

The March 5, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Susanne Murphy called the meeting to order at 6:30 P.M. with the following members present:

Susanne Murphy, Chairman
James M. Stanton, Vice Chairman
Daniel J. Cunningham, Jr., Clerk
Ted C. Case, Member (not present)
James S. DeCelle, Member (not present)

Matthew Zuker, Associate Member

Ilana Quirk, Town Counsel

6:30 p.m. – Town Counsel – Barberry Homes LLC – Case #21-13

Chairman Murphy declared that under G.L. c.30A, §21(b)(3) and (4), the purpose of the executive session will be to discuss litigation strategy regarding litigation known as Barberry Homes LLC v. Walpole Zoning Board of Appeals, Housing, Housing Appeals Committee Number 2014-01 regarding a proposed comprehensive permit for land located on Moose Hill Road; and that a discussion of the foregoing in open session could compromise the purpose for the executive session: and that the Board shall return to open session at the conclusion of the executive session.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to go into executive session, under G.L. c.30A, §21(a)(3), regarding the litigation identified and for the purposes and reasons declared by the Board's chairman, with the Board to return to open session at the conclusion of the executive session.

The vote was **4-0-0 in favor.** (Ms. Murphy – yes; Mr. Stanton – yes; Mr. Cunningham – yes; Mr. Zuker – yes)

The Board returned to open session.

6:45 p.m. – Michael P. and Bridget Servatius – Case #02-14 (cont'd without testimony from 2/12/14) (Murphy, Cunningham, Case, DeCelle)

Ms. Murphy informed the applicant that there are only four members present this evening and the petitioner is entitled to a five-member Board and that this hearing can be postponed until a five-member Board is present. Further, with a four-member Board, there can be no negative votes in order for a motion to carry; however, a five-member Board can have one negative vote and four positive votes.

Mr. Servatius would like a five-member Board and submitted a written request for an extension of time to the Board of Appeals with respect to appeal to complete the public hearing and render decision to June 1, 2014.

Town Counsel read the request for an extension into the record. Ms. Murphy asked for any public comments on the request. There were none.

A motion was made by Ms. Murphy, seconded by Mr. Stanton, to accept the request an extension of time to June 1, 2014.

The vote was **4-0-0 in favor.** (Murphy, Stanton, Cunningham, Zuker voting)

A motion was made by Ms. Murphy, seconded by Mr. Stanton, to continue the hearing to March 26, 2014 at 8:30 p.m.

The vote was **4-0-0 in favor.** (Murphy, Stanton, Cunningham, Zuker voting)

6:55 p.m. – Lot 5A – Route 1 Realty Trust – Case #01-14 (cont'd without testimony from 2/12/14) (Stanton, Cunningham, Case, DeCelle, Zuker)

Ms. Murphy recused herself from the public hearing.

Mr. Stanton explained to the applicant's engineer that Mr. Case and Mr. DeCelle were not present for the meeting and Ms. Murphy has recused herself, therefore, the Board has only three members available to vote and could not proceed with the hearing.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to continue the hearing to March 26, 2014 at 9:00 p.m.

The vote was **3-0-0 in favor.** (Stanton, Cunningham, Zuker voting)

7:00 p.m. – Barberrry Homes LLC – Case #21-13 (cont'd from 1/22/14) (Murphy, Stanton, Cunningham, Case, DeCelle, Zuker)

Ms. Murphy read the public hearing notice for **BARBERRY HOMES LLC, Case #21-13**, with respect to property located at 272 Moosehill Road, East Walpole and shown on the Assessors Map 36 and Lot Nos. 66, 66-1, 62, Residence A Zone.

The application is for:

A Comprehensive Permit under MGL Ch. 40B to allow construction of 174 unit apartment project containing 25% affordable units on a parcel of land containing 14.33 acres.

The applicant was not present for the hearing.

Town Counsel Quirk provided the Board with a brief update as to what has occurred since the last hearing held on January 22, 2014. The applicant has filed a motion for constructive grant of approval with the Housing Appeals Committee to which this Board disputes that constructive grant has occurred. Briefs are due by April 21, 2014. Secondly, a neighbor has filed with the Norfolk County Superior Court disputing the constructive grant of approval. And third, the Town has filed motions with the Land Court, 1.) Declaratory relief that no constructive grant has occurred as the application was incomplete due to a number of items missing and 2.) An appeal of the constructive grant of approval by the Town, as the Town is an abutter. A Case Management Conference will be held on Wednesday, March 19, 2014.

Town Counsel Quirk stated in last night's Executive Session with the Board of Selectmen, the Board voted to authorize up to \$5,000 to fund a peer review of the drainage calculations. While the Town Engineer is competent, she does not have the necessary software and hardware to complete such a review. The Town has gone this route before. Typically such a peer review would be funded by the applicant but the Town is taking every option to assist and the Board of Selectmen supported this further review. She has contacted John Chessia of Chessia Consulting Services and he has agreed to do the work and is available to meet with the Board on either Tuesday, March 25th or Thursday, March 27th but is not available on Wednesday, March 26th. Town Counsel stated the Mr. Chessia only reviews the material submitted and does not conduct any new investigations. Town Counsel recommended continuing the public hearing so that comments could be received from all Town agencies and invite members of the public to also provide comment this evening and in writing afterwards.

Mr. Brian Atkinson of 301 Moosehill Road inquired about the Ms. Murphy's recent disclosure filed with the Town Clerk and if she intends to recuse herself.

Ms. Murphy responded that she did file the disclosure with the Town Clerk noting that Mr. Carter is related but didn't know of his position with the company. She decided to not recuse herself as she felt she could remain unbiased in the proceedings with this project.

Town Counsel Quirk added that any decision to recuse rests with that member.

Mr. Atkinson of 301 Moosehill Road asked if the other members supported the decision.

Mr. Stanton said that the decision is up to the individual board member and it is not up to me.

Mr. Cunningham agreed and said that there have been many other times where board members have stepped down.

Mr. Zuker said that he would respect any member's decision.

Mr. Atkinson of 301 Moosehill Road felt it was a very big issue and that Ms. Murphy should remove herself as chairman.

Town Counsel Quirk asked for public comments to be about the project before the Board.

Mr. Atkinson of 301 Moosehill Road asked who oversees the Board of Appeals and the process to remove a member.

Town Counsel Quirk responded that the Board of Selectmen appoints members to this Board and they should contact the Town Administrator on how to proceed.

Ms. Laura Vaites of 12 Johnson Drive inquired about the credentials of the outside peer reviewer.

Town Counsel Quirk responded that John Chessia is a licensed Professional Engineer that specializes in drainage issues.

Ms. Waites of 12 Johnson Drive asked if this review would impact the action taken by the Conservation Commission and the outstanding appeal before the Massachusetts Department of Environmental Protection.

Town Counsel Quirk explained the comprehensive permit process under MGL ch. 40B. Any relief from the Wetlands Protection Act lies with the Conservation Commission who has jurisdiction on such matters.

Ms. Sullivan of Washington Street inquired about the pre- and post-construction data.

Town Counsel responded that the peer review will look at what already is done and the various assumptions made.

Ms. Sullivan of Washington Street asked about what is being done in the future to prevent this from happening again.

Town Counsel Quirk stated that it is being addressed through the Town Administrator's Office.

Mr. Atkinson of 301 Moosehill Road asked what other matters before boards are in the hands of temporary secretaries.

Ms. Kathy Hinds of 262 Moosehill Road asked how the scheduling of the hearing tonight was determined.

Town Counsel Quirk responded that the hearing was opened on January 22, 2014. The applicant filed a motion for constructive grant of approval. There are three pieces of litigation being disputed now and it is in the hands of the courts.

Ms. Hinds of 262 Moosehill Road asked who arrived at the January 22nd date.

Town Counsel Quirk asked that those questions are brought to the Town Administrator. This public hearing was opened on January 22, 2014 and we are proceeding with the hearing on the project before the Board.

Ms. Pamela Verrochi of 266 Moosehill Road asked about the appeal with the Massachusetts Department of Environmental Protection and if anything can be built before it is resolved.

Town Counsel Quirk responded that the jurisdiction over local concerns is separate. The developer needs to have all permits and approvals before beginning.

Ms. Dawn Pensak of 5 Johnson Drive asked if the application is complete now or if the information is still missing, will they provide it.

Town Counsel Quirk stated that the missing items remain and the applicant will not voluntarily provide it.

Mr. Scot Curran of 261 Moosehill Road asked if we can expect the applicant to appear.

Town Counsel Quirk responded that the counsel for Barberry Homes has said that they will not appear nor participate.

Mr. Curran of 261 Moosehill Road asked by Ms. Murphy recused herself from the previous case but not this one.

Ms. Johanna Seltz of the Boston Globe asked what a constructive grant is.

Town Counsel Quirk responded that if action was not taken by a specific date under the law then constructive grant is deemed approved by operation of law.

Ms. Virginia DeCristofaro of 306 Moosehill Road asked for the opinion of Town Counsel if we had a good case.

Town Counsel Quirk said that the Town has made a good faith claim as the application was not complete. Under the law, the hearing shall be opened within 30 days upon receipt of a complete application. The applicant has made the assertion of constructive grant. The Town is appealing that assertion.

Ms. Laura Vaites of 12 Johnson Drive asked if the appeal is granted with the Massachusetts Department of Environmental Protection and the plans change, does the process start again.

Town Counsel Quirk responded if a comprehensive permit were to be granted and the plans do change, should the change be determined substantial then there would be a new public hearing.

Ms. Angela Moore of 237 Moosehill Road asked if the items she submitted following the January 22nd public hearing was included in the list of missing items.

Ms. Seltz of the Boston Globe asked if the application was incomplete then how could the hearing be opened.

Town Counsel Quirk responded that the Board is still to proceed with opening the hearing and a discussion would take place as to what items were missing.

Mr. Dante Ferrara of 275 Moosehill Road said that we were asked to be notified of all hearings yet one was already held on one of the items of litigation. He also asked if the hearings of the Housing Appeals Committee are open to the public.

Town Counsel Quirk stated that on February 14, 2014 there was a conference of counsel where Housing Appeals Committee Chairman Lohe put together a schedule to hear oral arguments. She said that the Housing Appeals Committee docket is posted online. The public can attend but not participate. On March 19, 2014, there will be a case management conference in the Land Court and the public is able to be there.

Town Counsel Quirk asked the Board to move forward with the public hearing process, have Engineer Chessia perform the peer review and continue to receive comments from Town departments and boards as well as the public.

Mr. Stanton said that it is important to have the peer review and reminded the audience to submit comments in writing. He agreed with Town Counsel's recommendations.

Mr. Cunningham and Mr. Zuker were also in agreement.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to enter into a peer review contract with Chessia Consulting Services.

The vote was **4-0-0 in favor.** (Murphy, Stanton, Cunningham, Zuker voting)

Ms. Murphy directed Ms. Stephanie Mercandetti to work with Ms. Judi Barrett, the Town's technical assistance consultant and continue to gather comments from all the boards and departments.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to continue the hearing to Tuesday, March 25, 2014 at 7:00 p.m.

The vote was **4-0-0 in favor.** (Murphy, Stanton, Cunningham, Zuker voting)

There being no further business, the meeting adjourned at 8:20 p.m.

Craig W. Hiltz
Clerk

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Minutes were approved on May 28, 2014.