

approved
6/21/22

ZONING BOARD OF APPEALS

Meeting Minutes of May 10, 2022

@ 7:00 p.m.

CARVER TOWN HALL

MEETING ROOM #4

Present: Stephen G. Gray, Chairman; Sharon Clarke, Vice Chairperson; Members: Frances Mello and Mark Poirier. Alternate Member, James Barrington, was also in attendance.

Absent: Frank Casey

Meeting opened at 7:00 P.M.

A. Approval of Minutes:

Approval of meeting Minutes of May 3, 2022. Vice Chairperson Clark made a Motion to accept the minutes as written and Member Mello seconded the Motion. The Motion passed unanimously.

Continued Public Hearings:

B. Public Hearing: Case 32-1-A, 1-1, 1-2, 1-3, 1-4, 1-5 1-60: Petitioner: Margaret Sheehan on behalf of the Save the Pine Barrens, Inc. appealing the denial of the Building Commissioner for enforcement of the Town of Carver Zoning By-laws with regard to earth removal activities on land owned by Rickets Pond Business Trust, said activities allegedly occurring at property located on Spring Street/Rte. 44, Carver MA (Assessors Map 32-Lots 1-A, 1-1, 1-2, 1-3, 1-4, 1-5 and 1-6), in the Spring Street Innovation District, pursuant to M.G.L. c 40A, Sections 8 and 15, as well as under Sections 2230 and 5223 of the Carver Zoning By-law.

Chairman Gray opened the Public Hearing by announcing it was continued from a previous meeting night. He read the Public Hearing announcement into the record.

At the outset, Chairman Gray noted that the Board had received a multi-page letter from counsel for the Petitioner mere hours before the meeting. He stated that a continuance was offered to the Petitioner so that this submission could be considered properly at its next meeting, but this was not agreeable to it. It was also suggested by the Board that the Case could go forward that evening, without consideration of the late-filed submission of the Petitioner. This also was not agreeable to it, alleging delay in the process and the fact that numerous people were in attendance. Finally, it was decided that a fifteen-minute suspension of the proceedings would occur, so that the Board could read/study the late-filed submission of the Petitioner.

Upon reconvening after fifteen minutes, the Board held lengthy discussions, led by Chairman Gray, with Attorney Margaret Sheehan, appearing on behalf of the Petitioner, Save the Pine Barrens, Inc., and Attorney Robert Ferguson, on behalf of the Developer, concerning whether the Board had jurisdiction to hear this Case.

At the outset, Chairman Gray inquired of Attorney Ferguson whether it was his understanding that the Petitioner was asking the Board to overturn the unappealed Decision of the Planning Board, dated April

23, 2019, and the approval of the Definitive Subdivision Plans at the site. He indicated that this was implied because the position of the Petitioner in its "Request for Enforcement" was that all activities at the site be subject to a cease-and-desist order.

Attorney Sheehan denied that the Petitioner was seeking a reversal of the Planning Board Decision of April 23, 2019.

Next, there was discussion concerning whether the Board had the authority to hear this Case and to direct the Zoning Enforcement Officer, the Building Commissioner of the Town of Carver, to enforce any violation/s of the Zoning By-law if activity at the site was found to be outside the scope or "four corners" of the Planning Board Decision of April 23, 2019.

Attorney Sheehan thought this was correct.

The discussion then turned to whether the Board had the authority to overturn the Decision of the Earth Removal Committee Permit allowing for earth removal at the site, said Decision dated June 6, 2018.

As before, the issue identified by Chairman Gray, was whether the Board had the authority to hear this Case and to direct the Zoning Enforcement Officer, the Building Commissioner of the Town of Carver, to enforce any violation/s of the Zoning By-Law if activity at the site was found to be outside the scope or "four corners" of the Decision of the Earth Removal Committee. The enforcement authority of the Earth Removal Committee under the General By-laws of the Town of Carver was referenced.

Finally, there was talk concerning whether the Petitioner had satisfied the appropriate legal standards to qualify for standing. It was noted that the Application was filed only in the name of Save the Pine Barrens, Inc. No abutters, abutters to abutters, or other individual parties were listed. Both lawyers were heard on the question of whether individualized harm that was not merely reflective of the concerns of the community in general could be demonstrated. Attorney Sheehan referred to a legal case which, in her opinion, conferred so-called "associational standing" in this instance, so long as members of the Petitioner would have standing in their own right.

At this juncture, it was determined that at least one person in the audience, Dorothy Pollitt, claimed to be an abutter and was a member of the Petitioner organization.

The Board next heard from a number of people in the audience, both in favor of the relief requested by the Petitioner and opposed.

Noting the lateness of the hour, Chairman Gray stated that the Case would be assigned a short continuance date, as there still needed to be more evidence taken, as threshold issues concerning jurisdiction and standing had been the matters which were the focus of the meeting.

Both lawyers remarked that further delay was problematic, as there were agreements with the Developer to sell and/or develop portions of the subject property and the Petitioner desired expeditious enforcement of the Zoning By-law due to alleged on-going damage to the environment and the interests of its members.

In response, Chairman Gray urged both parties to communicate with each other in an attempt to resolve their differences. He remarked that if the Board was compelled to make a decision, one of the parties

would emerge very disappointed and an appeal was likely to be lodged. This could lead to years of ongoing litigation in the Trial Court and the Appeals Court, occasioning even further delay and expense which would not be helpful to either of them in view of their expressed interests.

The Board advised that the Case would be continued to the date of Thursday, May 26, 2022, at 7:00 P.M.

Member Mello made a Motion to adjourn and was seconded by Vice Chairperson Clarke. The Motion passed unanimously.

Respectfully,

Patricia A. Pacella
Recording Secretary