

TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES

July 22, 1999

FILE

AGENDA

7:30 Motion for Rehearing – Laurie Carbone, 208 Haverhill Road (1999-04)

Members attending: Chairman John V. Daly, Vice Chairman David A. Ciardelli, Norman J. Freeman, Alternate Members Peter A. Riley, Richard A. Cook, Nathaniel B. Rowell, and Selectman Donald C. Andolina.

Absent: Edward A. Cardone, David C. Boudreau, J. Roby Day, Jr., and Alternate Charles F. Marden.

Motion for Rehearing - Laurie Carbone, 208 Haverhill Road: Chairman Daly opened the meeting for the consideration of a rehearing filed by Laurie Carbone et al in relation to the Board's June 24, 1999 decision to affirm the Planning Board's decision to approve a site plan review for Chuck Woodlands Realty Trust. He noted that Mr. Rowell has joined the board as an alternate member and that Selectman Andolina is also present to help out with voting matters in this case.

He went on to say that various allegations have been made in the Motion for Rehearing. The same members under disqualification at the last hearing are still under for this meeting – Chairman Daly and Mr. Riley. The Motion for Rehearing filed by Ms. Carbone et al argues that the ZBA was wrong in their viewing of the ordinance, particularly the noise control and light industrial zone sections. The petitioners also made suggestions in their motion that members of the board prejudged the case or should have been disqualified from voting.

At Chairman Daly's inquiry, Mr. Cook stated that he in fact recently acquired land in the light industrial zone and that he didn't anticipate voting at the last meeting. He is familiar with the case on the Planning Board level. He stated that for appearance sake, he would recuse himself from further voting on this matter.

Chairman Daly then directed the member's attention to information, previously distributed to them, regarding disqualification. He noted that excerpts from the statutes, Peter Loughlin's book, and the Winslow v. Holderness Planning Board case, include valuable guidelines for the ZBA to follow. The bottom line- if there is anything likely to preclude one as a juror in a superior court trial, then they should not sit on the matter before the ZBA. Although harsh standards, they must be applied here.

He further stated that if a judge finds any conflict of interest with the board, he would order the case go back to that board for rehearing.

Regarding the suggestion that Mr. Day prejudged the case, a letter from Day was forwarded to Chairman Daly, in which Chairman Daly proceeded to read into the minutes (see attached). The letter refutes any suggestion that prejudgment was made. Chairman Daly explained that although denied by Mr. Day, the allegation alone warrants a re hearing. He further stated that Mr. Cook's ownership of land in the light industrial zone disqualifies and also warrants a rehearing.

Chairman Daly then suggested the board vote to grant this application for rehearing based on the claims of prejudgment and conflict of interest.

Mr. Ciardelli stated that it also came across to him that Mr. Day was reading from a prepared statement.

Chairman Daly stated that Mr. Day indicated that he had made notes on his computer. Although it appeared to have been a prepared statement, the Board must take his word on it.

Mr. Freeman responded that he sat next to Mr. Day at the hearing and observed him taking notes all throughout the meeting. If Mr. Day brought in his own notes and information to the meeting, he (Freeman) would not have a problem with it.

Mr. Ciardelli stated that the impression was that he had prepared text.

Mr. Freeman then asked about Ms. Carbone's claim at the hearing that the entire board was "on the take".

Mr. Riley stated that Mr. Marden has known the board for a long time and he (Riley) felt there was an underlying agreement between Marden and the board. He felt decisions may have been made prior to the hearing.

Chairman Daly stated that at the hearing there was a motion on the floor and at the discussion portion of it, Mr. Day asked to be recognized. If Mr. Day read from a script, it is not unreasonable that his statement looked prepared. Furthermore, if any member wishes to read from notes at a future meeting, they should so state it at the time.

Mr. Freeman stated that Glenn Clark, Building Inspector and long time friend of the board applied for a variance to construct a tower on his property. This board did not vote in his favor. He said that he takes offense to Mr. Riley's statement.

Mr. Riley replied that given the facts presented, he felt it was clear the applicants were entitled to what they were asking for.

Mr. Freeman reiterated that this board was not "on the take".

Mr. Riley continued to explain that at the last meeting, Mr. Marden had misrepresented what he had previously represented to the Planning Board and that Mr. Marden knows it. He (Riley) stated that he had a hard time with that— he didn't agree with the way Mr. Marden represented himself. He further stated that he is not accusing the board of being "on the take". He said that Mr. Freeman was not present at the Planning Board meetings thus he did not witness Mr. Marden's argument to the Planning Board v. his argument to the ZBA. He (Marden) contradicted his previous testimony yet he was still able to obtain a favorable vote.

Mr. Freeman stated that he read the Planning Board minutes – the written record. He said that he has known the ZBA to make decisions not in favor of board friends. Again, he stated that he didn't vote in favor of the Building Inspector's case and that he is offended by the implication.

Mr. Rowell stated that this has no bearing on the issue before the board right now, he asked if the meeting could move on.

Mr. Riley reiterated that there was a difference between what was presented to the Planning Board and what was presented to the ZBA.

Mr. Cook stated that he did not see that. He did see errors on both sides, but he did not see any changes between Planning Board and ZBA presentations.

Mr. Andolina surmised that this is why boards have so many members – to get a good cross-reference of positions.

Chairman Daly suggested that the board vote in favor of the request for rehearing based on the prejudged and conflict of interest disqualifications in order to give a sense of a fair hearing. He stated that Mr. Andolina and Mr. Rowell would vote on this matter now and at the rehearing.

MOTION: Mr. Ciardelli motioned to grant the application for rehearing based on the appearance of prejudgment and conflict of interest of members at the previous hearing. Mr. Andolina seconded.

DISCUSSION: Mr. Ciardelli stated that there are some gray areas here. This is a muddy case and everything needs to get on the table. If a rehearing was not granted it would appear the allegations of prejudgment and conflict of interest were true.

Mr. Andolina affirmed that granting a rehearing would be a good faith effort to clear the air.

Chairman Daly stated that the issue here is not whether Mr. Cook was influenced by his ownership of light industrial property, but the mere fact of his ownership is grounds for disqualification. He then called the vote.

The motion carried 4-0.

Having granted the rehearing, Chairman Daly instructed the board to consider a date for it to be held. He noted that another ZBA application has been submitted by Debbie Feather that must be heard by the 15th of August. Members agreed on hearing both matters on Thursday, August 12th at the Town Hall, with the Feather application to be scheduled for 7:30 PM and the Carbone rehearing at 7:45 PM.

OTHER BUSINESS

Rules and Procedure: Chairman Daly noted that this is the second of two readings necessary to amend the board's Rules and Procedures. He asked if members had any comments or recommendations for further amendments. The rules are amended as needed, usually once a year. He explained that two readings are necessary before the board can adopt any changes. The proposed changes, discussed in length at the previous meeting, include adding a disqualification paragraph (to conform to the statutes) and adding a 30-

day time frame for the submission of appeals. He stated that the board would vote on adopting these changes at the August 12th meeting.

Minutes: The board reviewed the minutes dated June 24, 1999 and without any objections approved them for the record.

With no further business the meeting adjourned at 8:10 PM.

Respectfully submitted,

Catherine Belcher

Minutes completed and on file July 23, 1999.

approved 8/12/99.