

TOWN OF GILL

M A S S A C H U S E T T S



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SELECTBOARD MEETING MINUTES

December 2, 2013

Minutes of an Executive Session

Present: John Ward, Ann Banash (remote) and Randy Crochier, Selectboard members; Ray Purington, Admin. Assistant and ZBA Member; Suzanne Smiley, Tupper Brown, and Roger Augustine, ZBA Members; Debbie Gleason, ZBA Clerical Assistant; Attorney Donna MacNicol, Town Counsel.

The executive session convened at 5:43 PM in the Administrative Assistant's Office at the Gill Town Hall. Ann Banash stated that no other person is present at her location, and that no other person is able to hear the discussion.

The Selectboard met with the Zoning Board of Appeals (ZBA) and Town Counsel to discuss a November 13, 2013 Notice of Action of an appeal to Franklin Superior Court of the ZBA's decision to grant a Special Permit to the Franklin County Boat Club. The Special Permit decision is dated October 8, 2013, and in it the ZBA allows the Boat Club to construct a pavilion attached to the existing clubhouse. The executive session was held to discuss strategy with respect to litigation of the appeal.

Suzanne Smiley, Chair of the Gill Zoning Board of Appeals (ZBA) briefly summarized the history of the case. In 2010 the ZBA granted a Special Permit allowing the pavilion to be constructed. That Special Permit was appealed to Land Court, which ruled against the ZBA in 2012. In its decision, Land Court noted that while the pavilion could not be allowed by Gill's zoning bylaws as a separate, standalone structure, a Special Permit could be granted if the pavilion was an extension of the clubhouse. The pavilion was constructed in 2010 while the appeal was ongoing.

In 2013, the Boat Club applied for a new Special Permit seeking to construct the pavilion by attaching it to the existing clubhouse by means of an open, covered walkway. After the necessary public hearing, the ZBA granted the Special Permit. The appeal was filed by Attorney Mark Tanner of Bacon & Wilson on behalf of Jay Boutin. Boutin is the son of Diane and Ellery Boutin, whose Oak Street home directly abuts the Boat Club.

Participants indicated that the Town has no vested interest in the outcome of the latest appeal, and wanted to hear from Town Counsel ways that legal costs could be controlled while still minimally defending the Town's interests. ZBA member Tupper Brown, who is an attorney, offered to help out in the legal defense, if that would save some money for the Town.

Attorney MacNicol agreed that the Town has no vested interest in the outcome of the appeal, but felt the Town should not "cave" in the face of an appeal. The Town ought to be willing to defend the decisions of its boards and committees. MacNicol believes there is sufficient case law to support the ZBA's decision, and that the ZBA wrote a solid decision. She does not object to taking a passive role in the case, and letting the Boat Club's attorneys do the lion's share of the defense.

It was discussed whether the Town should pursue discovery in order to find out the strategy behind Boutin's appeal. However, Town Counsel suggested it likely wouldn't be worth the expense, as it is Boutin's attorney who knows the strategy he will employ, and attorneys are not subject to discovery. Brown questioned whether Boutin has "standing" to file an appeal. MacNicol indicated that "standing" is not well defined in zoning law, and that a judge would not be likely to dismiss a case during summary judgment because of it.

Roger Augustine joined the meeting at 6:08 PM.

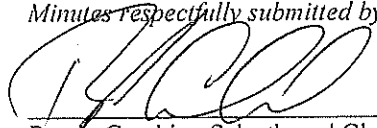
MacNicol agreed that Brown could do some of the legal research for the case. She felt there was no reason against quickly filing for summary judgment, as the case has already been well discussed during the Land Court case. She will work toward filing for summary judgment in January. If the judge suggests mediation, she has no problem saying no, as mediation was tried last time and didn't work.

There was general agreement that the Town needs to defend the case in order to support the ZBA's decision. There is a desire to have the defense conducted efficiently, inexpensively, and effectively.

Brown made a motion, seconded by Purington, for the ZBA to come out of executive session. A roll call vote was taken: Brown - aye; Purington - aye; Augustine - aye; Smiley - aye. Motion carried by unanimous vote.

Crochier made a motion, seconded by Banash, for the Selectboard to come out of executive session. A roll call vote was taken: Crochier - aye; Banash - aye; Ward - aye. Motion carried by unanimous vote. The Selectboard left executive session at 6:35 PM and returned to open session upstairs in the Town Hall.

Minutes respectfully submitted by Ray Purington, Administrative Assistant.



Randy Crochier, Selectboard Clerk

Released 2/11/15