

MINUTES

Public Hearing on proposed warrant article to increase the membership of the Zoning Board of Appeals from three members to five members.

Thursday, April 24, 2008

Meeting was called to order at 7:05 PM. Members present were: Anthony Gulotta, Margaret Martin, David Smith Sr., Christopher Tomich and Rene Wood.

C. Tomich chaired the meeting. R. Wood took minutes. Sign in sheet attached.

C. Tomich opened the public hearing with brief introductory comments and asked D. Smith, Sr. to read the legal notice of the public hearing into the minutes. After this was done, C. Tomich reviewed the order of the public hearing.

He next noted that no letters had been received. David West said Barbara West, ZBA Chairman, had given a letter for the Planning Board to the Town Clerk earlier in the day and gave a copy of it to C. Tomich. C. Tomich read the letter into the record (attached). The letter was found in the mail and had been over looked, as there was no notation on the envelope to indicate it was for the public hearing. (The board thought it was a ZBA notice of hearing or hearing decision and had not opened it, as the board had not yet reviewed the mail.)

In her letter, B. West said she preferred a three-member board and stated her reasons based on her experiences since 1997. She also reviewed board activities regarding the business for which they have responsibility. (See attached letter.)

Joe Kellogg, Town Administrator indicated that the proposed warrant article was his idea and reviewed his motivation for proposing it. His comments focused primarily on the merits of the Mullen Rule, which the town has adopted for board usage and that it can not be used by three-person boards, as the quorum for this sized board is always three persons. While he went into more detail, a change in board size from three to five-members would allow the Mullen Rule to be utilized as long as four members are present and no member has missed more than one meeting of the hearing.

The second reason he proposed the warrant article was his view of the impact a single person who is dead set against any kind of development can have on a three-person board. Such a person can completely shut down a three-person board, but would not be able to do so on a five-person board, as unanimity of approval is not require. Approval of

a special permit on a five-member board requires four affirmative votes. He commented however that if the proposed warrant makes sense use it, if not don't.

Catherine Miller spoke next and gave two reasons for her support for a five-member board: 1) Becoming a public official in a small town is hard and taxing. A three-member board puts more pressure and strain on its members than a five-member board. 2) Life in general and the questions put before boards are more complex today than they were in the past. She commented that to be on the ZBA, because of its charge and the complexity it sees come before it, requires research and work to understand the issues. For a three-person board where people work full time and volunteer their time, they don't have the time to do all that is needed. With a five-person board, there are two more people to share the workload. She made clear that her comments were not a criticism of the current board rather that she felt three-member boards are not realistic today.

David West, speaking on his own behalf, reviewed the Mullen Rule and the ZBA's history of its use, as guided by Don Schmidt. He made the point that the ZBA is not the final say, that there is the Appeals Court. He commented on J. Kellogg's comment regarding the impact of a "won't approve anything" member on the board. He favors a three-person board and gave his reasons: 1) easier for applicant; 2) harder scheduling a five-person board; 3) Mullen Rule may not work if member misses 2 meetings in a hearing; and 4) problem with alternate member.

R. Wood recapped her view of the Planning Board's very positive experiences using the Mullen Rule during 2007 and that the board had not needed to consider use of the alternate member during this time. C. Tomich reviewed his experiences with the alternate member over his two-years on the board. J. Kellogg reviewed how the ZBA alternate member would be appointed, if this proposed warrant article passed.

D. West recapped some ZBA experiences with the previous Town Administrator and that the three-member ZBA has worked well, in part because of the ease of a three-member quorum. He noted that his research had found 30 MA towns having a 3-member ZBA, including the Town of Amherst.

Eric Carlson commented on C. Miller's points on the issues before boards not getting easier and the extra help that could come with extra members. He indicated he could see merits to both sized boards. He felt a three-person board provided easier communications and making a decision but he could see the advantages of being able to use the Mullen Rule.

C. Miller spoke again and indicated that while she has not had personal experience with a three-member board, she said a slightly larger board better represents more of the town's interests. She reviewed the role of any board being to conduct a fair and impartial hearing and that they represent the interests and viewpoints of the townspeople and the Commonwealth. She talked about boards reflecting the character of the community. She again commented that it is a heavy responsibility.

J. Kellogg spoke once more and recapped his experiences in working with three and with five-member boards. He reviewed that in contrast to the Board of Selectmen, which is basically an administrative board, the ZBA and Planning Boards have adjudicatory responsibilities and on these boards, the job is not to find consensus but it is to hear the case and make decisions. He stated that such a board is under no obligation to give the special permit or variance but it is under an obligation to be fair and courteous and listen and for each person on the board to form his/her own opinion on the merits of the matter before the board. He again reiterated the job is not to build consensus like the Board of Selectmen strive to, but to make decisions.

E. Carlson stated that he felt the ZBA would work with either a three or a five-person membership. He indicated it should be up to the voters.

Julie Hannum, Chair of the Board of Selectmen, stated that she was impartial and reviewed what she described as a small survey of 28 MA Berkshire and nearby communities where it was found 16 had a five-person ZBA, 11 had a three-person ZBA and 1 (Lee) had a nine-person ZBA.

D. West commented on C. Miller's comments and his experiences as a ZBA alternate. He quoted from a March 2008 article about a Northborough resident's comments that on a volunteer board it doesn't cost any more to go from a three to a five-member board, as volunteers are free.

D. West reviewed a vote taken earlier by the ZBA on this proposed warrant, (Peter Rowntree was absent), where 5 of the 6 current ZBA members and alternates voted their opposition to this proposed warrant article. He wasn't sure if that had changed. There were no verbal comments from the ZBA member and other alternate present. Additional comments on Century Acquisition's recent hearing and Don Schmidt were given.

C. Tomich asked if there were additional comments from those in attendance. Hearing none, he asked each board member if they had any comments to make at this time on the proposed warrant article.

T. Gulotta summed his view up succinctly (and succulently) by stating that if he wanted to find the best sausage grinder in town, he'd rather ask 5 people than 3 people. He favors a five-member board and to let the voters decide.

M. Martin stated she can see the pro's and con's of each of the two board sizes, reiterated her earlier statements regarding more viewpoints possible with a 5-member board and said it's up to the voters to decide.

D. Smith, Sr. felt it will work with either sized board membership and favored letting the voters decide.

C. Tomich spoke of his experience during his 2 years on the five-member Planning Board and how the board is five different people. He openly shared how the board has agreed to

agree, disagreed and agreed to disagree and how the board has worked with differences of opinion, including a dissenting vote on a recent special permit decision. He noted that how the board has benefited from having the Mullen Rule available to use and spoke of no issues with the board's alternate member. He questioned what happens to a business applicant if one person doesn't agree to grant and spoke of a recent dissenting vote on this board and the impact that might have had if the Planning Board were a three-person board. He felt the real challenge facing boards was recruiting people to serve on them. He spoke of the Planning Board's rapport, communication and working relationship. He favors a 5-person board and letting the voters decide.

R. Wood said she favored a five-member board and spoke of the value and benefits she has seen come from a five-member Planning Board, including the value of different views in developing conditions to a special permit. She self identified as the dissenting vote C. Tomich had referenced and indicated she never experienced the pressure he spoke of. She spoke of her discomfort imagining how intense the pressure would have been and the conflict she would have had between doing what she felt was right for the town and the neighborhood as an elected official and knowing that her vote would close a business – if the Planning Board were a three-person board. She felt the pressure was lessened considerably with a five-person board.

R. Wood also stated she had told fellow board members and others in town, before this potential warrant articles was sent to the Planning Board, that she was going to apply for a position on the ZBA, as she leaves the Planning Board in May.

She next reviewed her conversation with Kelly Ganagan of the MA AG's Office of Municipal Law, following their receipt of the proposed warrant article. K. Ganagan did not approve of the last sentence of the proposed article and said it needed to mirror MGL c 40A §12. R. Wood passed out a proposed revision to the last sentence. This proposed revision was discussed.

C. Tomich asked if there was any additional input.

D. West reviewed his previous confusion over the terminology of clerk and secretary and the ZBA's experiences in this area with the previous Town Administrator. He questioned whether the language was "may" or "shall" regarding the chairman designation of an associate member. R. Wood reviewed the language of MGL c 40A §12 in the yellow Chapter 40A book, which uses the word "may".

At about 7:50 PM a motion was made by D. smith, Sr. to close the public hearing. The motion was seconded by M. Martin and unanimously approved.

Minutes submitted by Rene Wood