

ZBA Minutes Meeting of June 22, 2009 – BOS Work Session

Members Present: Robert Cadle, Mark Mulligan, Chase Duffy, Cynthia Maxwell, Alison Manugian, Harris McWade, Megan Mahony

Chairman Cadle convened the ZBA meeting.

The BOS meeting convened with Mr. Cunningham noting that he wants to come to a consensus as to how to proceed moving forward.

Mr. Cunningham noted that there open meeting law issues and some changes are due to the charter.

Chairman Cadle said that he wants to deal with Mr. Degen's missive point by point.

Mr. Degen stated for record that he verbally noted issues and the BOS asked him to write down these issues. He said they were completed one week late, but were produced. He said that two weeks after his verbal presentation, the ZBA appeared before the BOS. He said he wanted to read his document into the record, noting that he has additional supporting documents and that Chapter 338 has been violated.

Mr. Cunningham said that Chapter 338 is not a bylaw and doesn't need to be adopted by town meeting.

Mr. Schulman said that he wants to read all the letters in support for the ZBA if Mr. Degen reads his missive.

Mr. Degen said he wants to document actions taken before.

Mr. Dillon said that he thinks that all documents should be read tonight.

Mr. Cunningham said that he thinks this can still be accomplished by listing the history rather than reading all documents. He suggested doing a point vs. counter point but noted that the BOS will not have the information necessary to make appointments on 6/29/09.

Discussion ensued regarding how to proceed.

Mr. Cunningham agreed to let Mr. Degen read his missive into the record.

The ZBA requested that letters of support be read into record, which they were. These letters were from Virginia Wood, Robert Collins and Jay Prager.

Chairman Cadle said that he had additional comments on Mr. Degen's page one, noting that the Board completely redid their 40B rules and were even complimented by the abutter that Mr. Degen represents.

Mr. Degen said that for record, he does not represent anyone but the town and taxpayers.

Chairman Cadle referenced the Interim Town Manager's memo and talked about a meeting in the summer of 2007. He said he asked for what was missing in the minutes and never heard back, noting that he responded to Mr. Ritter on behalf of the Board. He said he takes Mr. Degen's concerns very seriously, noting that it is a matter of judgment what is clear and concise regarding decisions. He said the Board does the best they can and offers any decision for review. He also said that nothing in the statute requires that all decisions be signed by all board members, noting that Town Counsel said the Board did not have to sign. He said that as a result of the last meeting, he got seven points, all of which have been looked at, with one wrong and one adopted. He said there is not negligence as accused.

Mr. Cunningham said legal opinion and interpretation of the law can differ and in terms of adopting best practices, all members should sign decisions.

Chairman Cadle discussed this in detail.

Discussion ensued regarding how to handle signatures.

Mr. Degen said he wants to review the procedure regarding reorganization.

Chairman Cadle said Mr. Degen was correct that the Board has been lax about reorganization, noting that the vice chair was meant to be elected as clerk. He said the Board will proceed with elections in the future.

Mr. Degen said he thinks there was an open meeting law violation when the Board opened the Mattbob 40B without a full abutters list.

Mr. Schulman said this has been addressed, noting that the Board opened the hearing so the Town didn't fall into the trap of not convening within 30 days. He said that if the Board didn't hold the meeting, the Town would be looking at 44 units already built, noting that the Town was much better served by what the Board did.

Mr. Degen said there was an opening meeting law violation on May 13, 2009. Mrs. Manugian spoke to this, noting that a special meeting was posted and held just to authorize the Chairman to ask Town Counsel questions.

Mr. Haddad said he has never heard of needing to vote to authorize to draft questions for Town Counsel.

Anna Eliot said the PB would approve as a mutual decision to question Town Counsel about something.

Mr. Cunningham asked whether the ZBA discussed utilizing town counsel and the answer was yes.

Mr. Degen brought up the Oakridge 40B and a lack of quorum. He then read a lengthy portion of the decision into the record, noting that the plaintiff did not have standing because she couldn't get three citizens to file with the AG. He went into further detail.

Mr. Mulligan said it was the applicant's decision to go forward, noting that Mr. Bobrowski indicated that if it is the applicant's decision, all that is required is a majority. He said the petitioner knew how things stood and if he did not agree, the Board would have to start over again. He said that one Board Member went to Iraq and another Board Member had sporadic attendance. He noted that 40Bs are not fun and the Board spent almost two years of hearings trying to get the best decision for the Town. He said Mr. Degen is arguing across purposes.

Discussion ensued regarding how to proceed with fewer board members. Ms. Eliot said the PB has proceeded with fewer members and Mr. Degen said this was not true. Ms. Eliot said that it is, noting that the applicant has a great deal of leverage. She also noted that the PB works under Chapter 40A and not 40B.

Mr. Degen said the hiring of consultants was flawed and had much to say.

Chairman Cadle said he wants to know where Mr. Degen's authority comes from.

Discussion ensued regarding the charges of ethics issues.

Chairman Cadle noted that this is for a 40B modification request and not a regular 40B application. He said DHCD instructs the Town to work cooperatively with the applicant, noting that the Board has used Mr. Jacobs in the past and it was agreed upon by the applicant. He said there has never been a question of competence.

Mr. Cunningham said the Board is accused of using Mr. Jacobs without a vote.

Discussion ensued regarding the scope of what Mr. Jacobs would or would not do.

Ms. Eliot said she fails to see how the ZBA could be held responsible for the applicant's failure to pay.

Discussion ensued regarding how to hire consultants. Mr. Degen said the ZBA didn't follow procedure.

Mr. Degen said there is an issue regarding minutes and the approval system. Chairman Cadle said the DA has determined that minutes don't have to be approved.

Discussion ensued regarding how minutes are approved. Of note: minutes can't be approved on-line.

Mr. Degen then complained about the ZBA 40B workshops.

Mr. Schulman addressed this, noting that it was not a hearing but a work session with no majority of any board. He said it was a meeting of a variety of town officials and not a ZBA hearing.

Mrs. Duffy noted that these were discontinued shortly after they began.

Mr. Schulman said the meetings were very useful, when something is going to be built.

Mr. Degen said the Board does not attend training sessions.

Mr. Mulligan addressed this and said that he is an attorney has attended many different trainings, as had other board members. He said that Mr. Cadle, Ms. Mahony and he have studied much case law and they and the Board have made much effort to date.

Mr. Schulman noted that the Board attended one workshop that was a waste of time.

Discussion ensued regarding how to sponsor workshops, etc.

Mr. Degen asked whether the Board would grant any waiver, as written by Mr. Bobrowski in the 40B decisions.

Mrs. Manugian addressed this point, noting that Mr. Degen took the condition out of context and paraphrased it and then went on to describe what the condition meant. Mr. Schulman took the discussion further.

Chairman Cadle asked Mr. Degen to withdraw the complaint about the waiver condition as outlined in the 40B documents.

Mr. Dillon said he needs qualification of the open meeting law, quorums and who is entitled to vote.

Ms. Eliot asked about length of terms, how long, etc.

Mr. Haddad said town counsel determined that the current practice is acceptable, having terms staggered and grouped two, two and one, for regular members.

Chairman Cadle said he agrees that procedures are important, noting that the ZBA focuses on substance. He said a lot of these issues are going back to 2002, 2003, 2004 and 2005, and are things that have been resolved long ago. He said there is nothing said or implied, even if all the allegations are accepted, that harm was caused to the town, stressing that the Board did not open town up to any liability.

Mr. Cunningham said it doesn't hurt to follow best practice, noting that nothing is easily addressed.

Ms. McWade said that in one other point, Mr. Degen mentions attending countless meetings. She said she can only remember Mr. Degen attending one or two ZBA hearings and suggested taking attendance, not just of abutters, but of other town board members.

Mr. Degen said that if he were to withdraw his challenge, what assurances would he have that the Board would comply with best practices. He said he has attended 80 to 100 hearings.

Mr. Mulligan said his is very upset about Mr. Degen's claim of incompetence.

The meeting adjourned at 9:00 pm.

Minutes approved 12/9/09.