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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

June 14, 2018 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Philip Thorn

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

- **ZBA Case #2018-05 Hebert, Duxbury Animal Hospital, 103 Depot St. (CONT'D):** *The Board & the Applicant agreed to continue the hearing until July 12, 2018.*
- **ZBA Case #2018-08, Wei-Chi, 106 Harrison Street:** *The Board moved to deny the appeal and uphold the Building Inspector's determination.*
- **ZBA Case #2018-11 Webster Point Village:** *The Board moved to continue the hearing from June 14, 2018 to July 12, 2018.*

The Board motioned to approve the meeting minutes from May 24, 2018. All in favor (4-0).

The Board motioned to approve the meeting minutes from April 12, 2018. All in favor (4-0).

BOARD OF APPEALS — MINUTES

Applicant: Webster Point Village LLC

Property Address: 0 Tremont Street

Case No: 2018-11

Date: June 14, 2018 **Time:** 7:30p.m.

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Philip Thorn

Members Voting: Wayne Dennison, Judith Barrett, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Philip Thorn

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services; Amy Kwessell, Esq. of KP Law & Angela Ball, Administrative Assistant

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, June 14, 2018 at 7:30 p.m. to consider the request of Webster Point Village to Modify the Comprehensive Permit for the Webster Point Village 40B Project, as modified through August 6, 2015, by replacing the required Conservation Restriction for the Restricted Area ("CR") from a permanent CR under c. 184, s. 31 to a 30-year CR under c. 184, s. 23. The property is located at 0 Tremont Street (Rt. 139) and Duck Hill Road, Parcel No. 104-002-003 of the Duxbury Assessors Map, consisting of 18.40 +/- acres in the Residential Compatibility District and owned by Ferrante Gioioso and Francesco Gioioso. On April 19, 2018, the Board of Appeals determined that the Applicant's proposal requires a public hearing as it constitutes a substantial modification to the existing permit. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department.

- Wayne Dennison calls the meeting to order and states that the agenda has 3 matters tonight, 2 of which have been continued and the third has a request for continuance and they'll take that up first.
- Wayne Dennison and Judith Barrett ask Angela Ball (administrative assistant) where they are on dates for the matter of the Webster Point Village (WPV) continuation request.
- I, Angela Ball, state that the Board has upcoming dates of June 28 of this month or July 12 of next month.
- Kathleen Muncey asks if the administrative matter for WPV on the agenda.
- Angela Ball states that the admin matter for WPV is a request to extend the comprehensive permit lapse date.
- Judith Barrett states that they can take up both on July 12th.

- The Board reconvenes.
- Amy Kwezell points out that the Board must vote on the request for the extension of time and the Board must determine if it is a substantial or insubstantial change.
- Wayne Dennison and Judith Barrett agree it is a substantial change. All vote in favor (5-0).

BOARD OF APPEALS — MINUTES

Applicant: Chiu Wei-Chi/
240 Harrison Street Realty Trust
Property Address: 106 Harrison Street
(Duxbury Yacht Club)
Case No: 2018-08
Continued Date: June 14, 2018 **Time:** 7:30 p.m.

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~Thursday, May 24, 2018 at 7:30 p.m.~~ to consider the application of Chiu Wei-Chi for an Appeal under Article (s) 400, 600 and 900, Section (s) 430, 611, 615 and 906.1 of the Duxbury Protective Bylaw. The property is located at 106 Harrison Street, Parcel No. 107-008-003 of the Duxbury Assessors Map, consisting of 52.34 acres in the Planned Development District #1 and owned by the Duxbury Yacht Club. The Applicant contends that land clearing requires a Special Permit as defined in Section 611 and appeals the Zoning Enforcement Officer's opinion that it is within the Duxbury Yacht Club's right to maintain the golf course; therefore a Special Permit is not needed.

Members present: Wayne Dennison, Judith Barrett, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Philip Thorn

Members Voting: Wayne Dennison, Judith Barrett, Emmett Sheehan, Dimitri Theodossiou & Philip Thorn

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services; Amy Kwessell, Esq. of KP Law & Angela Ball, Administrative Assistant

- Wayne Dennison states that he'll take the agenda out of order as a matter of respect to people's time. Mr. Dennison states that with respect to case #2018-08 the Harrison St Trust case, they now have 4 members that are not members of the yacht club or you can proceed with 5 but as a matter of necessity, one of them will be me.
- Bill Apostolica asks who is presently a member of the club right now.
- Kathleen Muncey, Emmett Sheehan, Freeman Boynton, Jr. & Wayne Dennison each raise a hand.
- Mr. Apostolica states that all if all 4 of you excuse yourselves I'm left with 3.
- Wayne Dennison & Judith Barrett both states you'd have 4.
- Dimitri Theodossiou states that Borys isn't here tonight.
- Wayne Dennison & Judith Barrett concur that they thought Borys would be here tonight, but they have to move forward then, they can't tonight with 3.
- Wayne Dennison asks when the next date is.
- Bill Apostolica states that they will not continue.
- Wayne Dennison states that ok, you want to go.
- Bill Apostolica states that his question is if everybody excuses themselves except yourself, then 3 will be non-partial.
- Judith Barrett states that everyone is non partial as far as conflict of interest goes.
- Bill Apostolica states that non-conflicting then.
- Judith Barrett states that everyone is non-partial according to Town Counsel.
- Wayne Dennison states that they'll move to the next case on the agenda and pick this up in order next.

- Wayne Dennison states that the next matter is #2018-08 and is an appeal from the Zoning Enforcement Officer's opinion.
- Wayne Dennison reads the public hearing notice into record and clarifies it was for May 24 but was continued until tonight.
- Mr. Dennison states that this was continued from a previous night and in the interim we now have a new associate member of the Board, Mr. Thorn. Mr. Dennison states that earlier in connection with this request, I reached out to Town Counsel to advise since members of this Board are members of the Yacht Club as well and the advice from Town Counsel was that mere membership in the Yacht Club does not require recusal as long as you think you can address it fairly and that you file the appropriate form. Wayne Dennison states that he and Emmett filed the forms and neither of them are Duxbury Yacht Club Board members or Directors and that they have a Board that consists of 5 people for this hearing, the majority of which are not members of the Yacht Club.
- Judith Barrett asks if they can verify that associate members have been sworn in.
- The Board discusses reappointment dates.
- Wayne Dennison states that the last time we did this he had asked the applicant to decide if they wanted to proceed with the then existing board and he had hoped he could provide 4 that were not members of the yacht club and cannot, so the options are if you'd like to continue to a date where that can happen I don't have any objection or you can proceed with this Board tonight.
- Bill Apostolica states that he'd just assume get it going.
- Wayne Dennison states that he'll review the material.
- Wayne Dennison cites the application, reads a complaint letter from Jim Wasielewski, a cites the lengthy submission from the property owners making a series of arguments that is overall that a permit from the Planning Board should have been sought before the activity near the 8th tee box was done and completed and that the existence of the berm constitutes a fence and asks for enforcement of chapter 49 title 7 that deals with the private rights around fences. Mr. Dennison states that the argument goes on to say the property owners went through the appropriate process and the Yacht Club should've done the same.
- Mr. Dennison cites that they also have a series of plans, a letter dated May 15, 2015 from the then commodore of the yacht club, a series of photographs, google earth maps that one of which suggests that the area cleared for the tee box was in excess of 62,492 sf and a second one that says area minus pond which adds the tee box area work to a pond along an adjacent fairway which brings the total up to 88,246.41 sf and then area including tee boxes, pond and some trenching work, which went up to 108,371 sf. Mr. Dennison states there are pictures of what was installed, various tee boxes and greens, planning board minutes from 2015 in which representatives of the Yacht Club ask the Planning Board that there be a buffer maintained between the property, a memo from the BOH indication that the BOH has no issues, a Memo from the Conservation Commission stating there are no issues of concern, and then a lengthy submission in form of a staff report from the Planning Director that analyzes the bylaw including section 611 and most notably it states that by visual inspection the Planning Board states that less than 18,000 sf appears to be affected by grading (with photographs attached), a Planning Board email stating that they voted unanimously to defer to the ZBA but ask that the Zoning Board look at the sections mentioned.
- Mr. Dennison states that he will now speak to Mr. Lambiase, then he'll hear from Counsel and questions and then we'll hear comments from the public.
- Mr. Dennison states that he is confused because the letter that is part of the complaint doesn't state that there was 30,000 sf of clearing.
- Mr. Lambiase states that there were several letters and calls from Dr. Jodoin complaining about work that was going on and he did eventually file a complaint that did turn in to him complaining that it was site alteration. Mr. Lambiase goes on to state that the matter was assigned to one of his inspectors, Jim Wasielewski, and Jim did go back and forth

corresponding with the doctor. Mr. Lambiase state sthat he did go out and the decision was that this wasn't a land clearing matter, that this is a piece of property that was established many many years ago as a golf course and there is routine work that goes on there, we have our own golf course and routine work goes on from time to time that requires changing a hole, regrading a hole, fairway, tee box, greens, but in my opinion it is routine maintenance of that golf course.

- Wayne Dennison asks if this is PD-1 district.
- Scott Lambiase states it's RC and PD-1.
- Wayne asks Scott if he feels like his office has had fair opportunity to address that there was a 30,000 sf grading issue and this letter is in response to that.
- Scott Lambiase concurs.
- Bill Apostolica states his name and asks the Board if they have all the appropriate pictures.
- The Board concurs.
- Bill Apostolica asks why Kathy Muncey excused herself.
- Wayne Dennison states that she was a member of the finance committee that approved the work.
- Bill Apostolica states that he thinks there is an impartiality issue as at least 2 of you are NYC members and that he's attempted to settle this with the yacht club. Mr. Apostolica hands out pictures and states that it is much more than pure golf club maintenance and with the Conservation if you start with the whole conflict of interest of piece, that her father is a member of the club.
- Judith Barrett asks whose father.
- Bill Apostolica states that Corey's father, the conservation gal.
- Judith Barrett states they don't keep tabs on that.
- Bill Apostolica states that he'd like to bring it to a head and it may go to land court and then head to land court.
- Judith Barrett asks if he's read the Planning Director's analysis.
- Bill Apostolica states he never saw that and asks if Mr. Casagrande is part of the Planning Board.
- Judith Barrett states she's talking about the Town Planner and she doesn't work for the Planning Board but the Town Manager.
- Bill Apostolica states that Mr. Casagrande is on the Planning Board and that he is a member of the yacht club and that if you see his path here, that
- Judith Barrett states she can see what he is alleging.
- Bill Apostolica states that there are a lot of people connected with the yacht club and we want an impartial decision and we don't think we'll get that here.
- Judith Barrett states that she has a problem with him questioning the integrity of members.
- Bill Apostolica states it's just common sense.
- Judith Barrett states that it's rude and he should make his case.
- Bill Apostolica states it's a conflict of interest and it's not personal, make the decision.
- Judith Barrett states she is trying to and waiting for him to present facts.
- Bill Apostolica states they're all in front of you.
- Judith Barrett states that we've got information from the Planning Director indicaing that this doesn't even trigger the land clearing bylaw.
- Bill Apostolica states then make your decision and we'll take it from there.
- Amy Kwesell of KP Law states that she'd like to note on the record that my opinion is based on case law and also that both you [referring to Wayne Dennison] and Emmett [Sheehan] made disclosures so you swore on a document that you filed with the Town Clerk.

- Phil Thorn states that is his only comment, that we did take an oath as a member of the committee and as a new member I remember it clearly and it was that in essence deal with everybody fairly and so I resent your comment.
- Bill Apostolica states that it's self-serving, it's inherent in life anyways.
- Phil Thorn states that when you take an oath, it's not supposed to be.
- Bill Apostolica states they should make a decision, move on, we'll take it from there.
- Wayne Dennison states that if he thinks they've been fully briefed with the submission, the does anyone have questions.
- Dimitri Theodossiou states, to what, he hasn't presented anything.
- Wayne Dennison states they supplied a pretty substantial argument in the brief as to why they thought there was enough material removed that the Planning Board should have given a special permit.
- Judith Barrett states that the Board would appreciate a response to the Planning Director, she's making an analysis that what's gone on doesn't trigger a response to 611, it's pretty common in other towns I work in to at least get a response from the applicant.
- Bill Apostolica asks what the date on that is.
- Judith Barrett states May 17th.
- Bill Apostolica states he didn't get a copy of that.
- Judith Barrett states it's public record and asks if he'd like to read it.
- Bill Apostolica answers, no.
- Judith Barrett & Wayne Dennison ask if he wants to respond.
- Bill Apostolica states he's presented the case.
- Bill Apostolica & Judith Barrett discuss the process and why he didn't get a copy.
- Bill Apostolica states that if it is a factual determination and she'll agree with it, then they've made their argument.
- Judith Barrett states it's a conflicting argument and wonders how he can disagree if he hasn't read it, typically applicant's do.
- Bill Apostolica states that as far as we're concerned, you've exceed the number and if it's your factual decision that you disagree, fine, make your decision and we'll take it from there.
- Wayne Dennison states he will open it up for comment.
- Y. Oktay of 16 Seabury Point Road states that I heard it from Scott that this is simple maintenance, but it has to do with construction and not zoning and that the best way to get out of this is to say it's not your jurisdiction and that the applicant can go to the Board of Appeals.
- Judith Barrett states that we are the Board of Appeals.
- Y. Oktay states that the state establishes two boards, the board of appeals and the zoning board of appeals and it has nothing to do with zoning, it has to do with construction.
- Judith Barrett states that we have a challenge right now that says this is a zoning matter, so I don't think that holds.
- Scott Lambiase states that it's not building construction. That's 780 CMR.
- Mike Gill of 41 Allens Lane states he's there on behalf of the yacht club and would like to discuss the merits of the case that so far we've heard about conflict of interest and it's a red herring. Mr. Gill states that the facts are that we are here to determine if under 611 there has been more than 30,000 sf has been cleared, that Scott, Jim Wasielewski, and Valerie have all been out there and agree it does not fall under 611.3. Mr. Gill states that under 611.5 there are exemptions and a golf course is not one of them and he would argue that it should be as golf courses are dynamic, always trying to better the courses. He also states that even if it wasn't then the golf course could go and get a special permit.
- Judith Barrett asks why he makes that claim.
- Mr. Gill states that he thinks because it is routine maintenance and thinks it would be approved of an existing facility. Mr. Gill goes on to state that the golf course was built in 1901 and several holes were added in 1929 and that portion was in the 1960's so this is a

legal non-conforming use. He goes on to state that there was a couple of other arguments – section 430 and 700 which have to do with planned developments which this is not, so those don't hold water. Another argument is the spite fence argument that is a fence a structure under the bylaw, and if you look at the photos submitted you can see the entire landscape buffer was cleared up to nothing and the house was elevated and now when we at the club try to put up a landscape buffer the argument is that we can't do that. Mr. Gill states that they intentionally put a split stockade fence there and it's nice and attractive and if they had wanted it to be spite fence they could've gone higher, he states that these are the facts and we need to stick to them and get away from the conflict of interest argument.

- Bill Apostolica states that this is location and it's not golf course maintenance, it was deliberately done to irritate the neighbor and I ask that you make a decision on the merits, but we feel more involvement was necessary from the Conservation Commission and the Planning Department and we'll go to land court.
- Judith Barrett asks why he mentioned the Conservation Commission.
- Bill Apostolica states that he feels there was a conflict of interest and they should've been more involved.
- Judith Barrett asks if he's alleging that there were wetlands or wetland resources that we're affected.
- Bill Apostolica states yes, the so called reservoir, but we think it's a pond.
- Wayne Dennison asks if he can ask a question about the spite fence, Chapter 49 and that he doesn't think they have jurisdiction on that
- Bill Apostolica states there are a lot of arguments that can be decided somewhere else.
- Wayne Dennison states that regarding the submission about the 18,000 sf, that whatever you want to call it, the berm, it wasn't 18,000 sf.
- Bill Apostolica states that it's not just the berm, it's the tees.
- Wayne Dennison states that when you get into putting down new sod as opposed to old grass, that sounds like golf course maintenance to me. Mr. Dennison states that when he sees Valerie's submission and what your client has submitted...
- Emmett Sheehan states that he operated a golf course at one point and had to do a lot of similar stuff, cut trees, clear areas and put tee boxes, etc. but we called it maintenance and it happens everywhere.
- Bill Apostolica that this just happens to be neighbor that objects, way more than the normal.
- Phil Thorn states that he is not a member, however he is familiar with the golf course and his memory is that the pond or reservoir in question is an exact rectangle and based on the shape itself thinks it qualifies as a reservoir and that said reservoir is a fair distance away from the tee, so are you suggesting that the 2 points be connected.
- Bill Apostolica states that it could've been a pond and over time and it's become a reservoir.
- Phil Thorn states that his main point is that the 2 areas of work span across the course and does that mean that every year if they want to maintain separate areas it's included in this.
- Wayne Dennison states that the bylaw deals with how much work can be done in a 36 month period.
- Wayne Dennison states that the land described as 52.34 acres and that can't be the whole yacht club, is this dealing with just this side of Harrison street.
- Scott Lambiase states that it's not, my guess is that they pulled it out of assessors.
- Amy Kwesell states that when you look at 611 you should look at the purposes of the bylaw and #2 says to limit land clearing and alteration of natural topography prior to development review and it would be my opinion that a golf course is not natural topography.

- Judith Barrett states she remembers this and the idea of this was to protect water vegetation and has trouble including this section of the bylaw into this. She goes on to state that she would appreciate a response from the applicant regarding the planning report, that it's hard for the Board to ignore this analysis without having another one done or an argument. She asks if they had an engineer calculate etc.
- Bill Apostolica states that his client had an analysis done and if you look at the area and the trees, you'll come to more than 30,000 sf and we'd love to settle this, but it seems that it'll keep on going. We don't need a neighbor in the yacht club being at odds with each other.
- Judith Barrett states that she doesn't think the yacht club has changed much.
- Bill Apostolica states that it's become nasty and his client has been upset over talk.
- Judith Barrett states she's sorry if that's the case.
- Bill Apostolica states that it's difficult to talk to anyone at the yacht club; however Atty. Truelove and Gill have been nice about it trying to get to decide on the size of the berm, but it hasn't happened so whatever your decision, we'll move on to the next court.
- Emmett Sheehan states that if the berm was less, then he'd be happy with that.
- Bill Apostolica states that it would, some trees.
- Judith Barrett asks if they can get a peer review, an independent assessment of the area that was cleared.
- Emmett Sheehan asks if that is necessary.
- Judith Barrett states that I'm struggling as I have an analysis by a professional but I don't have an analysis by a comparably qualified professional so perhaps we need one.
- Emmett Sheehan states that you are suggesting his client pay for that.
- Dimitri Theodossiou states that you have to see if 611 applies and need more review.
- Judith Barrett states that she isn't questioning the planning opinion, just it'd be nice to have another opinion.
- Wayne Dennison asks what the peer review provision
- Judith Barrett states that it's in our rules and regulations.
- Amy Kwesell states that it is the applicant's burden and I heard offer to continue and it was turned down.
- Bill Apostolica states when did I turn it down?
- Amy Kwesell states that I thought you turned it down.
- Bill Apostolic states that I'm looking and visually it's 30,000 sf and you can do the planning board thing but if you include the trees etc., 30,000 sf is not a lot.
- Amy Kwesell states it's an area greater than 30,000 sf, so it wouldn't trigger it.
- Wayne Dennison states that it's an area that's either graded or cleared, both of which has definition.
- Bill Apostolica states that he has noticed that the water runoff is significant enough that some of the sod has died between the car path and the berm, so the berm will freeze and crack as it is, so you're probably not considering the settlement part.
- Wayne Dennison states that is the one part they can't do anything about.
- Wayne Dennison asks Mr. Apostolica if he'd like more time to review planning response.
- Bill Apostolica states and to come back after, no I think visually it speaks for itself.
- Wayne Dennison asks if anyone else has questions.
- Emmett Sheehan makes a motion to close the hearing.
- Dimitri Theodossiou seconds.
- All in favor (5-0).
- Wayne Dennison asks if there is any discussion.
- Judith Barrett states the question is if the applicants met their burden for the appeal, alleging that the building department made an error in declining to enforce the bylaw and a zoning violation exists, so we should start with is their adequate evidence in the record and is this a land clearing and grading activity subject to 611.

- Wayne Dennison states that questions of what is clearing or grading is implicated here because the only professional evidence in the record shows 18,000 sf. Wayne Dennison states that he'd be inclined to uphold the building inspector and determine that section 611 isn't implicated on the grounds that the applicant failed to establish that more than 30,000 sf has been graded or cleared.
- Judith Barrett states that it'd be your determination that 611 does not apply, no applicability.
- Dimitri Theodossiou states it's alleged, not proven.
- Wayne Dennison states that yes, and we have the Town Planner that says it's 18,000 sf.
- Dimitri Theodossiou states it doesn't even come close to the 30,000.
- Wayne Dennison states that from a discussion stand point, which is where he is, although he does think that they'll be more difficult questions down the road about what is grading or clearing.
- Dimitri Theodossiou states that it isn't in the spirit of this section.
- Emmett Sheehan states that if he wanted to put it in a new golf course, this section would apply.
- Judith Barrett and Dimitri Theodossiou concur.
- Wayne Dennison states that I'll address this on two grounds, 1 being that 611.1 limit land clearing and alteration of natural topography prior to development, that's the purpose, but my inclination is to decide this on the 18,000 sf.
- Judith Barrett states that it's the only professional evidence.
- Emmett Sheehan makes a motion to uphold the Building Commissioner's decision.
- Dimitri Theodossiou seconds.
- Wayne Dennison amends the motion to say that it's on the ground that the applicant failed to put forth sufficient evidence to persuade the board that more than 30,000 sf has been graded.
- Judith Barrett seconds.
- All in favor (5-0).

Motion: It was moved, seconded and unanimously voted to close the public hearing.

Moved by: ES

Seconded by: DT

Number in favor: 5

Number opposed: 0

Motion: It was moved, seconded and unanimously voted to deny the appeal and uphold the Building Commissioner's decision.

Moved by: ES

Seconded by: DT

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2018-05

Petitioner: Daniel Hebert

(Agent, Cavanaro Consulting)

Duxbury Animal Hospital

Address: 103 Depot Street

Case No: 2018-05

Date: June 14, 2018 Time: 7:30 p.m.

(Cont'd from May 10, 2018)

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, May 10, 2018 at 7:30 p.m. to consider the application of Daniel Hebert for a Special Permit under Article(s) 400 and 900, Section(s) 401.2 (3), 410.3 (6), and 906.2 of the Duxbury Protective Bylaw. The property is located at 103 Depot Street, Parcel No. 190-600-122 of the Duxbury Assessors Map, consisting of 0.95 acres in the Residential Compatibility District and owned by Daniel Hebert. The Applicant proposes to change the use of the pre-existing non-conforming dwelling from residential with a home occupation to a Veterinary Hospital use *only*. A Special Permit is required.

Members present: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

Members Voting: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Judith Barrett opens the case for 103 Depot Street, states we were struggling with if it's a hospital or not, and I will ask that Town Counsel speak to that.
- Amy Kwesell of KP Law identifies herself and goes on to explain that right now there's a home occupation use and they'd be looking for a special permit with 410.3 #6 which provides for hospitals; however the facts unfortunately mirror a case, Tanner vs. Boxford which was very similar and the terms hospital and animal hospital were not defined as they are not in the Duxbury bylaw either, so in Tanner the higher court said that it was ok for the Board of Appeals in Boxford to determine that any references to hospitals refer to people and it is my opinion that Duxbury has the same, parts of the bylaw refer to persons 62 or older. Amy states it is up to the Board to interpret the bylaw. Amy Kwessel goes on to state that under 401.2 subsection 3 any reconstruction must confirm with other provisions of the zoning bylaw, but in my opinion I don't see how this can be an extension to the home occupation use, a change would be different. She goes on to state that the third alternative would be through a use variance.
- Kathleen Muncey asks what the standard for a use variance is.
- Amy states it's 40A Section 10 and case law states it should be given out sparingly and needs to cover three prongs – topography unique, hardship and not more detrimental to the neighborhood.
- Freeman asked if a tech could stay the night, would that keep it as a home occupation.
- Judith Barrett states it has to be the homeowner.
- Jeff Angly of Philips & Angly states that he's at a disadvantage without having the opinion of Town Counsel ahead of time, but he's familiar with Tanner case and he asks what Board thinks bylaw means by hospital vs. clinic, and he believes there are different

kinds of hospitals and the bylaw does allow professional office space, but there's a 25% limitation.

- Judith Barrett states it is for retail, yes.
- Jeff Angly states he thinks the Board can allow for an expansion
- Judith Barrett questions that it was not the premise of what the use began as and if it's not going to be extended, then it'll be erased as it won't be an occupied dwelling.
- Jeff Angly states he think we met all 4 criteria and I'd hope the Board could find a way to interpret the bylaw to continue the use.
- Emmett asks Town Counsel if there were opponents to the Tanner case.
- Amy states she doesn't know , but her firm did represent Boxford.
- Dimitri Theodossiou states that Board did not approve.
- Amy Kwesell states that both the land and the appeals courts analyzed the bylaw, it wasn't simply just a finding. She states that there are hospitals that treat different systems; however, they are all humans.
- Judith Barrett states she remembers when this was changed in the 1980's after a case was before the Board to encompass a healthcare facility, so this is not new. She goes on to state that she encourages them to go to Town meeting to change the zoning bylaw to add a veterinary hospital as a special permit use.
- Daniel Hebert states he argues there's an immediate need and he is not providing appropriate care with the facility as is, this has taken a long time already and we'd like to get it going.
- Judith Barrett states she doesn't think anyone thinks you've applied an incomplete application, but it is a matter of an interpretation of the bylaw to include a hospital.
- Dimitri Theodossiou states that pets are now a part of the family, whereas when bylaw was written pet care was not a part of life as it is now, so he thinks that the reason that hospitals are included in the RC to provide for care of all family and he would vote for it today.
- Kathy Muncey states that the law is clear that this is not allowed and I think if we make a decision then a neighbor that doesn't agree then we could have a great grounds for an appeal.
- Freeman states there is only one neighbor we heard from. Is the special permit use allowed?
- Judith Barrett states that yes, there was no ground swell, I agree, she goes on to state she's not sure the use is allowed.
- Freeman states if it's not allowed in any district, then we can't allow them in town.
- Judith Barrett states the bylaw states if it's not specifically allowed, it's prohibited.
- Jeff Angly states it is an argument for a way to say that it would comply, and this is just outside of a commercial zone and if bylaw recognizes that institutional uses are appropriate then you could find a way to make the bylaw fit.
- Judith Barrett states she went back to NB section of the bylaw to clarify and found there was more wiggle room in the NB district, not the RC.
- Judith Barrett states she's struggling with this case as she doesn't want to drive the business out of town, but she does have to interpret the town's purpose of the bylaw and I don't think it was intended to accommodate this kind of use. She asks if the Applicant would like to review the opinion by Town Counsel and continue the hearing.
- Jeff Angly states he'd have to discuss with his client.
- Emmett Sheehan wonders if he could sell a piece of his property, would that route work.
- Kathleen asks if it makes a difference that it states it's resident not owner occupied.
- Jeff Angly states that he doesn't see a case where if they eliminate a prior use and he argues that the expansion could be allowed, that medical services are an allowed use. Mr. Angly goes on to state that his client has to tell him what he'd like to do.
- Daniel Hebert asks about the Boxford case for clarification.

- Kathleen Muncey states she thinks it's very similar and thinks this would be overstepping.
- Jeff Angly states that he wonders if there is any reason to continue the alternative is to withdraw or have them take a vote.
- Deb Stuart states she is not a Duxbury resident, but your point about the Boxford case that it lacks the animal term, does it preclude all others.
- Judith Barrett suggests reading the bylaw to clarify.
- Kathleen Muncey wonders if the Town is ready for a veterinary hospital to be an allowed use in RC.
- The Board and the Applicant agree to take a recess and return with answer.

- The Board reconvenes.
- Jeff Angly states that his client would like to continue.
- Freeman Boynton, Jr. asks if we can grant the special permit with a condition that it's owner occupied.
- Judith Barrett notes that wasn't what they asked.
- Jeff Angly states that the bylaw limitation of 25% so it wouldn't work.
- Amy Kwessel states that the bylaw does allow for extension but it's all in one section so it's the change of use and limitation on intensity and one is that nonconforming use is if it complies with all other parts of the bylaw and so I think the Board has discretion to interpret the bylaw, but if they've already extended into the residential so the Board could perhaps find the extension is not that great, but it could be a problem.
- Amy and the Board discuss the old special permit and that it was for a home occupation.
- Jeff Angly points out it was the old special permit that limited it to 25%.
- Jeff Angly states they will reconvene on the 12th.
- Freeman Boynton, Jr. makes a motion to continue the hearing until July 12, 2018.
- Emmett Sheehan seconds. All in favor (5-0).

Motion: It was moved, seconded and unanimously voted to continue the hearing until July 12, 2018.

Moved by: FB
Number in favor: 5

Seconded by: ES
Number opposed: 0