

**Zoning Board of Appeals
Minutes of October 19, 2011
Bourne Town Hall, Lower Conference Room
Buzzards Bay MA 02532**

Lee Berger, Chairman
John Priestley, Jr., Vice Chairman
Judith Riordan, Clerk (excused)
Timothy Sawyer
Wade Keene
John O'Brien (excused)
Harold Kalick
Thomas Armstrong – new member

Meeting called to order

7:30 pm

Approval of minutes

Wade MOVED and SECONDED by Sawyer to table of minutes of 10/5/11 to the next meeting.
UNANIMOUS VOTE.

7:35 pm - #34-11 Special Permit – Change of Use

Margaret Every/Andrew Soucie. Location: 32 Bournedale Road, Buzzards Bay.
32 Bournedale Road, Buzzards Bay 02532. Map: 10, Parcel: 23 in an R-40 zoning district.
Applicant seeks a Special Permit for a kennel to own and keep four (4) dogs on the property, and to build a kennel structure in accordance with the plans submitted.

Sitting on the Board: Lee Berger, John Priestley, Tim Sawyer, Wade Keene, Harold Kalick.
Also present: new member Tom Armstrong.

Correct spelling of applicant's last name is "Soucie" not "Soulle" as printed in the legal ads.

The cages currently on the property will remain where they currently are. In addition, new cages will be built attached to the back of the garage to enable the dogs to stay in the garage in inclement weather. At night the dogs are brought inside the home. Applicants are not planning on breeding or boarding any dogs. Rather, they train the dogs to compete in obedience and other competitions. However, three of the dogs are "retired." Two dogs are spade and neutered; one is scheduled to be fixed. The dogs are all German Shepards, including the fourth dog they plan to purchase.

Chairman Berger asked if the one neighbor had any objections. The applicant stated the neighbor is his uncle and he likes the dogs. No one appeared in opposition to the petition.

Priestley MOVED and SECONDED by Sawyer to close public hearing for Special Permit #34-11. VOTE 5-0.

Priestley MOVED and SECONDED by Sawyer to approve Special Permit for #34-11 kennel license, limited to four (4) dogs, kennel and structure built according to plans, with the following conditions: no boarding or breeding of dogs, and subject to review at any time if there are any complaints of noise or other disturbance. VOTE 5-0.

New business

Freitas - #30-11 Special Permit

Signing of Corrected Decision for #30-11 at meeting. He first decision signed and filed with the Town Clerk had two different address of the property within the decision. A corrected decision needs to be signed and filed with the Town Clerk. While this is a clerical matter, since the decision was already filed with the Town Clerk, and it would be very unusual to have two decisions in the Town Clerk's office, Chm. Berger thought it was best to obtain a vote of the Board to authorize him to sign a "Corrected" decision, and to have that vote reflected in the minutes of the meeting.

Priestley MOVED and SECONDED by Sawyer to authorize Chm. Berger to sign the Corrected Final Decision, dated 10/19/11 for Special Permit #30-11. VOTE 6-0.

Hideaway Village Condo Association - Ron Horne, General Manager

Discussion with representative from Hideaway Village Condo Association on protocol of notification of abutters in Hideaway Village.

At the last meeting a question had been raised as to whether the immediate neighbors of a Hideaway Village resident had been notified of our hearing, and the applicant didn't know. The only notice sent by the Town was to the Hideaway Village Association. Chairman Berger was concerned that while technically, the law only required the Town to notify abutters and abutters who owned lots, and all of Hideaway Village was considered "one lot" so only the Association and abutters and abutters to abutters outside of the "one lot" known as Hideaway Village were required by law to be notified, the immediate neighbors affected should receive notice. Chm. Berger argued that due process requires notice to those most affected of the time and place of the board's hearing, not only so they could have a voice at the Board's hearing, but also so that they would know that the board took some action from which they may have the right of appeal to the Courts.

Mr. Horne briefly described process. A unit owner applies to the Board of Directors of the condominium association (created under Chapter 183) for approval of a proposed improvement to his property (which is really an area of exclusive use). If it is something Mr. Horne, as General Manager, cannot approve by himself (such as new windows or doors), Mr.

Horn sends the application to the Board of Directors with a plot plan and drawings. The Board notifies by registered mail everyone who may be affected by the proposal, holds a hearing at which the applicant may, if he wishes, be represented by an attorney, and renders a decision whether the application poses a positive or negative impact to abutters. If they determine that the proposal poses a negative impact, they deny permission to the applicant. Otherwise, they grant permission but notify the applicant that he has to obtain a building permit, which many times requires a special permit from the Board of Appeals because Hideaway Village is a non-conforming lot.

Hideaway Village has worked well with the Building Inspector. All proposed decks and sheds need to go to the Board of Directors. Mr. Laporte explained Mr. Horne's approval process is similar to his at Town Hall.

Chairman Berger asked whether the applicant or the immediate neighbors could appeal the decision of the Board of Directors. Mr. Horne said he would get Chairman Berger a copy of the condo documents. Mr. Mulvey suggested that any appeal rights a resident would have would be limited, since the resident signed condo documents which probably limited the scope of appeal to the courts.

Mr. Horne said everyone has the opportunity to be heard. He has been General Manager for almost a year and has not had one abutter appeal the Board's decision.

Chm. Berger said neighbors should have a right to notification of the hearing before the Board of Appeals, either from the Board of Appeals or from the Condominium Association, and have a right to come and voice their opinion.

Mr. Horne stated that the neighbors were notified by the legal ad in the newspaper for two consecutive weeks prior to the Board's hearing.

Mr. Laporte clarified by saying Hideaway Village operates as being one unit. Officers have been elected, etc. He explained how years ago the Building Inspector sat down with Hideaway Village Condominium Association and came to this system which has been working out.

Chm. Berger asked that if there is anything in the Condo documents stating that the neighbors can appeal the decisions of the Board of Directors to the Courts. Mr. Horne will send copy of the condo association documents for clarification. Chm. Berger is just concerned that the immediate neighbors most affected by the proposal not be deprived of due process – the right to be heard by the Board of Appeals and by the Courts – by the failure of adequate notice.

Board member Tom Armstrong serves on the Hideaway Village Association Board of Directors. The Board of directors is very sympathetic to the neighbors' concerns, and don't run into many cases where the Directors approve a project if an abutter is negatively impacted.

Mr. Horne said the HAVCA and Board of Directors look at all perspectives of an application. Applicants have the opportunity to bring in their attorney to present the applicant's case. Ultimately the Board of Directors is trying to enhance the community as a whole. The Board of Directors is voted in by the unit owners.

Chm. Berger asked, how can we be sure that a person affected by a proposal knows about a hearing before the ZBA meeting?

Mr. Armstrong suggested the hearing notice can be put on the Condo Association's website.

Mr. Mulvey asked what is the HAVCA definition of an abutter. Mr. Horne said an abutter is anyone surrounding the unit that may be affected by the proposal.

Mr. Horne said notification on the website calendar would be something the HAVCA was willing to do. Chm. Berger said not all people have a computer. Mr. Horne said the condo association hired a company who tracks how many of the 268 units go on the website, although they do not yet know. Mr. Horne agreed that not all members use the website. Chm. Berger stated his concern that the fact that most of the residents are summer residents only, notification by mail may to winter addresses may be more important. Mr. Horne stated that out of the 268 units, all but 75-80 are summer residents. Summer residents are notified by certified mail at their permanent addresses of the date and place of the board of directors' meetings.

Chm. Berger said the Board's issues under the zoning bylaws for the issuance of special permits were not necessarily the same as the condominium association's concerns. The Board of Appeals should not be delegating its responsibility to a private organization. The Board of Directors may approve something that the fire department and the ZBA believe to be a safety concern.

Mr. Laporte said he believes Chm. Berger is concerned with an issue that has never been a problem. Legally, all that is required is being done – giving notices only to the Association and to the abutters outside of Hideaway Village.

Mr. Armstrong said he will propose that the Board of Directors write a policy to notify abutters of the Board of Appeals hearing dates. He will bring it to the next meeting. Chairman Berger thought that was a very good idea, but noted that the Board of Appeals may tinker with the policy before approving it.

John Priestley said that the HAVCA should warrant to the ZBA that any interested parties have been notified in writing that the Board of Directors approved the proposal and that they have the right to attend a hearing before the Board of Appeals on the relevant date.

Mr. Mulvey said that HAVCA should develop a form for the ZBA saying it has approved the proposal and notified the abutters. Mr. Horne said the HAVCA already has such a document,

which is part of the construction application. Mr. Horne will provide a copy of the construction application.

Board of Directors meeting is next Friday. Mr. Armstrong will put this issue on their agenda.

Priestley MOVED and SECONDED by Sawyer continue discussion under New Business on 11/2/11. VOTE 5-0.

Approved minutes on town website

Discussion on Town Meeting approving that all minutes put on the Town website for five years. Chm. Berger said it was brought to his attention that at last May's Town Meeting, the Town approved a warrant article requiring that minutes be put on the website. He called the Town Clerk's office and was told by Wendy that while this Article was approved by Town meeting, it had not yet been approved by the Attorney General's office.

Chm. Berger thought it was a good idea to put our minutes on the Town's website, he wanted the Board's input before doing so, since it was not yet required. The consensus of the Board is to put on the website.

It was agreed that tonight's meeting minutes would be the first to go up on the website.

Other business

Secretary to email Mr. Armstrong the Decision forms.

Public Comment

None.

Adjournment

Priestly MOVED and SECONDED by Kalick to adjourn. Meeting adjourned at 8:50 pm. UNANIMOUS VOTE.

Respectfully submitted,
Lisa Groezinger, sec.