

Appeal Board Meeting
January 19, 2017

Members present: Bob Temple, Cathy Blake, Lowell Freiman, Charlotte Henderson, James Kearney, Dorothy Sainio Council: Peter Drum Public: Wesley Daniel, Robert Marks, Nancy Linscott, Deborah Bocko, Patrick Mellor, Henry Sainio, Suzanne White

Lowell Freiman called the meeting to order with roll call at 7:02PM.

Dorothy Sainio moved to accept the 12/15/16 summary as written, Charlotte Henderson seconded, all in favor.

Dorothy Sainio moved to reconsider the ruling on the applicability of the consent decree, Cathy Blake seconded, all in favor.

Lowell Freiman moved the meeting to discuss the reconsideration.

Robert Marks stated his arguments are connected to the consent decree with different arguments that were made before. The Appeals Board's earlier decisions decided the Planning Board was correct in disregarding the consent decree because they couldn't enforce it. Robert Marks is asking the Appeals Board to enforce the mining ordinance which was not enforced by the Planning Board. There are two instances of non-enforcement 1) Article V, § 2.B which requires the applicant to provide a certificate from an attorney as to the unencumbered "right title or interest" in applicants' property in question. There was no certificate. The application, document from Plymouth Engineering, clearly restates the requirements. Their response – applicant statement "see attached deed". There were two deeds attached but no certificate from a title attorney that stated that there was an unencumbered right title and interest to the property. 2) There was evidence in the record that the applicant had not met the conditions of the consent decree. That in and of itself, the failure to meet the conditions of the consent decree encumbered their right title and interest as much as not owning the property as much as the property was about to be foreclosed as much as there were tax liens on it. The Planning Board may not have had the right to stop them from applying because of the consent decree but they certainly had the right to determine that their right title and interest was encumbered to the extent that they had no right to apply which springs from the language of the consent decree. This is two simple arguments 1) no title certificate showing unencumbered right title and interest 2) the evidence submitted was contrary to them having right title and interest. The decisions of the Board were contrary to the statute. The Appeals Board has the power to affirm, modify, remand with instructions or vacate the action of the town Planning Board or CEO in issuing or denying building or other permits or failure of the Planning Board to render a decision when there is an error in any order requirement decision termination in the enforcement of this ordinance. Robert Marks is asking the Appeals Board to vacate the permit which was issued by the CEO because the permit does not comply with the requirements of the act.

Patrick Mellor spoke on behalf of the applicants, Berkley and Nancy Linscott. He cited a case Whiting vs Seavey that deals with how Boards are intended, under Maine Law, to deal with issues such as this. The Appeals Board has already decided on that the consent decree cannot be a measure or a means of enforcement of the ordinance, only permitted to enforce the ordinance. This case states zoning if to be accomplished at all must be accomplished under police power. It's a form of regulation for community welfare. Contracts between property owners or between a municipality and a property owner should not enter into the enforcement of zoning regulations. The consent decree is an agreement between a municipality and a private party, not for the Appeals Board to evaluation or to try to enforce. Patrick Mellor stated the case law is clear on this issue.

Robert Marks stated that Patrick Mellor's argument does not persuade him to think that the requirement for a title attorney can't be enforced. This has nothing to do with the consent decree. To the extent that the consent decree which is a court order based on a series of violations of our ordinance by the applicant whose every action was an attempt to avoid the consequences of the ordinance. For the Planning Board to have known about the consent decree and known about the order that was enforceable by the municipality wasn't enforced in court but was enforceable to get an injunction against an application. For the Board's to ignore the fact that they did not have right title and interest and could not prove that they had unencumbered title and interest would be a violation. This was not a private agreement this was an end of a litigation.

Patrick Mellor in response to Robert Marks stated he was involved in this case early. Patrick Mellor spoke with Bob Temple, CEO about the application and wanting to comply with the ordinance and how that is to be done. Patrick Mellor spoke with Fred Newcomb, town attorney at the time, about how to deal with the consent decree. The engineer submitted a reclamation plan to the Planning Board. Patrick Mellor was at the pre-application meeting to ask if the Planning Board was ready for the applicant to submit their application. He heard from Robert Marks and the Appeals Board that they found that the manner in which they dealt with the application to be somehow dishonest. Patrick Mellor has gone through the history of the application process and statements from this Board. He's displeased with the notion that they were dishonest in any way. They got approval, from the Planning Board, Bob Temple, and town attorney to submit the application; "What else do you want these people to do?" Patrick Mellor stated he is a title attorney and is certifying they own the property. You have succeeded in dragging this out another month and having his clients spend more money, which should be the end of it, thank you.

Peter Drum had a question for Robert Marks, you stated the property has to be unencumbered which he did not find that anywhere either in the ordinance or the application. Peter found they are to list any deed restrictions, easements, rights of way, liens, mortgages or encumbrances affecting the property but doesn't see where it has to be unencumbered. Robert Marks reiterated Article V. §2.B, which is an encumbrance. If there is a court order that states an application cannot be made until certain things are done and the record shows that certain things weren't done, how can there be an unencumbered right title or interest. Peter asked where it says it has to be unencumbered. Discussion ensued. Peter Drum stated the court order does not attach to the property it says the applicants shall not apply, it doesn't say the property should not be used this way. Peter asked if there is another place, other than Article V. §2.B. that says something about being free of encumbrances. Robert Marks stated that it says you have to certify and notify the Board of any encumbrances.

James Kearny moved to go into executive session with council at 7:25pm, Dorothy Sainio seconded, all in favor.

Dorothy Sainio moved to go out of executive session at 7:52pm, Charlotte Henderson seconded, all in favor.

James Kearny moved to maintain our original Findings of Facts from December 15, 2017 and reject the reconsideration, Cathy Blake seconded, all in favor.

Dorothy Sainio moved to adjourn the meeting at 7:50pm.

Respectfully submitted,

Mary Anderson