

TIVERTON ZONING BOARD OF REVIEW
SPECIAL MEETING
Planning Board of Appeals
May 13, 2014
7:00 p.m.

The following Special Meeting of the Tiverton Zoning Board of Review was conducted on Tuesday, May 13, 2014 at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Lise Gescheidt, Susan Krumholz, Dick Taylor, David Collins, Jay Jackson and Wendy Taylor-Humphrey.

Also present were: Mark Hadden, Town Solicitor and Sally Ferreira, Court Reporter.

1. The Continued Hearing on the Appeal of Eagleville Road Realty, LLC/Pleasant Sales and Construction, Inc. d/b/a Site Ready Materials Recycling Company from the decision of the Planning Board dated April 2, 2013 denying their Application and Master Plan Application for the premises located at 322 Eagleville Road, Tiverton, RI, also designated as Plat 205, Lot 101 on the Tiverton Tax Assessor's maps located in an Industrial zoning district. Continued from 11-06-13, 01-23-14, 03-25-14, and 04-22-14.

DECISION:

Chairwoman Ms. Gescheidt opened the meeting and welcomed everyone and acknowledged there were people in the audience. The Chairwoman asked if anyone in the audience would like to be heard before the Board went into executive session since the meeting was still open. No one came forward. Ms. Krumholz made a motion to close the meeting. Mr. Taylor seconded. The vote was unanimous with Ms. Taylor-Humphrey not voting. Voting in favor were: Chairwoman Lise Gescheidt, David Collins, Susan Krumholz, Jay Jackson and Richard Taylor.

The Chairwoman stated she wanted to make sure that everyone on the Board received the draft, proposed decision and had an opportunity to review the minutes of the April 22nd meeting. The members of the Board stated they had.

Mr. Hadden stated that Ms. Gescheidt contacted him and asked him to add certain provisions to Section IV on page five. Mr. Hadden read out loud the addition he made and stated the following: "The applicant failed to provide a traffic mitigation plan, and failed to address dangers posed to pedestrian and children walking to a nearby bus stop; numerous curves in the roadway, as well as numerous changes in grade elevation, and competent and appropriate lay and other testimony from town officials provided evidence sufficient to support the Planning Board's decision."

Ms. Krumholz made a motion to accept the addition to Section IV. There was further discussion among the Board. The Chairwoman stated she would like to add language on page four relative to the discussion about the appellant's claim of surprise that the

Comprehensive Plan could form the basis with the denial of the master plan. The Chairwoman pointing out in the third paragraph, Mr. Brainsky discussed the appellant's allegation of sand bagging and bad faith on the part of the Planning Board and its officers.

The Chairwoman stated she would feel comfortable if the Board added after sand bagging that the Board specifically found that there's no evidence of bad faith or any improper conduct. Mr. Hadden stated he will add that to the final copy. The Chairwoman further stated that on page five the word "error" is missing on the second line so it should read: "there is no clear error or prejudicial procedural error."

The Chairwoman asked for some discussion among the Board regarding the draft decision that's been prepared by Mr. Hadden with the amendments. Ms. Krumholz stated that in her opinion it is very complete and it covers everything that the Board discussed. The Board did not make any further additions or changes or deletions. Ms. Krumholz made a motion to approve the decision once the changes have been made. Mr. Taylor seconded. The vote was unanimous with Ms. Humphrey not voting. Voting in favor were: Chairwoman Lise Gescheidt, David Collins, Susan Krumholz, Jay Jackson and Richard Taylor.

Michael Levinson, attorney for the appellant, introduced himself and stated he would like to put on the record and he knew this was discussed at the last meeting by his partner Attorney Brainsky, that their position was that the public hearing should have been closed at the last meeting after both Attorney Brainsky and Attorney Ruggiero gave their presentation. Mr. Hadden responded he made it very clear to Mr. Brainsky after he suggested that at the last meeting we were not closing the public meeting because that would certainly narrow the period of time within which the Board would be able to get a drafted decision and decide upon it in an appropriate manner and that's why the public hearing is left open and why the Board today accepted any further public information from either party or anyone else who may have wanted to submit something right up to the time the Board would take its vote.

Mr. Hadden further stated this Board has done nothing procedurally improper. Mr. Hadden concluded by saying this Board has acted very honestly and straightforward and worked very hard on this very complex case and there is no procedural error. Mr. Levinson reiterated that he just wants his objection noted.

ADMINISTRATIVE ISSUES:

The Chairwoman entertained a motion to approve the minutes of the last meeting. Mr. Taylor made a motion to adopt the minutes of the April 22nd meeting as amended. Mr. Jackson seconded. The vote was unanimous. Voting in favor were: Chairwoman Lise Gescheidt, David Collins, Susan Krumholz, Jay Jackson, Wendy Taylor-Humphrey and Richard Taylor.

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Ms. Taylor-Hymphrey made a motion to adjourn. Mr. Jackson seconded. The vote was unanimous. Voting in favor were: Chairwoman Lise Gescheidt, David Collins, Susan Krumholz, Jay Jackson, Wendy Taylor-Humphrey and Richard Taylor.

Whereupon the Special Meeting of the Tiverton Zoning Board of Review Planning Board of Appeals meeting was concluded at 7:18 p.m.

ZBR/ssf

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing pages 1 - 4 of minutes in the matter of Planning Board of Appeals meeting at a special meeting of the Zoning Board of Review held on Tuesday, May 13, 2014, are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 6th day of June, 2014.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2017.

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