

Unapproved

Minutes of Public Hearing of Zoning Board of Appeals Special Meeting
on December 16, 2008

MEMBERS PRESENT: Rich Carey, Fred Katen, Ed Mead, Nanci Seltzer

ALTERNATES PRESENT: David Hulme

STAFF PRESENT: Emmeline Harrigan, Assistant City Planner; Linda Stock, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:05 p.m.

Attorney Leo Carroll asked for attendance to be called to which the Board members stated their names for the record.

A. CONSIDERATION OF AGENDA ITEMS

1. **12 Francis Street** (Zone R-7.5) Kevin J. Curseaden, Attorney, for Joseph Voll, appellant, for Antoinette Voll, Owner – appeal the decision of the Assistant City Planner's cease and desist order and the City Planner's decision and letter. Map 6, Block 84, Parcel 2. Continuation of public hearing from December 9, 2008.

Ms. Stock, Zoning Enforcement Officer, confirmed that Board members received additional information in the mail. The information included a memo to the Assistant City Attorney from Assistant City Planner where she explains that Mr. Voll was in to see her on the morning of October 27, 2008 with his copy of the cease and desist letter. This proves that he received actual notice by October 27, 2008 and the appeal period would then be over on November 10, 2008. The appeal wasn't filed until November 13, 2008. The appeal of the cease and desist is mute because it was not filed in a timely manner. She repeated her comments from the December 9, 2008 meeting regarding Mr. Sulkis' letter saying it was just that, a letter informing Mr. Voll of an upcoming meeting before the Planning and Zoning Board. It was not an order, not a requirement and not a decision of a Zoning Enforcement Official. Mr. Sulkis wrote that letter on behalf of the Planning and Zoning Board as its executive secretary. As such, she feels Mr. Sulkis' letter is not an appealable order, requirement or decision and the Board does not have jurisdiction and the appeal to the Assistant City Planner's order is untimely.

Leo Carroll, 26 Cherry Street, said he is filling in for Atty. Curseaden who is at the Planning and Zoning meeting across the street, which had been scheduled a month ago. It was well known to Staff when this meeting was rescheduled, that Atty. Curseaden would not be able to appear. He confirmed with Chrmn. Katen that they are holding a meeting and the meeting is a continuation to which Chrmn. Katen answered in the affirmative. He asked when the meeting was continued.

Chrmn. Katen answered it was continued after the last meeting as there was a technicality: the hearing was not closed.

Atty. Carroll disagreed saying the meeting was closed. Ms. Seltzer moved to approve the continuance and it was denied 4-1. Then there was a motion to deny the continuance and at that point, the Board ceased acting on this matter. They left this matter on the agenda and went on to another item. Atty. Curseaden waited in the hall for about 15 minutes and nothing more happened. His position is the Board failed to act on it last week. He added this meeting tonight is improper because it was not noticed according to State Statutes, which requires two publications and this was only published once. Also, under protest, he said the letter issued by Ms. Harrigan on the

24th is not sufficient to toll activity by this Board. The letter by Mr. Sulkis on the 29th spelled out a date and time for a hearing and Mr. Voll could then appeal that order. He explained Mr. Voll built a house on the water. Ms. Harrigan issued a cease and desist for something regarding a dune. They have been working with FEMA and the State DEP to resolve these issues. They believe that they deserve a full and complete hearing on this order. There was no hearing of the Planning and Zoning Board between the 24th and the 29th so how could Mr. Sulkis be acting on behalf of the Zoning Board? He was acting as the City Planner and that is the way the letter is so signed. He stated there are many problems with this meeting. He repeated he felt the meeting was improper, that this was not a continuation as there was no decision on the night of the last meeting. He and Mr. Voll feel that in order to have a meeting, notice requirements of State Statutes must be met. The hearing wasn't held last time and he believed the Board was out of time. If the Board intends this to be a meeting, then he requests that it be continued until he can subpoena Mr. Sulkis and Ms. Cervin to testify as to what transpired between the 24th and the 29th. Since they are at another meeting this evening, this cannot happen. This is a man's home that he has spent a lot of time, effort and expense on. There has been a disagreement as to whether there was a sand dune covered or whether it was not a sand dune. They have a report from 2006 saying that it was not a sand dune. The expert they hired was unable to attend the meeting due to an illness in the family. He felt there was no harm in waiting until next month. It would still be within the 65 days and a full and complete hearing could then be had. He asked Chrmn. Katen if the Board has ruled that the Board is not going to give them a continuance to which Chrmn. Katen said that was correct. He renewed his request for a continuance to January 13, 2008 based on the fact they were not able to prepare for this hearing, notice was defective, the last meeting was not properly continued and the fact that you cannot deny the Board's jurisdiction in this matter.

Chrmn. Katen asked Ms. Stock if the meeting was noticed to which she said it was published once. She added she received the information regarding the publication of the notice from the Assistant City Attorney. She said she would have to check with the Assistant City Attorney because we did exactly what she told us to do. We now have additional information that proves the appeal of Ms. Harrigan's order was untimely. She added Mr. Sulkis signs everything, as the City Planner, everything. However, in the letter, underneath City Planner, it also says, executive secretary to the Planning and Zoning Board. The letter is not an order.

Atty. Carroll said Ms. Harrigan's letter of the 24th is not an order. It didn't contain the necessary information telling Mr. Voll to do anything. The order became effective when Mr. Sulkis issued his October 29th letter. It is signed executive secretary, but also City Planner. He didn't have any authority to sign as the executive secretary since the Board had not met since the 24th. He was signing it as the City Planner to bolster Ms. Harrigan's letter. Mr. Voll appeared at the office and is not disputing he appeared around the 27th. He was informed he could not appeal that order yet because it hadn't been made an order by Mr. Sulkis.

Ms. Stock read the section of Ms. Harrigan's letter where it orders proposed plans be submitted to the office within ten days of the issuance of this order. She added once that word "order" is in the letter, this is an order and that is how we end all our letters when they are orders. Mr. Sulkis' letter doesn't have anything to do with this letter being an order. It already was an order.

Atty Carroll said the order was effective ten days after the letter is written and he has fifteen days to appeal it.

Joseph G. Voll, 17 Colonial Drive, Monroe, said when he was in the office on the 27th, he talked with Emmeline and was specifically told by her and David Sulkis that he couldn't appeal it. The secretary got up and said he could appeal it. He was told by both city planners that he had no right to appeal because it is a decision by the Planning and Zoning Commission. It was misrepresented to him. When he got the letter from David Sulkis on the 31st, he hired a soil scientist that is an expert in this field. He had a casualty loss; the house was frozen and he lost two of his pipes. He got his first variance approval in 2005. By the time he got his P & Z approvals for his CAM, he was a week over the one year time period for the approval and had to reapply for the variance. This second variance request was again approved. The permit process in the Building Dept. is like a nightmare. It has been three years now. All he did was dig out his foundation and his footings. When an excavator digs, he takes sand from one place and puts it in a pile in another place. That sand pile stood there for almost eleven months because of the approval/permit process. That sand on the top is the same sand that is on the bottom. All this started from a harsh letter from DEP informing Ms. Harrigan that there was potentially a sand dune under the house and under the deck that wasn't stated.

Chrmn. Katen informed Mr. Voll that the Board is unable to do anything about it to which Mr. Voll and Atty. Carroll said yes, the Board could do something.

Atty. Carroll stated this Board is empowered to overrule the City Planner. He read Mr. Sulkis' letter into the record. He said the City Planner wants to revoke the permit. That is what the Board is here for, to stop him from doing that.

Chrmn. Katen said Mr. Sulkis' letter is a letter and not an order and he spoke with the City Attorney about it. The City Attorney has advised the Board that it was not an order. He understands Mr. Voll's excitement, but they can't change the law. The Board can only deal with the order and the letter. Whatever happens, you do have the right of appeal, you can go to Court.

Mr. Voll said if he goes to court it could take years. Even the State agreed and sent a letter saying that there is nothing wrong with the lot and they are working it out with FEMA.

Atty. Carroll read Sec. 9.2 of the Zoning Regulations and claimed the ZBA is not deciding the facts. He and his client are saying the City Planner and the Assistant City Planner were in error when they issued their orders. We appealed Sec. 9.2.1 of the Regulations and this Board has not ruled on this yet. You really do have a lot more authority than you give yourselves credit for. You don't have to listen to what the City Attorney says; she is not infallible.

Chrmn. Katen said this Board has no jurisdiction over the law. There is no way he is going to overturn the City Attorney.

Ms. Seltzer asked for the definitive issue dates of the letters/orders to which Ms. Stock answered saying Ms. Harrigan issued her order on 10/24/08; Mr. Voll had the order by 10/27/08; the deadline to appeal was 11/10/08; the application for the appeal was filed on 11/13/08; Mr. Sulkis' letter of 10/29/08 was not a decision, requirement or order, just an informational letter informing him of a public hearing on December 2, 2008.

Atty. Carroll disagreed saying it was an order that they were going to revoke the zoning permit if Mr. Voll didn't do what they said. They have appealed that order in a timely manner.

Ms. Stock disagreed.

Chrmn. Katen noted that is why they asked for an opinion from the City Attorney and this is what they were told. The Board does not have the jurisdiction to change that.

Mr. Voll told the Board to ask the Assistant City Planner if she told him he couldn't appeal. Both she and Mr. Sulkis gave him false information or misled him. If you are told by a professional planner that you have no appeal, what would you think. Mr. Sulkis told him it has to go before the Planning and Zoning Board. Then he sent me the letter to confirm his statement.

Atty. Carroll stated if the Board doesn't think they have the authority to review Mr. Sulkis' threat to revoke his own permit, then the Board has misread the State Statutes on the authority of the Zoning Board of Appeals.

Chrmn. Katen said it is a letter and that is why it is not appealable because it is a letter. If it were an order it would be appealable.

Atty. Carroll noted Ms. Harrigan said Mr. Voll had ten days to submit something to the Zoning Board yet he had 15 days to appeal. How can she order him to do something before the fifteen days are up? This is a due process issue. We are asking this Board to exercise the authority vested in them by the State Statutes.

Ms. Harrigan said there is no new information, so if the Board feels Atty. Carroll has provided the information they feel is necessary, they can close the hearing and vote on it. It has gone back and forth and a lot of the same things have been said.

Atty. Carroll objected saying Ms. Harrigan is not an authority; she is a witness.

Ms. Stock said all the information provided by Atty. Carroll and Mr. Voll belongs in front of the Planning and Zoning Board not the Zoning Board of Appeals.

Mr. Carey asked if the applicant would have to appear before the Planning and Zoning Board and hear this information and decide to which Ms. Stock answered they do have to go before the Planning and Zoning Board and it is up to them.

Mr. Carey then said the applicant is not being denied due process.

Chrmn. Katen said it is not the sand dune, it is the letter and the days and this Board cannot change that.

Ms. Seltzer stated it was said that Mr. Voll came in and met Ms. Harrigan and was told it was not something that was up for discussion. At that point he felt he couldn't fight this battle. Then he received the letter from Mr. Sulkis, which started everything again.

Ms. Harrigan said that unfortunately any statement she makes is going to be he said, she said.

Chrmn. Katen interrupted her to say he wants to talk only about the jurisdiction of the Zoning Board of Appeals. He added Atty. Carroll and Mr. Voll can appear before the Planning and Zoning Board.

Atty. Carroll stated Chrmn. Katen underestimates the power of this Board. They have the power to overrule an erroneous decision by the City Planner and it is a significant obligation this Board took an oath to uphold. By acceding to the desire of the City Planner...

Chrmn. Katen again interrupted Atty. Carroll saying it was not an order or a decision and that is what we are basing our decision on.

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Chrmn. Katen closed the hearing.

Mr. Mead made a motion to deny the appeal of Joseph Voll, on the basis that the Board lacks jurisdiction because the appeal of the Assistant City Planner's order was not timely filed, and because the letter from David Sulkis, Executive Secretary of the Planning and Zoning Board is not an order, requirement or decision of a zoning enforcement official. Mr. Carey seconded the motion.

DISCUSSION:

Chrmn. Katen said he understands the situation. They are here because of a technicality and jurisdiction. This Board cannot change the law. The motion carried 4-1 with Messrs. Carey, Mead, Hulme and Katen voting in favor and Ms. Seltzer voting against.

The meeting was adjourned at 7:52 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA