

MINUTES

NOVEMBER 20, 2012

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:05 P.M.

He then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll the following were present:

E. Thomas Behr, Chairman
Sandi Raimer, Vice Chairman
Christopher Collins, Member
Edwin F. Gerecht, Jr., Member
Felix Ruiz, Member

Michael Pesce, 1st Alternate

Excused: John Fagnoli, Member
Maureen Malloy, Member
Richard Keegan, 2nd Alternate

Barry Hoffman, Bd. Attorney
Thomas Lemanowicz, Bd. Engineer
Kevin O'Brien, Twp. Planner
Dawn Wolfe, Planning & Zoning Administrator

X X X X X X X X X X X X

EXECUTIVE SESSION

It was determined that there was no need to hold an executive session.

APPROVAL OF MINUTES

The minutes of June 19, 2012 were approved as written on motion by Mr. Collins and seconded by Mr. Gerecht. Mrs. Raimer abstained as she was not present at that meeting.

The minutes of August 7, 2012 were approved as written on motion by Mr. Pesce and seconded by Mr. Gerecht. Dr. Behr, Mr. Collins and Mr. Ruiz abstained as they were not present at that meeting.

ANNOUNCEMENT

Dr. Behr announced that the application of Robert & Martha Heinkel, Successor in Interest to Charles & Devorah Grunau, (App. No. 09-09Z) is carried to December 4, 2012 with no further notice.

DISCUSSION

PROPOSED REVISED ORDER OF PROCEEDINGS

Dr. Behr said that he had e-mailed the Board members and consultants notes in draft form for the proposed process improvements and order of proceedings. Beginning with the Proposed Order of Proceedings revised 10/25/12, Dr. Behr said that the Board has previously discussed this and noted some of the important changes as follows:

As to Item #2 – A one-page handout for the public will be created by himself with a deadline of 11/6/12.

As to Item #3 – Photos showing the property how it currently exists and all structures thereon will be provided by the applicant, not the Board Planner except as requested by the Board with the intent to save costs to applicants by providing their own photographs. Mr. O'Brien will continue to take photos for his own purposes. He said that during the completion review process, if the Board's consultants feel that they need additional photos or that the photos are insufficient, then they will request the applicant to remedy that. He said that some changes will also need to be made to the current Checklist because it is not specific enough in specifying the kind of photographs that we are really looking for from applicants and he added that he will follow through on that. He said that we also need to make a recommendation to the Planning Board that the Checklist be modified to include the detail that we are looking for in the photos, noting that they need to be 4" x 6" *at a minimum* and clear.

As to Item #4 – The applicant and/or witness #1 will have the freedom to decide which witness will be presented first. The intent of "Chairman summarizes the previous testimony and Board responses" is to be able to get real clarity on issues that either have been resolved or that need to be resolved so that the applicant can then decide if it wants to modify its proposal. The applicant and their witness will be invited to respond in detail to the points that have been raised by the Board's consultants so that we are now using the consultant's report as a control factor. This will allow items to be taken off the table if they have been resolved or items to be highlighted if they are still open.

As to Item #8 – Chairman/Board Consultant's to summarize conditions to be met were the Board to approve the application. This will have the effect of simplifying the work that Mr. Hoffman does in preparing the Resolution. In practice, Mrs. Wolfe will make a note of the time count on the recording and within 2 days will provide Mr. Hoffman with a list of the conditions as summarized at the end of the meeting.

Mrs. Raimer said that sometimes the Board is in the predicament that it must continue an application to a second hearing and, in those cases, there are open items for the applicant to consider, but by the time the second hearing comes around sometimes the applicant has not addressed those open items. She questioned if something could be added to the order of proceedings whereby we are not being redundant of the items that are closed but we are reminding the applicant that there were open items that were left off from the previous hearing and that they have either chosen not to address those items and are willing to proceed accordingly, or that the applicant is unwilling to go forward and move the date of the hearing until such time as those open items can be addressed.

Dr. Behr replied that the departure point for that is outlined in Item #5 on Pg. 2 so that, in a continued hearing, it is the responsibility of the Chairman to make sure that these issues are covered. He was unsure of how you would phrase it but said that the reality of it is that unfortunately we have all experienced the Board making a strong requirement of an applicant and we show up at a meeting and they haven't done it.

Mrs. Raimer asked if a step should be inserted where then the Board professionals could notify the Board or the Chair of the Board a set period in advance of the second hearing date to let us know that certain items have not been complied with, which of those items are open, and what efforts were made to make sure that the information was obtained from the applicant and we give the applicant the option of proceeding without that information (at their risk) or going to another date. She said that we are putting ourselves too often in the case where we find out at the

meeting that our Board professionals are missing something that they asked for through no fault of their own efforts to get the information and we are wasting everybody's time.

Mr. Pesce referred to the second "Note" under Item #5 on Pg. 2 and said that there is a deadline for the Board to receive those submissions. He questioned if the Board should include there what happens if the deadline is not met.

Mrs. Raimer felt that that would be an appropriate place to put that.

Dr. Behr suggested the following addition: "The Board professionals and Planning & Zoning Administrator will alert the Board Chair if applicants have missed critical deadlines".

Mr. Collins asked if the Board is still *required* to hold the meeting if the applicant(s) do not have those materials presented by the deadline.

Dr. Behr replied that there have been times when we have said that we cannot discuss a particular issue, so we can go forward, but it is at the applicant's risk and they may have to bring their witness back. He also noted instances where *at the meeting* 10 new drawings are presented for the Board to look at.

Mr. Collins said that, in addition to that, can the Board have the applicant sign off that the Board is proceeding with the meeting at his/her own risk.

Dr. Behr replied that he thought he has been reasonably diligent in saying to applicants that the Board has not had a chance to look at this, our consultants have not had a chance to look at this, and we are not going to discuss it.

Mr. Collins said that he was talking about at the inception, not the day before it is supposed to be due.

Dr. Behr said that he would then add that "The applicant is to be notified that, absent the required information, the applicant may proceed with the hearing but at their own risk", noting that he may need to add some additional language. Summarizing, he said that, if the applicant has failed to meet a deadline, the Board Chair is notified immediately and through Mrs. Wolfe we send out a notice to the applicant that says we have not received this information, therefore the Board is simply not going to be able to discuss this and, if you want to proceed with the hearing, please understand that you do so at your own risk.

Mrs. Raimer said that that would work for her. She said that she was trying to avoid a situation where the applicant is paying for something that he expects to get and he doesn't and it can be avoided. By doing this, she said it will also put the Board's professionals in a position of alerting the Board earlier when they are missing something.

Dr. Behr noted that information to be considered is due into the Planning & Zoning Office two weeks prior to the meeting. He added that we have just started having Technical Review Committee (TRC) meetings with applicants as part of the completeness process. He said that Mr. Lemanowicz provided a report on the first TRC meeting and he made a very persuasive case that this process saved the applicant a tremendous amount of time. He said that, built into this, is going to be ongoing communication between our professionals and the applicant so that, if there is a problem, it is the expectation of Mr. Lemanowicz (and he was going to make sure that Mr. O'Brien is following the same procedure) to say that we have not received the requested information/material, or we received it and it is still not what we are looking for.

In response to Mrs. Raimer, Dr. Behr said that Mr. Lemanowicz is already doing this.

Mrs. Raimer said that she felt that the information/material needs to come back to the Board members and that was what she was worried about. She said that she was worried about that gap where Mr. Lemanowicz knows that he does not have everything he needs, but the Board does not know that until we get to the hearing.

Dr. Behr said that his note will indicate that the Board professionals and Mrs. Wolfe are to alert the Board Chair if applicants have missed critical deadlines or if submitted material is inadequate.

Mr. Pesce felt that is very good but there will still be some “grey” though because some of the problem is that they submit but they don’t submit adequately and they are still cleaning it up the day before to the point where it is really acceptable. He felt that the other thing at work is that these professionals are trying to be collegial with their colleagues and they are not necessarily to “rat” on the engineer sitting at the other side of the table.

Dr. Behr replied that, in all fairness, he was not so sure that is true.

Mr. Gerecht agreed with Dr. Behr.

Dr. Behr felt that what happens is that, in a very professional way, Mr. Lemanowicz is saying to their engineer that this is going to take a second hearing unless you clean this up and he is pretty firm on that.

Mr. Collins said that he wanted enough time that the Board consultant’s get the things that they need and also enough time that, if it is *not* proper and adequate and someone else has all these things in and we have pushed them back, that we may have the ability to fill that gap in time. He said that he cared about the Board’s time since the members are volunteering their time and we come here and waste it half the time because people aren’t prepared. If there is adequate time, he said that he would prefer to schedule another applicant.

Dr. Behr said that that would be very hard since you must allow time for notice to be served.

In response to Mr. Gerecht, Mr. Collins confirmed that he meant that if something is already scheduled or if it is a continuation with no further notice required.

Dr. Behr said that, informally, we have done that. He recalled situations where it was abundantly clear that the applicant is not going to be ready and he has asked Mrs. Wolfe if another applicant can be moved into that particular time slot. He said that he would like to track, through the next 4-5 applications that are heard, what actually happened. He felt that Mr. Lemanowicz’s report was quite comprehensive and he said that he would like to get that kind of debriefing every time a TRC meeting is held so that the Board knows what is happening and can determine if we are seeing positive results in terms of the absolute cost to applicants, but also to the efficiency of the hearing.

Mr. Pesce said that one of the potential problems with an expanded completeness review process is that we are delegating to our professionals to some extent to give the applicants what we need and where we are going and he felt that it does have the potential to stray from the purely technical into letting them divine what we are going to be thinking in order to give them some direction.

Dr. Behr said that the Board had talked about that at extensive length and, before the first TRC meeting was scheduled, there was some question of whether Mr. Hoffman should attend. In responding to that, he said that he laid out what he believed are the appropriate legal guidelines and Mr. Lemanowicz and Mr. O’Brien understand very well that they may not ever say to an applicant, “You should....”. Secondly, they may not say to an applicant, “If you do “x”, the Board will approve, or disapprove”..... He said that what they *can* do is say, “If you take a look at the history of this Board.....”. He felt that it might be useful to occasionally have a Board member attend a CRC/TRC meeting – not to make comments, but to observe the process to see if it is working the way we want it to work.

Mrs. Raimer felt that that was an important point. She said that it seems that it is Mr. Lemanowicz who reports on the efficiency of the TRC and that is a burden that may need not be placed on him all the time. Having a Board member present shifts the burden, expense, and effort from Mr. Lemanowicz to one of the Board members to report on the efficiency of the TRC.

She said that we are adding to Mr. Lemanowicz’s workload because he is preparing an additional, though informal, report for us at the close of each of these TRC meetings.

Dr. Behr agreed and said that this is a learning process for the Board to see how it works and how it can be made better. He also agreed that, ultimately, it is the *Board’s* responsibility to make sure that its process is efficient and not its professionals.

Mrs. Raimer suggested that members take turns rotating to sit in on the TRC meetings. She added that she did not want to block the progress of finalizing the proceedings tonight and asked if the Board could try and come up with some final language for each of the thoughts that the Board has raised.

Dr. Behr said that he wanted to wait to that item because it really talks about the process and not the actual hearing. He said that the substance of the language he had for what the Board *did* say was that the Board professionals and Mrs. Wolfe are to alert the Board Chair if applicants have missed critical deadlines or if the applicant’s submitted materials are inadequate. The applicant is to be notified that, absent the required information, the applicant may proceed with the hearing but they do so at their own risk.

After taking into consideration additional wording suggested by Mrs. Raimer and Mr. Gerecht, Dr. Behr confirmed that he would add the following additional language, “or may choose to schedule a later date to ensure that they are properly prepared for a productive hearing”.

There being no further comments, Mr. Gerecht made a motion to approve the revised Order of Proceedings with the additions discussed which was seconded by Mr. Collins. All members present were in favor.

X X X X X X X X

DISCUSSION

PROPOSED PROCESS IMPROVEMENTS

Dr. Behr referred to the draft Board of Adjustment Process Improvements dated 10/23/12 which he had prepared and was distributed to the Board members and consultants.

As to Item #II – Dr Behr read the bullet points listed under “Commitments Effective Immediately”. He said that our hope is that this is going to have a *significant* improvement in efficiency. He said that, as Mr. Hoffman had pointed out, this does not involve issues associated with a “d” variance, but anything that has to do with stormwater and/or reductions in impervious coverage, any issues where there are errors or discrepancies between the engineer’s drawing and the architect’s drawing, issues where square footages have been improperly calculated, or where wetlands delineations are completely incorrect will surface.

As to Item #III – Dr. Behr read Item #1 under “Immediate Comments” and said that we are going to track this, adding that Board members, on a rotating basis, will be invited to attend CRC/TRC meetings as observers and will verbally report back to the Board on efficiency outcomes.

Mr. Collins suggested that the verbal report be given as the first item on agendas (if there is a report to be given).

Mr. Pesce said that the Board needs to be careful that the report does not become substantive and the Board spends ½ hour talking about it.

Mrs. Raimer agreed and said that the Board cannot have such discussion at a hearing because how would the invoices then be adjusted?

Mr. Collins suggested that Board members arrive at 7:45 PM on the nights that such reports will be given. He suggested that reports be presented, for example, on the second meeting of every month.

Dr. Behr said that the second meeting of every month will start at 7:45 PM to allow time to review reports on CRC/TRC meetings. He said that Mr. Lemanowicz will be able to quantify for the Board what kinds of savings have arisen from this process improvement.

Referring to “Follow-Up Actions”, Dr. Behr read the proposed “Further Action Steps”. Under Items #1 & 2, he said that the deadline will be extended to January due to Hurricane Sandy and Mrs. Wolfe’s illness. Under Item #3, which is to create a “user friendly” Applicant’s Guide, he said that the deadline for that item will be extended until the end of January, 2013.

Referring to Item IV, Dr. Behr read Items numbered 1-4, as well as the bullet points under “Further Action Steps”. As to Item #4 (“The Board of Adjustment will create a process to track charges to applicants”), he said that Mrs. Wolfe has created that form. He said that the Board’s expectation is that our consultants will be itemizing by line item and we will be checking this. He said that he would like to spread that work out in 2013 and, on a monthly basis, we want to take a look at these charges by application and by line item to see if we are actually seeing the reduction in costs that we are looking for. He added that, if we don’t track it, it won’t happen. He said that, in a professional way, we are reminding our professionals that we are *deadly serious* about this.

Mr. Gerecht asked, for the Board members that are not privy to the consultant’s invoices, how would we know if it was reduced?

Mrs. Raimer felt that that was a good question. She said that we will not have a perfect answer unless we have Mrs. Wolfe in the room every time, however she did not want to bog her down. She said that Mrs. Wolfe prepared a very quick snapshot of closed cases over the course of a few years for the Fee Study Subcommittee. It listed the type of application, the total escrow (required and total). From there, she felt that you would get a sense of what was paid for planning and zoning in an application that also involved a building height variance, for example. She said that, if you see a tremendous discrepancy, you might want to go back and look at the file (noting that all of the invoices are on record and in the applicant’s file).

Mr. Gerecht asked, if we wanted to compare an application to a similar kind of application in the past to see if the invoices are lower, could we look at the old bills.

Mrs. Raimer said that you could, but we have to be careful that there is no precedential value. She felt that any member who has been sitting on the Board for 2 years or more has a “feel” for the type of application that we are hearing and will be able to draw on their history with the Board for like applications that they might like to reference. She suggested that, if a newer Board member is looking at it, they might be paired with a member with more experience so that their collective memories might allow them to have a deeper history.

Dr. Behr pointed out, for example, if one were to look at Mr. O’Brien’s initial report, it costs *this* much and here is his follow up report – it ought to cost *that* much. He also said that he has gone through all of Mr. Hoffman’s last 5 or 6 resolutions and was completely convinced that they could be *immensely* streamlined. He said that he will have to sit down with Mr. Hoffman and then he will have to come back to the Board and advise what he proposes doing. Once he does that, he said that we will have a benchmark.

In response to Dr. Behr, Mrs. Raimer said that, based on the list of closed applications dating back to 2009, Mr. Hoffman’s total invoices for applications ranged from \$800 - \$6,000.

Dr. Behr said that when he did a comparable study and compared these numbers to the numbers from 2004-2005, these numbers are almost double. He noted that his hourly rate has not doubled.

Mrs. Raimer added that there is a lot involved regarding the complexity of the application and it is hard to say that it should just cost “x”, and we couldn’t do that for the Board Engineer or Planner either.

Dr. Behr noted that there have been applications which have been “legal nightmares” and, on those, obviously Mr. Hoffman’s fees will be higher. He said that those are basically the highlights he covered in terms of how to improve our process. He asked for any additional thoughts of the Board members on what else could be done.

Noting that the goal of this is to help the public, Mrs. Raimer asked how the public will know about this short of watching this meeting. She asked if there was some way to make this available prior to it being published in the Applicant’s Guide.

Mr. Collins noted that there is now a Facebook page that got very popular during the storm and so there is no reason not to publish it on that when ready.

Dr. Behr felt that we need to do it because it is important that the public understand that this is being done and also because of the whole conversation around the fees it is also a way of cushioning the shock of some of that. He said that he will take a look at the Facebook page. He said that he will also prepare a report of this for the Planning Board and copy the Township Committee to advise what we are doing. He said that we would be happy to discuss with the Planning Board any of these steps which they feel might be useful to them. He said that he was also comfortable in putting out a press release to the Echoes-Sentinel saying that the Board is acting in the following ways and also to allow people to understand that our professionals are working with the Board to try and accomplish this collaboratively.

Mr. Gerecht felt it will be helpful. He noted that he felt that people have been shying away from improvements because of the costs.

Mr. Pesce said that we need to be careful not to “wake a sleeping dog” here because most of the population is unaware of the process. He felt that it needs to be more generic and something like the fact that we are into cost cutting without getting into any specifics that could raise a flag that we would just as soon leave buried.

Mr. Gerecht felt that becoming common knowledge isn’t going to make it so there is going to be a revolt because that is the process.

Mrs. Raimer felt that if a press release or something of that magnitude is the step we are taking, we don’t do that in isolation and consult with the Township Committee to make sure that they are comfortable with it. For example, she said that as a first step the Planning Board wanted our input on a building height variance and the Planning Board wants input on an application fee and escrow deposit assessment. She did not think it would be unreasonable that they might like to consider something like this at one of their meetings.

Dr. Behr said that the Planning Board is going to get a *detailed* analysis of what we have done and with perhaps less detail it will be sent to the Township Committee. He said that the other issue to keep in mind is this, when he spoke with Mrs. Wolfe she indicated that 5 years ago the people who appeared before the Board were very appreciative of the process and felt they were treated fairly. Recently, in part because of the escrow mess and in part because the hearings have just taken longer, he said that there are a lot of people who are really frustrated and they talk to their friends and neighbors and say that they can’t believe how they got “hosed”. Therefore, he felt that some proactive communication with the public is needed to let them know that we are aware, have heard them, and are taking action. He felt that it is okay to say that for a variety of reasons the cost for applicants appearing before the Board of Adjustment have really spiraled out of control because they have.

Mr. Pesce added that, when the Township Committee acts on the Fee Ordinance, that might be an opportunity for the Board to provide input to the article that the Echo-Sentinel writes about that.

Mr. Collins suggested a presentation to the Township Committee and it will make its way to the newspapers there.

Dr. Behr said there will be a draft that people will look at because he felt that the language (legislative intent) has to be very carefully done but that will be a part of the communication to the Township Committee and the Planning Board. He said that, if Mr. Hoffman reduces the length of his resolutions by 50%, that is a cost savings.

Mrs. Raimer said that she was not sure that reducing the size of a resolution is going to reduce the fees because, in some cases, the resolution is as voluminous as it is because there are a lot of boiler plate conditions that have to be there that do not necessarily raise the cost because they appear in every single resolution.

Dr. Behr said that in Mr. Hoffman's resolutions, you get a blow by blow discussion of everything that the applicant testified to and the Board members asked questions about that and so all of the rationale behind what was finally decided is reproduced in great detail.

Mrs. Raimer replied that the value of that is that we have iron clad resolutions that have withstood legal scrutiny through the beginning of time.

Dr. Behr replied that he well understood that and his challenge to Mr. Hoffman is how can we get the same judicial strength but in fewer words. He felt that it can be done until proven to him that it can't be done.

Mrs. Raimer noted that Mr. Hoffman does not charge by the word and said that, in fact, his legal fees are below market value. Her concern was that if we scrutinize this too much, we might end up with a lawyer that actually charges market rates and we'll pay even more.

Dr. Behr said that he would have a conversation with Mr. Hoffman and at some point when he says that this has got to be in the resolution, he would not argue with him. He agreed that the Board has been well served in having bullet proof resolutions.

Mr. Pesce asked, when you have a relatively simple application and there are no objectors, who is shooting the bullets?

Dr. Behr and Mr. Ruiz felt that the Board should look to see what can be done in that regard. Dr. Behr then asked the Board if it was now willing to approve the recommended Process Improvements.

Mr. Collins made a motion to approve the proposed Process Improvements which was seconded by Mr. Gerecht. There were no further comments or suggestions. All Board members present were in favor.

Dr. Behr thanked the Board members. He also said that he was encouraged that the Board's consultants seem to really be supportive of the Board's efforts.

There being no further business the meeting adjourned at 9:15 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator

