

M I N U T E S

BOARD of ADJUSTMENT
EAST KINGSTON, NEW HAMPSHIRE

East Kingston Town Hall
Wednesday, March 8, 1989 - 7:30 pm
(FMR, Inc. / Hearing Continued)

BOARD MEMBERS: William Osgood
David Boudreau
David Chiardelli
Daniel Guilmette
Patty Keans
Richard Smith

(1989-01)

OSGOOD:

I would like to call this hearing to order. This is a continuation of a hearing that we started on February 15. At the request of Mr. Decker, it was postponed until tonight and we didn't achieve anything other than a statement of what the hearing was all about on that evening. So now, we will ask Mr. Decker to present his situation to us.

DECKER:

Mr. chairman, I would like to get into a couple of procedural matters before we start. First of all, there is a tape recorder here and I'm going to respectfully request that anybody who speaks address the tape recorder so we have a record of the meeting.

OSGOOD:

We have exactly the same issue and we would like if anyone does speak, to have people identify themselves by name.

DECKER:

Secondly, I'm going to ask that the member of the Board identify themselves.

OSGOOD:

Easily achieved. I'm William Osgood, Chairman of the Board.

KEANS:

Pat Keans

CHIARDELLI:

David Chiardelli

GUILMETTE:

Dan Guilmette

SMITH:

Richard Smith

BOUDREAU:

David Boudreau

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DECKER:

I count six people. How many people are members of the board?

OSGOOD:

We have four members of the Board and two alternates.

DECKER:

Procedurally, I am going to ask if the two alternates are going to vote or if one is going to vote. Who are we addressing?

OSGOOD:

You will be addressing the group and we will be scheduling another evening to have a vote. It will not be this evening and at that evening, those members and/or alternates that are present to constitute a five man board will vote.

DECKER:

May I respectfully request that you will identify the five members who are going to vote before we start.

OSGOOD:

That won't be possible because I won't know who will be present at the subsequent meeting.

DECKER:

Mr. Chairman may I respectfully request that I know who the five members are who are going to vote on this matter, and I am also going to request that you inform us as to why there will not be a vote this evening.

OSGOOD:

It is our customary procedure to schedule an opportunity for a public vote.

DECKER:

Is there any reason why we can't have a public vote this evening sir?

OSGOOD:

That's not known to me right now.

DECKER:

Excuse me?

OSGOOD:

It's not - our process in conducting our hearings is to have the hearing to allow who ever is appearing before us to present their case and then to meet as an administrative body and discuss the matter and then reconvene to conduct a public vote as we are required by law to do. And we typically have scheduled that on another evening since we have no idea how long we would normally want to meet in an administrative session to discuss...

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DECKER:

Well, Mr. Chairman, in the words of Adler Stevenson, I'm willing to wait here until hell freezes over tonight. Is there any reason why we can't have a vote here tonight?

OSGOOD:

Yes, because we are going to continue to follow our standard procedure.

DECKER:

Even if it is contrary to the Law of the State of New Hampshire - Is that correct?

OSGOOD:

It is our intent to conduct our hearing within the laws.

DECKER:

Then if the law requires you to vote this evening you'll do it - is that correct?

OSGOOD:

If the law requires us to do that, we will do it of course.

DECKER:

Mr. Chairman, I'm going to ask that if any member of the Board has had any discussions about this matter with anyone in the town of East Kingston, prior to this moment, that they identify themselves and disqualify themselves. Is there anybody on the Board who has had such discussions?

SMITH:

I guess he's pointing to me. He has been before the Planning Board with this thing - so I'll disqualify myself.

DECKER:

I wasn't pointing to you, sir. Is there anybody who has had a discussion with anybody in the Town of East Kingston?

OSGOOD:

At this point I'd have to ask you why you feel that the Chairman of the Planning Board ought to disqualify himself as a member of this Board.

DECKER:

Because the Board sits as a quasi-judicial body and they're disqualified for any reason that would disqualify them if they were sitting on a jury, except for knowledge of the facts.

OSGOOD:

We don't see a reason why the Chairman of the Planning Board would be required to disqualify himself and so, therefore, as Chairman of this group, I won't ask the Chairman of the Planning Board to disqualify himself.

DECKER:

I didn't ask you to ask him to disqualify himself. I asked if any member of this board has had any discussions concerning this matter and my question...

OSGODD:

And you have presented your matter before the Planning Board and so therefore the Chairman of the Planning Board would necessarily have been involved in those discussions.

DECKER:

I am asking if anybody on this Board has had any discussions with anybody respecting this matter.

GUILMETTE:

That's not what you said.

DECKER:

With anybody in the town of East Kingston.

SMITH:

That's not what you said.

DECKER:

Well would you like to paraphrase?

SMITH:

Well, what you said was that if anybody had any connection with this prior to this meeting, they would disqualify themselves.

DECKER:

The record will speak for itself.

GUILMETTE:

Mr. Decker, its very unusual that if we put a legal notice in the newspaper as we are required by law, people say, "oh, there is a meeting coming up about a proposal or a case!". There is, it is a matter of public record, we have to publish the fact that this meeting is here. Do you agree to that?

DECKER:

Yes.

GUILMETTE:

Ok. Thank you very much.

DECKER:

I'm not asking about that, I'm asking if there has been discussion about the merits of this matter.

OSGODD:

That is not what you said. You did not ask about the merits, you said the nature of the case, and I would have to say then

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that all of the members of the Board have had discussions on the issue and therefore, based on your request that the Board disqualify itself, then the Board will be so disqualified. We will present the matter to the Selectman, the Selectman can appoint a new Board to hear your case. And this terminates our hearing for tonight. Thank you very much for coming down here.

End of Tape.

...words to this effect...

DECKER:

You have just made yourself liable to a \$5000,000 law suit.

William R. Osgood
Chairman