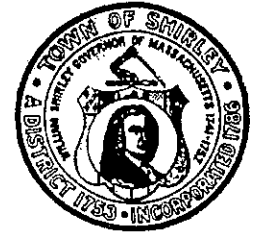


Town of Shirley

Zoning Board of Appeals



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MINUTES
ZONING BOARD OF APPEALS
JUNE 21, 2016
1st Floor, Meeting Rooms A & B

MEMBERS PRESENT: Chip Guercio (Chair), Lora Prescott (Vice Chair), Kevin Kelly, Laurel Hayes, and Joshua Bedarian

OTHERS PRESENT: Pat Wojtas (Interim Land Use Clerk), Kendra Dumont, Bryan Dumont, Janet Tice, M.E. Jones, Cynthia Furman, Marie Elwyn, Betsy Colburn Mirkovic, Tim Hatch, Barbara Yocum, Jim Yocum, Enrico Cappucci, Peter Elwyn, Raejean Price, Dylan Venell, Don Cooper, Attorney Jonathan Eichman

Mr. Guercio convened the meeting at 7:05pm.

CONTINUED PUBLIC HEARING: 42 Parker Road
Owner & Applicant: Mary and Michael Lance

Mr. Guercio noted that this Public Hearing was opened at the last ZBA meeting, with no testimony taken, since there were not enough members present to vote on the Special Permit.

Mr. Guercio reported that a Special Permit was issued for the requested use (yoga studio) in 2011, for a period of five years. The applicants are now asking for a renewal of the Special Permit. All boards and committees returned favorable comments, and there were no abutters who opposed granting the extension. Mr. Guercio stated that the Board can issue a 10-year Special Permit, if they so choose.

Tim Hatch, 3 Maple St., asked which bylaw allows the ZBA to issue a ten-year Special Permit. Attorney Jonathan Eichman, Shirley's Town Counsel, replied that there is no limit on the length of time a Special Permit can be issued. It is at the discretion of the Board. Mr. Guercio noted that the Board typically issues a five-year permit on the first application, in order to be assured that no problems arise.

Mr. Hatch also questioned the ability of Ms. Prescott and/or Ms. Hayes to vote on this Special Permit, since neither were present at the last meeting, when the Public Hearing was opened. Attorney Eichman noted that no evidence was presented at the last meeting, so all members of the Board are eligible to vote tonight.

There being no other comments, Mr. Guercio closed the Public Hearing at 7:21pm.

Voting: Mr. Kelly made a motion to approve the renewal of the Special Permit for a yoga studio at 42 Parker Road, for a period of ten years. Ms. Hayes seconded the motion. Motion passes, unanimously.

CONTINUED PUBLIC HEARING: Appeal of Building Permits issued for 21 and 21Rear Patterson Road

Mr. Guercio noted that this Public Hearing was opened at the last ZBA meeting, with no testimony taken, since Town Counsel was not available to attend the meeting.

Mr. Guercio read the Legal Notice into the record, and noted the attached documents, which included a letter from Attorney Margaret Sheehan. He also read an email received from Adam Arakelian, informing the Board that he has withdrawn from this appeal. Attorney Eichman stated that Mr. Arakelian's removal from the appeal does not change the process, as other appellants are still following through.

Mr. Guercio asked who the spokesman for group will be. Betsy Colburn Mirkovic, 32 Brown Road, announced that she will lead the discussion. She stated that the appellants are not motivated by personal feelings, only that the rules have not been followed for this project. She noted that a Building Permit was issued within the time period for an appeal, and that the Planning Board issued a Special Permit and Site Plan Approval without all conditions being satisfied. She listed the conditions that were not met, including that the Town wells were not designated on the plans; no legal lease had been negotiated with the Town; Town Meeting never voted to lease this land for this purpose; and no certification for any effects on water quality were presented.

Ms. Mirkovic added that other legal questions are being addressed in Land Court. She is asking this Board only to rule on the issue of the Building Permits.

Raejean Prince, 18 Brown Road, stated that town bylaws are straightforward, and they are the basis for the request to support the residents against officials who openly disregard those bylaws.

Mr. Guercio read the section of the Town bylaws under which this appeal was filed. He noted that it does not appear to be relevant in this situation, since it only addresses a case in which the Planning Board fails to act.

Ms. Price argued that the citizens who filed this appeal followed the process as outlined, and were ignored. She added that the Land Court has not acted expeditiously in this matter, so they felt forced to return to the ZBA.

Ms. Mirkovic reiterated that no Building Permit should have been issued while the issue is before the Land Court. When the residents asked the Building Inspector to revoke the Building Permit, they received no response.

Mr. Kelly asked Town Counsel if the Building Permits were issued legally, and if the appeals have been filed in a timely manner. Attorney Eichman replied appeals of Building Permits should be filed within 30 days of issuance. That time had lapsed on the first permit (issued on January 12), but the appeal was filed appropriately on the second permit (issued March 3).

Mr. Kelly asked if the Land Court has issued a restraining order on this project. Attorney Eichman noted that no restraining order is in effect. Mr. Guercio then stated that the project applicant is going forward at his own peril.

Mr. Guercio asked Town Counsel what relief this Board has available for these appellants. Attorney Eichman stated that he sees none, since Section 7.4.6 does not apply in this case.

Ms. Mirkovic stated that when the bylaws were amended, it appears that any avenue for an appeal such as theirs was eliminated. Mr. Guercio agreed, but noted that the Board must rule based on the current bylaw, not one that may be modified in the future.

Mr. Kelly asked why the Land Court has not issued a restraining order on this project. Ms. Mirkovic replied that the Land Court will not issue a restraining order until Discovery is complete, and that process is very time-consuming and expensive. She noted that her group was trying to reach some accommodation administratively in lieu of the Court's decision.

Ms. Mirkovic raised other concerns about conditions that were not completed before the Building Permits were issued, such as the negotiation of a lease. Mr. Guercio asked Kendra Dumont, a member of the Board of Selectmen, if the lease has been signed. Ms. Dumont replied that it has been finalized and signed by all parties. Mr. Guercio asked if the Town Administrator had included members of the group filing this appeal in the lease negotiations. Ms. Dumont noted that several of them were included, and some of their suggestions were incorporated in the final lease document.

Barbara Yocum, 51 Lawton Road, stated that Town Meeting never gave authorization to lease the property where the solar facilities are located. There was some discussion as to when the authority was granted, and which parcels were included.

Enrico Cappucci, a member of the Board of Selectmen, suggested that the two sides were at loggerheads at this point, and offered to sit with representatives from both groups to reach a compromise. He recommended that the hearing be continued to a later date before taking a vote.

Mr. Kelly asked Town Counsel if this Board has the legal authority to void the Building Permit(s). Attorney Eichman stated that the Building Permit is valid unless rescinded. Mr. Guercio said this would be an easy decision if the bylaw clearly addressed this situation; however, that is not the case.

Mr. Bedarian asked if the Board could review the Shirley bylaws in an attempt to find one that may address this issue. Ms. Prescott noted that the appeal is under a specific section, and their decision must reflect its authority under that section only.

Peter Elwyn, 8 Cottage Street, asked how bylaws are written. Mr. Guercio replied that typically a review committee will make recommendations for changes to the bylaws, which must then be approved by a vote of Town Meeting.

Mr. Bedarian asked if there might be a Massachusetts General Law that would supersede the town bylaw. Attorney Eichman replied that he is not aware of any, and noted that Site Plan Review, which allowed this project to proceed, is strictly under local control.

Mr. Hatch stated that the residents of the Town are at a disadvantage in a situation such as this, since the Building Inspector is not required to publicly post permits that are issued.

There being no further comments, Mr. Guercio closed the Public Hearing at 8:15pm.

Voting: Mr. Kelly made a motion to deny the appeal. Ms. Hayes seconded the motion. Motion passes, unanimously.

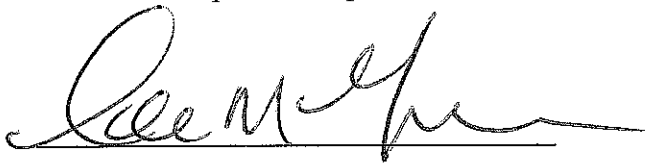
MINUTES:

Mr. Kelly made a motion to approve the regular meeting minutes from May 16, 2016. Mr. Bedarian seconded the motion. The motion passed, 3-0, with Ms. Prescott and Ms. Hayes abstaining, since they were not present at that meeting.

ADJOURNMENT:

Ms. Hayes made a motion to adjourn at 8:20pm. Seconded by Mr. Kelly. The motion passed, unanimously.

Minutes Accepted on September 12, 2016

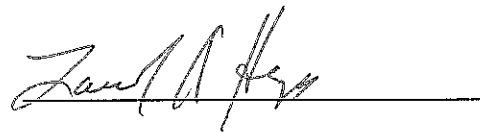


Leonardo Guercio

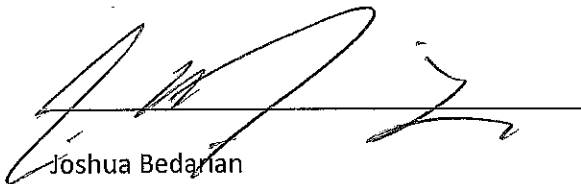
Kevin Kelly



Lora Prescott

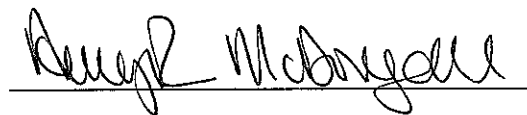


Laurel Hayes

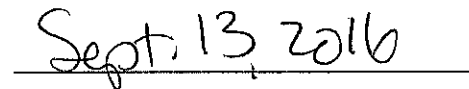


Joshua Bedarian

Filed and received in the office of the Town Clerk:



Amy McDougall, Town Clerk



Date