with impacts to children in the area being of concern.

Mr. Gosselin stated that GroLex had company trucks and took delivery of materials etc. once or twice a week, midday.

No traffic counts have been done to assess the significance of change etc. and a newspaper ad dated 6/15/07 was submitted as evidence of Lagasse's activities (no mention of welding).

Mr. Collins, atty. for Brian Lagasse, presented information and highlighted a letter submitted to the Board this evening:

Building and site have been grandfathered and non-conforming since zoning was implemented in the 1960s,
Non conforming uses and businesses are allowed to evolve over time and that the type of business activities, when zoning was enacted, is the key. In the 1960s, Gro Lex was very noisy and had 24 employees.
Lagasse owns 3 trucks and has an additional site in Shirley.

Chicopee row site is for storage of vehicles for landscaping business and for doing contract welding for others.

Mr. Ferrell, abutter for 15 years:

Very little disturbance to neighborhood prior to 2004,

Currently trucks idle, load and unload flatbed, generating diesel fumes,

Trucks must make awkward maneuvers on site, Chicopee Row and Town land to enter building,

In the 60's impacted neighbors were all cows, now there are over 30 houses.

Chairman Cadle requested clarification of welding fabrication vs. arc welding.

Atty. Collins stated large machines with sheet metal use vs. quicker repairs. He stressed the pertinent comparison is now to GroLex when zoning was enacted.

Discussion ensued of current conditions and remembered conditions from the 60s.

Board reiterated that we're bound by regulations and factual information.

Everyone agrees that current use would not be permitted without grandfathering in a RA district.

Mr. Tusino, Building Commissioner presented:

Two years of inactivity is not pertinent.

GELD billed Nov. '05 (his usual determination of property use), and on-site activity was noted by him in fall of 2005:

Affadavit presents evidence of prior use. Lagasse Trucking is not a typical trucking firm, they do construction etc. Lagasse confirmed intent to use site largely for welding. Tusino's site visit on 5/3/07 revealed a few pickup type trucks parked on site and no large equipment or welding. Tusino isn't familiar personally with use of site in 60s but contends recent use is similar to Lagasse's current use.

Mr. Mulligan, abutter, put forth that affidavit is self serving and the GELD records are not an accurate measure of use. Requested written documentation of ongoing use.

Discussion of current and past uses ensued and the interpretation of use is questioned.

If the building was idle while another tenant was actively sought would this be use?

Concerns of neighbors and requests for additional written information are discussed. A site visit is recommended

A question was raised: if non-conforming use was terminated after being grandfathered, may that use be resumed by a subsequent owner?

A letter from the Leach Family, abutters not present at the meeting, is read into the record and presented to the Board.

Discussion of operations concerns and enforcement ensue. Mr. Tusino says that noise problems would be construed as Disturbing the Peace and be dealt with by the Police Department.

Concerns were raised as to McElroy's right to protest and the definition of an abutter per Statute 40A. The Board will need to examine this. McElroy indicated he would add other(s) to appeal if necessary to meet the abutter definition.

Mr. Gosselin indicated he will obtain the 21E report, and has no objections to additional records from GELD or others regarding use being sought.

Jeff Lyons, abutter, highlighted the need for tax and bank records etc. for 2005.

Discussion of who holds the burden of proof of dates and duration of non-use ensued.

Mr. Tusino stated that determination is required within 100 days of submission dated 5/16/2007.

A recommendation to confer with Town Counsel as to case law and procedural standards and for coverage of Building Inspector was made.

Mr. Collins stated that Mr. Lagasse is willing to pay for Town Counsel if that is an issue in this case. Abutters raised concerns about conflicts and Mr. Collins offered to withdraw the offer.

Additional photos and notes were submitted by abutters.

A site walk was scheduled 7/7/07 at 8am.

The hearing continued until 7/11 at 7:45 (motion Megan, Second Jay, unanimous vote).

The meeting adjourned at 10:00 pm.