



**TOWN OF BROOKFIELD
OFFICE OF THE PLANNING BOARD
6 Central Street
Brookfield, MA 01506**

Minutes
Wednesday, August 12, 2008
Town Hall

RECEIVED

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BOARD OF SELECTMEN

Members Present: Bruce Clarke
Kermit Eaton
Daniel Leahy
Sharon Mahoney
Mary T. O'Connell

The meeting was called to order at 5:35 p.m.

Continuation Hearing on Quayside Shores
The hearing continuation opened at 5:35 p.m.

Present were Mr. Michael Loin of Bertin Engineering, Mr. Donald Zucco of Zucco Construction, Attorney Mr. Edmond Neal III representing Zucco Construction, Mr. Cliff Fontaine representing Quayside Shores Condo Association. Residents of the condo units and abutters of the property were present at the meeting.

The Planning Board received a letter from Town Counsel Kopleman & Paige, P.C. in response to Mr. Neal's letter submitted July 2, 2008, on the effects of Zoning Amendment on Special Permit Application.

Copies of the letter were distributed to the Board members, including Bertin Eng'g, Zucco Construction Co., Attorney Neal and Quayside Shores Condo Association.

Everyone present read the letter.

Ms. O'Connell then asked the board members if they were able to absorb the letter. Ms. Mahoney said no, she felt there were too many issues and needs time to review both letters from Attorney Mr. Neal III, and Town Counsel. Mr. Clarke said no, he feels that the legal language is confusing. Mr. Eaton stated there are many legal issues that need to be addressed. Mr. Leahy stated he needed to compare letters.

Mr. Eaton asked do we put ourselves in jeopardy if we agree with Attorney Neal. Ms. O'Connell responded that the Board has discretion to interpret the applicability of the Amendment to the Project.

Mr. Clarke asked if the Board could accept the permit application as is. Ms. O'Connell stated no, the Amendment is applicable to the Project. Mr. Clarke stated the board did not have this project in mind when the Board proposed amending the bylaw. It was not the intention of the Board to stop this project. Ms. Mahoney is concerned do we change the wording of the amendment & do we have the right to disagree with Town Counsel. Mr. Eaton agreed and commented that the wording needs to be changed.

Ms. O'Connell stated the Board has a fair amount of latitude in making its decision. The Board needs to interpret the bylaw.

Mr. Clarke does not agree with either attorney. Ms. Mahoney stated she feels there could be ramifications on this decision.

Ms. O'Connell asked whether members felt that a spread sheet showing both attorneys' opinions side by side would help with understanding the issues. All the board members said yes. Ms. O'Connell stated it is hard to read and decipher legal letters since we are not attorneys.

Mr. Leahy and Mr. Clarke said the article was done not with intention to create ambiguity but to make certain multi family dwellings have green space between them.

Mr. Clarke stated we may have made a mistake interpreting the bylaw. Mr. Eaton commented the board needs to make an objective decision. Ms. Mahoney feels that once the decision is made, will there be future fallout and possibly legal issues. Mr. Eaton what if the board sides with the applicant.. Mr. Eaton asked Attorney Neal, is there anything that can be done. Mr. Neal stated should the Board decide the bylaw is ambiguous, then the Board should rule with the applicant. Ms. O'Connell commented that is not necessarily the case, and the Board needs time to review both letters.

Mr. Loin stated the open space by law was created to enhance green development.

Ms. O'Connell stated there are things that can be done; for instance, the Board could go to a Town Meeting and request a change in the wording. The bylaw can be amended to clarify the wording. Ms. Mahoney asked if it would negate the intent of the bylaw. Ms. O'Connell said no, since no permit has been issued.

Mr. Eaton stated the applicant would like the Board to move quickly. Ms. O'Connell stated that the Board does not have to change the bylaw to make a decision. The Board can interpret the meaning of the bylaw as it stands. Ms. O'Connell will send the spread sheet to everyone and asked that everyone review it and come prepared for a discussion at the next meeting.

The continuation of the special permit is Sept. 3, 2008 at 7:15 pm.

The hearing session was concluded at 6:41 p.m.

Motion to adjourn the meeting at 6:42 pm by Ms. Mahoney 2nd by Mr. Clarke, All in favor.

Other Business:

Ms. Stawski received a check in the amount of \$1800 from Mr. Zucco for legal fees on Quayside Shores.

Mr. Loin of Bertin Eng'g asked if the board could email him a copy of the spreadsheet, for his files.

Respectfully Submitted,

Diane Stawski, Clerk for the Board

Minutes approved: 10/2/08