

**BOARD OF APPEALS
SPECIAL MEETING MINUTES
SEMINAR
FEBRUARY 24, 2010**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Donna Lambert, Clerk
Christopher J. Graham
Kimberley A. Fernandes, Alternate

Absent: Kendal Tripp
William Wyatt

Vice Chairman Coutinho called the Zoning Board of Appeals meeting to order at 6:00 P.M. in the Westport Town Hall Annex Meeting, 856 Main Road, Westport, MA.

*Note: Clayton Harrison arrived at 6:20 PM.

Executive Session – 6:00 PM

Motion made by Ms. Lambert to enter into Executive Session pursuant to Massachusetts General Laws Chapter 39, Section 23b to discuss strategy related to pending litigation – the Deutsche Donn Appeal. Second by Ms. Fernandes. The Board voted unanimously in favor.

Roll Call Vote: Ms. Lambert-aye. Ms. Fernandes-aye. Mr. Coutinho-aye. Mr. Graham-aye.

Mr. Coutinho announced that the Board would return to Open Session following the Executive Session.

Open Session – 6:28 PM

Attorney Ilana Quirk, Kopelman & Paige gave a seminar entitled “Land Use Permitting”. Attending for their respective departments were:

Ralph Souza – Building Inspector/Zoning Enforcement Officer
Connie Brawder and Lucy Tabit – Planning Board
Susan Maynard – Highway Department
Mary Ellen Gomes – Council on Aging
Sharon Potter and Kathy DeNadal – Board of Assessors
Bill Burns, Claude Ledoux and Richard Spirlet – Conservation Commission

Attorney Quirk reviewed the following items:

1. How to write a defensible decision.
2. How to avoid litigation.
3. How to communicate with Town Counsel, the Town Administrator and the Board of Selectmen.
4. What to do with a complaint when it is served.

5. Open Meeting Law requirements.
6. Conflict of Interest / Bias.
7. Preparation of Minutes.
8. How to handle Public Record Requests.
9. What should be included in a Legal Notice.

Attorney Quirk discussed each item at length and made recommendations and answered questions when asked. Some of the notes included a caution as to not advertise relief that is not being requested; always check the tax arrearages (anything more than 12 months), this is a mechanism for the Town to get outstanding taxes paid and it can also be used when permits are applied for. The Town can legally hold the permit until the taxes are brought up to date. Another suggestion is that no one give out legal advice; the employee can speak to the applicant about what they want and give general guidance but never give legal advice.

Attorney Quirk stated that once an application is accepted, you must go forward with it; it must be advertised and at the same time, in writing alert the Tax Collector for any outstanding taxes, in most cases, the Tax Collector can make an acceptable payment arrangement with the applicant; advertisement is made in a local paper or general circulation. In the notice, identify specific time, date and location. After the hearing, the Board should always vote to close the hearing, if they feel they have enough information to base a decision upon. Once the hearing is closed, no further information or comment can be taken. The Board should then hold their own discussion and review all the material and then make findings before making their final decision. In writing up decisions, be sure to be specific and add any attachments because the more information included makes it easier down the road to reference. Always reference all plans and use the information from the plans in your decision. Some useful information obtained from plans is the initial date of preparation and the final revision date. One recommendation is that all plans be recorded at the Registry of Deeds. Make the applicant aware of the expiration date for recording; Special Permits is 2 years and Variances are 1 year. When the applicant applies at the Building Department, that department should always check to see if a variance or special permit has been recorded. Good wording that should be added to decisions is "Any relief not granted expressly hereunder is hereby denied".

Attorney Quirk then moved on to the Conflict of Interest Law. There is a form that can be used, to file with the Ethics Commission to verify if a conflict exists and any direct questions can save money on the legal budget.

Attorney Quirk mentioned the "Mullin Rule" and questioned if anyone knew whether the Town Meeting had adopted this general law. Attorney Quirk stated this would be a useful tool and the Town should look into it. The Mullin Rule states that one member of a board hearing a petition is allowed to miss a meeting, so long as there are recordings of the meeting that the board member can review before continuing to hear the same petition.

Attorney Quirk stated that Legal Opinion can be held but her recommendation is that they should be made public as soon as possible especially with the applicant or their attorney.

Also, in regards to legal fees, an applicant can make a gift donation if the application is a costly one for the Town.

Attorney Quirk stated that in the future, Kopelman & Paige will continue to hold these free seminars and would welcome suggestions from any department, board or committee as to what topic they would like to have discussed. These types of seminars help employees understand the basics and usually eliminate some of the unanswered questions they are faced with each day.

Attorney Quirk remained after the seminar was over to answer questions from individuals that was not covered in the seminar.

Motion made by Ms. Fernandes to close the meeting of the Zoning Board of Appeals at 8:15 PM. Second by Ms. Lambert. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
To the Zoning Board of Appeals

APPROVED: 
Donna Lambert, Clerk