

MINUTES OF THE ZBA MEETING

TOWN OF CHARLEMONT

September 13, 2004

Members Present:

Eric Dean
Joe Wagner
Mark Ledwell

Others Present:

Earl Bowen
Bill Stephens
Charlotte Dewey
Trevor Mackie
Jim Gariepy
Perry Schwarzer
Phil Banks

Eric Dean convened the meeting at 7:01 p.m. and then turned the meeting over to Joe Wagner.

Joe stated that the Select Board requested that the ZBA have counsel during the hearing process and so he found one out of Amherst. However, this counsel's firm is in conflict as they are involved in a dispute between the towns of Heath and Charlemont. Joe stated that they will come before the Select Board and the ZBA's counsel will submit a letter to the SB, notifying them of their firm's involvement in the dispute.

Also, because Tom Shields has resigned from his position on the board, that now leaves the ZBA with only a two member board and therefore, they cannot continue to act on this issue until a replacement is appointed. Joe further stated that he was told the Attorneys involved in this issue have been in contact with each other and Joe recommended that the hearing be reconvened (continued to) at a different date, at which time, the hearing process may need to be started all over again.

Bill Stephens asked why an Associate member could not sit in for Tom's place, as that was what Associate members were for.

Joe answered that he felt it would be too difficult and time-consuming to a new Associate member coming in; to recreate all that has taken place on this issue, to date. The Board needs time to appoint a regular member and go over the information with them.

Perry questioned why he was not notified that the hearing would not proceed tonight, as the lawyers were notified.

Carlene, Secretary to the Boards, apologized and explained that she didn't get official notification that the hearing would be unable to proceed until 3:15 today, at which time, she had to leave for a meeting. Carlene further stated that the lawyers were traveling a

great distance and needed to be notified, and as Perry was local, she figured he would want to come to the meeting, at least for the information on the issue, that was to be given tonight. Perry further contended the lawyers being notified before him.

Joe explained that the lawyers were all discussing the matter amongst themselves, and needed to know whether or not to make the trip. Joe asked Perry if he was an abutter.

Perry stated he was not, but was a taxpayer and further challenged not being notified.

Bill Coli interjected that Carlene afforded an explanation as to why he was not notified and felt that in the interest of time, the hearing should move on.

There was some discussion as to the next hearing date and when the actual petition from the applicant was received.

Trevor expressed concern about the late date (October 25th, 2004) that if the hearing was postponed too late, that per Mass. law, the appeal will be automatically granted.

Carlene explained that the date was made between Attorney's Lombardo and Bard, in an effort to stick to the ZBA schedule of Monday nights.

Charlotte added that the ZBA could schedule the hearing continuation on a different day of the week; it didn't necessarily need to be a Monday. Then, if the attorneys can all make it, great, but if not, another date could be set to reconvene.

Earl Bowen interjected that his understanding was that there must be a specific date set and that the October 25th date worked for both Attorney's Lombardo and Bard.

Joe stated that this was a date made between the attorneys, and he, he was not privy to that conversation.

Bill Coli stated that the ZBA has met before on the Friday after Thanksgiving, so finding a sooner meeting date shouldn't be a problem. Bill also asked for clarification on the status of this hearing; the hearing has been posted and continued two times, and now the lawyers have advised that the hearing be adjourned and a new hearing begun. Bill's question is, will the hearing be adjourned, will a new one be begun or will it start over? Earl Bowen commented that it is not an adjournment, it is being continued, the hearing process has started, and they are still in the hearing process. If the hearing is continued with a third ZBA member, then the hearing process can be started over again with that member.

Jim Garipey suggested that it be termed continuing the hearing, but re-hearing evidence.

Earl re-iterated that the October 25th date works best, and felt it was chosen because of the other Boards meeting on other days of the week.

Bill Stephens stated that the Selectmen are not meeting on September 28th and that there were no Thursday Planning Board meetings.

Joe Wagner said he would like to stick with 10/25, since the lawyers made that date.

Bill Stephens would like to hear from counsel that an associate member wouldn't be chosen to sit in on the hearing to take Tom's place. He also reminded the Board that waiting until the 10/25 date is too long, the Board has an opportunity to reconvene, hear the evidence and digest the matter. Bill feels they should move expeditiously, there should be plenty of time to work with everyone's schedules and to review material, without going into October.

Jim suggested that they pick a few dates and the Secretary can contact the Attorneys with the dates, then they can continue to a determined date, depending on the acting attorneys.

Joe reiterated that they must set a specific date tonight.

Earl brought up the conflict with the attorney the ZBA had hired.

Jim stated that he had the power to resolve that himself.

Earl stated that he was under the impression that the Board needed an attorney to know how to proceed.

Jim said that for procedural questions, the ZBA has permission to use Town Counsel, Kopelman and Paige, not for a conflict.

After some discussion on the ZBA's attorney, discussion moved on to the role of Associate members.

Charlotte stated that an Associate member can sit in on a hearing, if the hearing is in fact going forward, and that it can not be decided by the ZBA who is going to be the permanent member.

Joe stated that Boston said all three members must be permanent members.

Charlotte said that they can clear that up tomorrow.

Mark Ledwell asked if he and Bill Coli were in the pool for becoming permanent members. Joe explained that the final selection and appointment of a permanent member was ultimately up to the Select Board, and that it may not necessarily be an Associate member that was chosen.

It was suggested that any date be chosen to reconvene, to see who could make it.

Charlotte said it was best to keep things moving, or something may happen again, with the deadline (of days allowed to grant/deny the appeal) being up.

Bill Stephens reminded the Board that Jim advised them that for procedural questions, they could use Town Counsel, which would be preferable to locate another firm or use one that required waivers. Some dates should be suggested and the attorneys involved can select from them, a date that works.

Earl Bowen further contested not using the 10/25 date.

It was suggested that the Board not wait until such a late date, but rather solicit certain earlier dates, to see if any could work, yet still keep the 25th as a back up.

Jim Garipey noted that it was funny that Earl seems to be pushing the 25th date, when at his last appeal, the date was pushed up to the deadline, and in the end, Earl did not show, and was automatically granted his appeal. Jim reminded the Board not to let the applicant decide their date.

After much discussion ensued about the dates, Eric made a motion to continue the hearing to Tuesday October 5, 2004, at 7:00 p.m., at the Town Hall. Motion is moved and passes unanimously.

Trevor questioned if both Associate members have been sworn in, and was assured they have been.

The Board briefly discussed their attorney amongst themselves.

There was some question as to the use of Town Counsel (Kopelman and Paige), by the ZBA, as they were currently representing the planning Board in this issue. It was determined that the ZBA will ask Town Counsel this.

Bill Stephens asked for clarification about the use of an Associate member, to stand in on the hearing, in the absence of a permanent member. Bill's feeling was that this was the reason for Associate members.

Eric asked what the Planning Board in such instances.

Bill replied that their Associate members sit in on any and all hearings, in case a member cannot be present.

Business having been conducted, the meeting was adjourned at 8:02 p.m.

Respectfully Submitted,

Signed: ZBA

Carlene Millett,
Secretary to the Boards