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TOWN OF DUXBURY

BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

October 10, 2019 @ 8:00 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. Emmett Sheehan & Borys Gojnycz

CALL TO ORDER: Wayne Dennison called the meeting to order.

ADMINISTRATIVE

- **ZBA Admin Case #2019-15 Webster Point Village:** *The Board voted to deem the request for an extension of the Comprehensive Permit as insubstantial, 4-1 (Barrett opposed). The Board voted to extend the comprehensive permit lapse date for 6 months from November 4, 2019 to May 4, 2020 (3-2, Dennison & Barrett opposed).*

The Board voted to approve meeting minutes from September 12, 2019.

Wayne Dennison motioned to adjourn the meeting. All in favor.

BOARD OF APPEALS — MINUTES

ADMINISTRATIVE

ZBA Case #2014-25 Webster Point Village: Applicant requests to modify the Comprehensive Permit issued August 6, 2015, by extending the lapse date from November 4, 2019 to November 4, 2020.

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. Emmett Sheehan & Borys Gojnycz

Members Voting: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

Other persons present: Angela Ball, Administrative Assistant

- Wayne Dennison, Chair, called the meeting to order and states that the agenda this evening is an administrative one and the only request they have before them is from Webster Point Village. Admin confirms. Mr. Dennison then invites the applicant to present the request.
- Robert Shelmerdine, attorney representing Webster Point Village, introduces himself as counsel and asks the Board if they'd like a history of the project.
- Wayne Dennison states that he can begin by speaking about the request.
- Robert Shelmerdine states that they presented this same request to the Town of Marshfield and they were approved for 6 months. Mr. Shelmerdine goes on to explain that there's a condition in the Comp Permit that states we need a CR (Conservation Restriction) and another through Mass Heritage and the MA DEP done in 2008 and the reason for the extension is that we need to find a grantee for this CR; He continues on stating that we have conducted extensive searches for a grantee for the CR and for various reasons we could not find one, a big part of why is that of the 14.9 acres the land for the CR is not in a contiguous area and you'd be walking through neighbors yards, it's not a state park etc. Shelmerdine continues stating that we tried to renegotiate in 2016 and to do a 30 lot subdivision and not a 40B and had no luck there.
- Mr. Shelmerdine states that in 2017-18 we came to this Board and it seemed to us that this Board wanted us to not just find a non-profit to hold the CR but to offer money.
- Mr. Dennison disagrees, stating he doesn't recall telling him he had to offer money.
- Judith Barrett states that she recalls that we talked about how it was commonplace for it to often come with an offer of money.
- Mr. Shelmerdine continues, stating that he had made several attempts at this and he has responses from many people pretty much saying that no amount of money would be a convincing factor, that it the land and how it's almost a buffer zone which is a tough area to secure a CR. Mr. Shelmerdine states that they then worked with MDNA (Marshfield Duxbury Neighborhood Association) to have them hold the CR and we've worked with them this past May and September working out and adding and subtracting language and have yet to find an agreement and now that we are close to the lapse date we are here to ask for another year and we are not giving up and are hopeful we can come up with an arrangement.
- Wayne Dennison states that it is his understanding that this is not a substantial change request and that we can do this without a public hearing
- Robert Shelmerdine agrees, stating that Marshfield did.
- Judith Barrett states that is the case, unless we feel there are compelling reasons.

- Wayne Dennison states that that we cannot reasonably deny this under the regs. and asks if anyone else has anything to say about this.
- Jon Witten, states that he is here as an individual and an abutter and that the counsel couldn't be there and that he does represent MDNA but he is NOT going to represent them tonight.
- Wayne Dennison asks Jon Witten if he knows if MDNA took a position.
- Jon Witten states that on Tuesday (referring to the Marshfield ZBA meeting) the position was neither opposition or support and Atty Murphy who was there to represent MDNA did push back on some things with Shelmerdine and although I am not in a position tonight to do so but I do agree with Shelmerdine that there was a strong attempt to reach an agreement. Mr. Witten states that in speaking for himself, we were disappointed that Shelmerdine had these requests marked up before we had an arrangement because that is part of the reason why you gave him the 90 days and frankly we think the applicant needs a little pressure because we are not reaching a deal.
- Mr. Shelmerdine states that time was running out and he needed to get his request in and he thought he'd be heard at the end of October not now and that they (referring to Marshfield) have 11 hearings at the end of October.
- Wayne Dennison states that their end of October is busy as well.
- Emmett Sheehan asks what the conditions Marshfield imposed were.
- Mr. Shelmerdine states that the conditions were that they granted a 6 month extension and it was on the condition that prior to the end of the 6 months the comprehensive permit and the subdivision plans were recorded at the registry of deeds. Mr. Shelmerdine states that as a land use attorney he would push back on that condition as if you record before you make sure the conditions can be met, then the taxing changes and they are having a tough time with the CR.
- Judith Barrett points out that his client agreed to that.
- Ms. Muncey states that you can't record half of it; you have to record the whole thing.
- Robert Shelmerdine agrees.
- Wayne Dennison states that it seems they've worked diligently on and off to get this done but what are the chances of ever getting it done?
- Robert Shelmerdine states that they are hopeful still and others have asked what have you done, meaning what have you done with the land and I can't without recording the comp permit and I'd be doing a disservice to my client to do so.
- Ms. Barret asks that if we impose the same condition are you going to record the plan. Robert Shelmerdine states that they will record the comp permit in order to take benefit of the development of the property.
- Judith Barrett asks if it'll be within the 6 month extension.
- Shelmerdine states it depends on whether they have satisfied the other problems.
- Judith Barrett states that you can tell us if you are going to record it.
- Shelmerdine states that if he can solve the problem and get the condition met then he will record it.
- Wayne Dennison states that it seems that the short answer is if you can't solve the condition you're going to do something else.
- Judith Barrett asks what happens if we deny it, you'll go to the HAC?
- Shelmerdine states that they will try but if November 4th comes they'll have no choice
- Wayne Dennison states that he feels that when an applicant comes in and requests a 90 day extension it seems to suggest to me that in the exercise of reason that this

project is a near term happening, but then to see his lawyer come in and now ask or another year, I can see my way to denying being reasonable.

- Judith Barret asks how many extensions they have made. The Board and Shelmerdine discuss past requests/extensions.
- Wayne Dennison asks if anybody else would like to speak. No.
- Judith Barrett wonders aloud if they need an extension to decide this. No.
- Borys Gojnycz and Kathleen Muncey state they are ok with the 6 months as Marshfield had and Muncey states it doesn't make sense to keep extending.
- Judith Barrett states this has been going on for 17 years.
- Robert Shelmerdine states that it's been since 2002 and there was a 2012 appeal court filing and a lot of this predated me.
- Emmett Sheehan asks who is ok with matching Marshfield.
- Kathleen Muncey & Borys Gojnycz both state yes.
- Freeman Boynton, Jr. asks what is the consequence if they don't record.
- Judith Barrett & Kathleen Muncey both concur that they'll just come back for another extension. Kathleen Muncey states that Marshfield has made it clear that they won't approve another one unless it's recorded.
- The Board discusses how to proceed.
- Mr. Dennison asks who is sitting on this. It's established that it's Wayne Dennison, Judith Barrett, Kathleen Muncey, Emmett Sheehan & Freeman Boynton, Jr.
- Wayne Dennison moves to determine that it's an insubstantial request.
- Emmett Sheehan seconds.
- Kathleen Muncey and Freeman Boynton, Jr agree. Judith Barrett opposed. Vote is 4-1
- Wayne Dennison states that he knows that people have worked hard and that it seems to be subject to conditions that will likely not be satisfied and due to that, I would be inclined to vote to deny this.
- Judith Barrett states that as the only person on this Board who was involved with trying to negotiate this to not go to the HAC, I felt that I was there in good faith and have done a lot on this and to be sitting here all these years later is really disturbing and is not the normal, that there are extensions etc. and this is not it.
- Robert Shelmerdine and Judith Barrett discuss the history of the project and disagree.
- Mr. Shelmerdine states that there were unforeseen conditions. Judith Barrett states it was on the client to know before agreeing to it.
- Wayne Dennison votes to deny the request.
- Judith Barrett votes to deny the request.
- Kathleen Muncey votes to approve the request, with the same time and conditions as Marshfield.
- Emmett Sheehan votes to approve. Freeman Boynton, Jr. votes to approve.

Vote is 3-2, with Barrett and Dennison dissenting.

Motion: It was voted to deem the request for extension as insubstantial

Moved by: WD Seconded by: JB

Number in favor: 3 Number opposed: 2 (Dennison & Barrett)

Motion: It was voted to extend the Comprehensive Permit lapse date for 6 months, with conditions, until May 4, 2019.

Moved by: WD Seconded by: ES

Number in favor: 4 Number opposed: 1 (Barrett)