

ZBA meeting minutes - August 31, 2015 - 5pm

ZBA Members Present: Alison Manugian, Bruce Easom, Jay Prager, Cindy Maxwell, Bob Cadle, Berta Erickson

Also Present: Jack Petropolous, Peter Cunningham, Mark Haddad, Michelle Colette

Chair C. Maxwell called the meeting to order at 5:05pm

Member A. Manugian presented a summary to date of the timeline and events relating to the Roche Application and Litigation per the document shared with members and the Board of Selectmen (in advance of their meeting tonight). A conference call summary was offered of conversation between A. Manugian, M. Haddad and David Donesky of Koppelman & Paige.

J. Prager questioned - How does Roche (as applicant) have authority to annul the ZBA decision rather than withdrawing?

M. Haddad responded - That the applicant (and their atty.) typically take the lead and that this verbiage is typical for a situation like this.

Members remain uncomfortable with the verbiage of the decision and the statement that the parties listed are in support of the decision. There is need for public discussion/presentation of the reality that this seemingly judgmental language is indeed typical of a withdrawal by one party. No decision was handed down on the appeal or the ZBA decision. Nothing about the case initially or upon appeal is precedent setting in any way.

Moving beyond the discomfort the lack of communication and overall handling of the appeal are concerning. Town Counsel has a responsibility to keep the board they represent up to date on progress and meetings, regardless of outcome. Additionally, it is never advantageous to have counsel representing a board without meeting with the board to discuss the situation, details, and anticipated outcomes.

The potential exists for the public to interpret BOS authorization for PB counsel as support of the PB in this case. There is need to set formal process for boards to comment on open hearings. There is need for the BOS to set guidelines for a board planning an appeal. PB approach on the 20th day (of 21 permitted) put the BOS in a difficult predicament.

Lastly there is tremendous need for boards in town to work collaboratively. In this case the ZBA and PB should work together to revise the Zoning Bylaws. The non-use portion has been problematic in the past, which is known to all.

J. Petropolous' intent is to address (at the BOS meeting tonight) the Communication issues, public perception of the process and boards and to set the foundation for collaborative work.

J. Prager departed (at 5:50pm) and the ZBA meeting was recessed until the 7pm BOS meeting.

The above was summarized at the BOS meeting as anticipated. Minor discussion ensued (see the BOS meeting minutes taken by D. Dunbar).

At approximately 6:45 A. Manugian motioned to adjourn. B. Easom seconded and all members voted in favor.
Approved 10/22/15

To: Groton Board of Selectmen and Town Manager
From: Groton Zoning Board of Appeals
Date: August 28, 2015
Re: Recent Litigation from the Planning Board

In advance of our opportunity to discuss the above matter in your upcoming meeting on August 31, 2015; we felt it important to submit information and perspective for your review.

We very much appreciate the upcoming opportunity for discussion and your time in advance.

Background timeline:

Earlier this year an application for special permit/variance was filed with the Zoning Board of Appeals (ZBA). Resolution of the case depended on the Board's finding as to whether the property had reverted to a condition of "nonuse" (Town Bylaws, Chapter 218 – 6B). This section of the Zoning Bylaw has been a source of controversy in the past, in part because the bylaw provides no guidance regarding the meaning of the term "nonuse." Ultimately the board decided that the property had not fallen into nonuse and that the applicant could proceed as requested.

Within the 21 day appeal period a lawsuit was filed against the ZBA by the Town of Groton Planning Board (PB) in objection to the ZBA's decision and interpretation of the bylaws.

Through conversations between the ZBA, the PB and the Board of Selectmen it was decided that Town Counsel would represent the ZBA and that outside counsel would be retained to represent the Planning Board. The decision to have Town Counsel represent the ZBA was the last time the ZBA was included in any part of the process. From that point on, Town Counsel never discussed any aspect of the case with the ZBA or consulted with the ZBA on any matter. It is of some concern to the ZBA that Town Counsel did confer with the Planning Board, which may have created, or at least created the perception of, a conflict of interest.

Town Counsel proceeded to negotiate a settlement agreement without ever communicating or consulting with the ZBA. The agreement, which "nullified" the decision of the ZBA, was granted by the Court without the Court being aware that the ZBA had never been consulted.

Concerns:

1.) To discover that Town Counsel has signed an agreement on our behalf without our knowledge or input is very concerning. As mentioned in the timeline, the last communication the ZBA had on this matter was the appointment of Town Counsel to represent us. We were not consulted prior to, nor during, negotiations. The ZBA had no opportunity to present our rationale or perspective to Town Counsel before he acted. Once a tentative agreement had been reached, Town Counsel should have met with the ZBA to discuss the proposed settlement and get ZBA approval prior to signing anything on our behalf. (PB agenda from May 28th lists executive session pertaining to this case. While the specifics are not public, this may have been a meeting with their counsel prior to acceptance of the proposed

resolution.) Giving Town Counsel the power to nullify decisions of any Board without input or approval of the Board involved (in this case the ZBA) undermines Board authority and may create liability for The Town of Groton. It may also have a chilling effect on taxpayer's willingness to act on a board decision, or even seek such a decision, given that that decision may be rescinded by anonymous deliberations, and unilateral actions, of Town Counsel.

2.) There needs to be codification of the formal comment process between Town Boards PRIOR to decisions being reached. In this specific case, the ZBA would have welcomed and considered input from the Planning Board during the ZBA's public hearings. Having had no input from the Planning Board, in writing or via representation at the public hearing, the ZBA had no opportunity to consider the PB's concerns. It is also imperative that processes be established to address disagreements between Boards before either party resorts to time consuming and costly lawsuits.

3.) The Town of Groton Zoning Bylaws need review and update. In addition to addressing the definition of "nonuse", there are other areas that are routinely problematic for the ZBA. The PB is the authority having the ability and responsibility to review and recommend updates to the regulations; Town Meeting has the ultimate authority to accept or reject those recommendations. The ZBA will be happy to work with the PB on this important project.

Suggested Next Steps:

Power and authority of Town Counsel vis-a-vis board decisions needs to be clarified and communicated to all board members and to Town Counsel. Increased controls and communications may be necessary between Counsel and the Town Manager and/or the Town Manager and the Boards within Groton.

Groton Boards, both appointed and elected, need to find effective ways to work together collaboratively. Joint efforts of the ZBA and PB (or a subcommittee thereof) should ensue around:

- Processes for review and input while cases are open and ongoing.
- Processes for resolution of ongoing disagreement following a board decision.
- Review and update of existing Zoning Regulations.

In Summary:

We stand by our initial decision and vigorously object to any settlement that alters or nullifies a decision of any Board without knowledge of, or input from, that Board. We are concerned that the process in this case sets a precedent that seriously undermines the authority of the ZBA, and other Boards in Town.

We have directed our Administrator not to schedule hearings until we are confident that the decision making authority of the ZBA is intact.