

# ***Town of Bourne Zoning Board of Appeals***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

June 19, 2019

### **I. Call to order**

Chair Amy Kullar called to order the meeting of the Zoning Board of Appeals at 7:10 PM on June 19, 2019. Ms. Kullar explained under M.G.L., Section 40A, all appeals must be filed within 20 days of the filing of the decision with the Town Clerk.

Ms. Kullar announced the meeting was being recorded and asked if anyone in the audience was recording the meeting to please acknowledge such to the board. She noted Carol Mitchell and Michael Rausch were recording the meeting.

**Members Present:** Amy Kullar, John O'Brien, Wade Keene, Tim Sawyer, Harold Kalick and Associate Members, Kat Brennan, Deb Bryant and Chris Pine.

**Members Excused:** N/A

Also Present: Roger Laporte (7:10), Carol Mitchell, Michael Rausch, Paul Gately, Robert Buckley, Randy Collette, Patricia Duggan, John Duggan, Zachary Basinski, Kristofer Ketch, Megan Ketch, Diane Tillotson, Sam Lorusso, Laura Lorusso Peterson, Sam Lorusso Jr., Paul Lorusso, Michelle Reynolds, Lewis Perry, Debbie Forand, David Ingersoll, Jim Mulvey, Maureen Bradley and Elise Drew.

*Deb Bryant will be writing the Decisions.*

### **II. Agenda Items**

**1. Approval of Minutes** – Ms. Kullar entertained a motion to approve the minutes of the June 5, 2019 meeting. **Mr. O'Brien moved, Mr. Keene seconded to approve the minutes of the June 5, 2019 meeting.** With no discussion, the motion carried. 5-0-0.

*Sitting on the hearings; Amy Kullar, Tim Sawyer, Wade Keene, John O'Brien and Harold Kalick.*

**2. 665 Scenic Hwy, Second Request for Extension of Time for Completion of Restoration Agreement Decision #04-23** Requesting an extension of time under M.G.L., Ch. 40A, Sec. 9, and per Section 1330 of the Bourne Zoning Bylaw on the Board of Appeals Petition No. 04-23 and Agreement for judgment in Land Court Miscellaneous

No. 292080 for an additional six-months to complete restoration work from June 30, 2019 thru December 31, 2019

*Materials – Abutters List, Public Hearing Notice, Final Decision Petition Number Petition number 04-23 and Aerial Photographs.*

Diane Tillotson, the attorney representing Cape Cod Aggregates, addressed the board and introduced the members of the Lorusso family who were in attendance. She explained that although good progress has been made with restoring the site, an extension is needed because the progress has been hindered for reasons beyond their control. She referred to an aerial photo taken within the last two weeks to describe the progress that's been made to date. Ms. Tillotson mentioned that although there are piles of finished product that needs to be removed from the site; the processing plant will cease operating on June 30, 2019. She stated every effort will be made to complete the restoration by December 31, 2019, but she cannot guarantee additional time won't be needed.

Board Comment – Mr. Keene asked what type of seed is being used to revegetate the site. Ms. Tillotson stated it's hydroseed comprised of native grasses and wildflowers.

Ms. Brennan commented that during her site visit that day, she observed two trucks hauling material from the site. She expressed frustration that product is still being hauled and the restoration won't be complete by the deadline. A discussion ensued.

Ms. Brennan opened a brief discussion regarding impacts on the abutters and the possibility of the town having to cover the cost of the restoration should the property owner fail to abide by the restoration agreement. Ms. Kullar would prefer that the property owner complete the restoration because the current bond amount of \$250,000 will not cover the exorbitant restoration cost. Ms. Tillotson stated her client is committed to restoring the site so that it is reusable in the future for a purpose yet to be determined.

Mr. O'Brien asked what the next step will be if the board denies the extension request. Ms. Tillotson stated her client is willing to restore the site and agreed with Ms. Kullar that the current bond amount will not cover the costs associated with the restoration. Also, if the town assumes responsibility of the restoration, the bidding process and eventual hiring of a contractor will be not only time consuming but costly. Ms. Brennan reiterated her frustration that material continues to be processed for financial gain. She suggested the town sell the finished product as a means of paying for the restoration if the applicant fails to do so. Mr. Ingersoll expressed his opposition to Ms. Brennan's suggestion that the town sell the finished product. A discussion ensued.

Mr. Lorusso briefly discussed the cost associated with the relocation of the road used to transport product.

Mr. Kalick referred to the previous decision which required the restoration be completed by June 30, 2019. Ms. Kullar discussed the board's frustration that the restoration will not be finished by the deadline. She asked that the applicant provide an honest timeline for completion. Ms. Tillotson explained that although there is still finished material to be removed from the site, the restoration process has been ongoing since just after 2006.

Mr. Lorusso discussed the amount of time he thinks will be needed to dismantle the processing plant and to remove the piles of finished product. Mr. Kalick asked how long it will take to remove the remaining finished product from the site. Mr. Lorusso estimated it will take at least a year.

Public Comment – Abutter, David Ingersoll, addressed the members. He discussed the good deeds the Lorusso family has done for the community. He feels the applicant should be given additional time to restore the site. That will prevent the taxpayers of bearing the financial burden to do it.

Lewis Perry expressed his frustration with the amount of dust generated from the site and with the number of continuances the applicant has received.

Ms. Kullar asked Mr. Perry if he has seen the site recently and whether he observed any changes to the landscape. Mr. Perry stated he has seen the site and acknowledged that there have been improvements made to the site's landscape.

Mr. Perry's daughter, Debbie Forand, addressed the members and discussed damage caused to her parent's personal belongings because of the dust generated at the site. She asked that the board monitor the progress more closely and require monthly status reports be given. Mr. O'Brien informed Ms. Forand that the board is made up of volunteers and once a decision has been made, it is not the responsibility of the members to enforce the decision.

A brief discussion transpired regarding the amount of time it will take to move the finished product and complete the restoration. Mr. Ingersoll offered to allow the board to set up a camera on his property to monitor the restoration progress.

Laura Peterson discussed the progress that's been made during the past six months. She then requested a one-year extension vs. a six-month extension that was requested with the filing. Mr. Tillotson agreed and suggested conditioning the decision requiring a representative to appear before the board to provide a status report regularly.

Mr. Kalick opened a brief discussion regarding the estimated cost of the restoration, increasing the bond to one million dollars and issuing a deadline to close the processing

plant. Mr. Pine also suggested issuing a deadline to remove the finished product. A discussion ensued.

At the request of Mr. Kalick, Mr. Lorusso provided a timeline for removing the processing plant and the finished product.

Ms. Kullar entertained a motion to close the public hearing. **Mr. Keene moved, Mr. Kalick seconded to close the public hearing.** The motion carried. 5-0-0.

Ms. Kullar entertained a motion. **Mr. Kalick moved, Mr. Sawyer seconded to grant an extension to complete the restoration project by June 30, 2020 with the following stipulations; the bond shall be increased to 1.5 million dollars, a representative from Cape Cod Aggregates is required to appear before the board on the first Wednesday of every month to provide updates on the progress of the restoration, virtually within three months, the processing plant will be dismantled and removed from the site, within approximately six months, the finished product will be removed from the site. Revegetation of the site shall begin on July 1, 2019 and continue until June 30, 2020.** With no discussion, the motion carried. 5-0-0.

**3. 10 Samoset Road** – Appeal Building Inspector’s Decision **A09-2019** – Request to appeal the Building Inspector’s decision under M.G.L., Ch. 40A, Sec. 8; the Bourne Zoning Bylaw Sections 1210 and 2400. The applicant is appealing the Building Inspector’s decision on the buildability of a non-conforming lot.

**(Continued from June 5, 2019)**

*Materials – Notice of Appeal, Letter from Elise Drew, 2019 Assessor’s Data Card, (2) Letters from Building Inspector, (2) Letters from Ethan Schaff, Affidavit of Ownership, Assessor Property Sheet and Google Directions.*

Ms. Kullar announced she emailed town counsel on June 6, 2019, to obtain his opinion as to whether the matter can be heard by the board since the allowable time to appeal the decision has expired. Attorney Troy did not respond. In her opinion, the statute of limitations has tolled on this matter. She asked if anyone would like to present new evidence on the matter.

Elise Drew, the appellant, addressed to members. She reiterated that two out of four abutters did not receive notification regarding the change in the lot’s buildability status. Ms. Kullar reminded the appellant that in this instance, notification wasn’t required; it was courtesy. A brief discussion transpired regarding the Affidavit of Ownership that was submitted. Ms. Drew feels there are discrepancies regarding land ownership. Mr. Collette disagreed. A discussion ensued.

Ms. Kullar reiterated her position that the matter cannot be heard by the board due to the statute of limitations on the Notice. She explained that Ms. Drew should have filed the appeal within thirty days of the decision being made. Ms. Drew interjected stating it was town counsel who encouraged her to pursue the matter. After a brief discussion regarding the beneficial interests of the trust and whether the lots merged, Ms. Kullar explained she does not have enough information to make an informed decision.

Board Comment – Mr. O’Brien questioned whether the matter should even be heard. Ms. Kullar does not feel the matter can be heard.

Public Comment – Maureen Bradley questioned how the lot which was deemed unbuildable but is now considered buildable.

John Duggan, the property owner, discussed his purchase of the lot. He questioned why the board was allowing testimony from Ms. Drew since the thirty day appeal time has passed. He also mentioned that a signed return receipt card from the post office shows someone at Ms. Drew’s address signed for the letter that was sent to the abutters even though notification wasn’t required. Ms. Kullar explained that the appellant is not being represented by an attorney so she wanted to give her the opportunity to speak.

Mr. Kalick opened a brief discussion regarding the appeal process.

Mr. O’Brien agreed with Ms. Kullar’s opinion that the matter should not be heard by the board. Mr. Sawyer agreed.

Ms. Kullar entertained a motion to close the public hearing. **Mr. O’Brien moved, Mr. Sawyer seconded to close the public hearing.** The motion carried. 5-0-0.

Ms. Kullar entertained a motion. **Mr. O’Brien moved, Mr. Sawyer seconded to uphold the building inspector’s decision on A09-2019.** After a brief discussion, the motion carried. 4-1-0. Mr. Kalick opposed.

Ms. Kullar explained the appeal process to the audience.

**Old Business** – Ms. Kullar announced she received notification from Town Counsel that the board’s decision to prohibit weddings at the Wing’s Neck Lighthouse has been upheld in the Superior Court and there’s an injunction against holding any weddings there in the future.

**New Business** – Ms. Kullar announced it was Mr. Sawyer’s last meeting. She thanked him for his exemplary service. Ms. Kullar stated the selectmen have opted to elevate an associate member to fill the vacant position and it will most likely be Ms. Brennan.

**Public Comment** – None.

**III. Adjournment –**

**Mr. O’Brien moved, Mr. Kalick seconded to adjourn the meeting.** With no discussion, the motion carried 5-0-0. The meeting adjourned at 7:45 PM.

Minutes Submitted by: Carol Mitchell