

Approved April 12, 2006

**Minutes of Public Hearing
March 22, 2006
Town House 7:00**

Members in Attendance: Joseph "Charlie" Dolben, Chair, John D. Flynn, Melissa Reeves, Robert E. Majkut, Anthony Bongorni, Associate Member

Members Absent: Joseph Kruzel

Meeting opened at 7:00 pm.

Warrant Articles Earth Removal and PURD: Joseph Dolben opened the meeting and explained this is a Public Hearing for two articles to be placed on the warrant for the upcoming Town Meeting in April.

John D. Flynn made a motion to not read the notice that was put in the Reminder on March 6 and March 13. Robert E. Majkut seconded. The Board voted and it was unanimous not to read the notice. Vote: Yes- Majkut, Flynn, Reeves and Dolben No- 0

Dolben introduced the Board and went on to explain the articles. The first article is Earth Removal. To see if the Town will vote to amend paragraph 7.82 of the Zoning By-Law by replacing the phrase "50 cubic yards" with the phrase "250 cubic yards." Dolben stated the 250 yards of earth is more reasonable for a foundation hole than 50 yards was. The Board felt 50 yards was not a realistic number.

Dolben asked if any Board members had any questions or comments. Having none he asked if the attending public had any questions or comments. No one had any comments or questions so Dolben moved on to the next article.

The second article for the Town Meeting Warrant is regarding the PURD Dolben explained. He then read the article. To see if the Town will vote to amend paragraph 7.1311 of the Zoning By-Law by replacing the first two sentences with the following: "In order to provide housing for individuals aged 55 and older, each household must have at least one resident member aged 55 or older and every resident member must be aged 40 or older." Dolben told all present this was a relaxation from the current bylaw which states all residence must be 55 and older. The Planning Board felt the change would not derogate from the objective of the bylaw. It would however allow spouses to live together if one is younger. Also it would allow for a son / daughter or caregiver over age 40 to move in to provide assistance.

John D. Flynn reported on the Advisory Meeting that took place on Monday, March 20, 2006. The warrant articles were discussed. A resident had a concern with this warrant article. This person felt this article put the town in a position to have to evict a person from their home and having to bring them to court for a costly legal battle. It was reported this person wanted the property owner to pay the Town's legal fees in the event that the Town successfully brought enforcement action against the property owner for violation of a zoning bylaw. Flynn brought this concern to the attention of the Town Attorney to seek legal advice on this matter. Dave Martel, Town Counsel, answered Flynn in a letter as follows: "The statutory scheme for enforcement of zoning bylaws is

contained in General Laws Chapter 40A, Sections 8, 15 and 17. Section 17 provides for judicial review of local zoning decisions, including decisions on enforcement matters. Section 17 does allow for assessment of “costs” against the losing party but “costs” in this context refers to a limited range of items such as filing fees and sheriffs fees. The term “cost” does not include attorney’s fees. It is therefore my opinion that a local bylaw which authorized imposition of attorney’s fees on a party which violated the zoning bylaw would be beyond the scope of the statutory authority of Section 17.

I should add that I discussed this matter with Assistant Attorney General Robert W. Ritchie who is the attorney who would review local bylaws to make certain that they complied with applicable law. Attorney Ritchie advised me that he was not aware of any local zoning bylaw that provided for payment of attorney’s fees and that he would disapprove such a bylaw if it were submitted to him for his review.”

Melissa Reeves was disappointed with the age of 40 and would prefer to see it left at 55. Dolben said he shares her concern. Flynn said he would like to see it at age 35. Robert Majkut said he had concerns dealing with individual cases and changing bylaws for one person. Dolben said 40 was a good compromise. Dolben explained this was the age adopted by most towns in the state.

Frank Watson, 66 Greenleaf Drive, asked what if a couple where to have a baby, if the husband is 55 and the wife is 40. Robert Majkut said when you buy into a house with an association you know the rules; you would have to sell and move.

Dolben explained the Homeowners Covenant and Association have the power to enforce the rules and regulations. Majkut said the stricter of the two rules applies either the Town bylaws or the association rules and regulations.

Dolben asked the Board if they were ready to vote on the two changes. Reeves made a motion to vote in favor of the Planning Board’s endorsement of the Earth Removal Article. Majkut seconded it. The vote was unanimous in favor of endorsement. Vote: Reeves, Dolben, Flynn and Majkut.

Flynn made a motion to vote in favor of the Planning Board’s endorsement of the PURD Article. Majkut seconded it. The vote was three to one in favor of the endorsement. Vote: Yes- Dolben, Majkut and Flynn No- Reeves.

Hearing Closed: 7:25

Submitted by: Jane M. Budynkiewicz, Clerk