

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
April 9, 2018

The Chairman David Hennessey called the meeting to order at approximately 7:00 pm.

The Secretary Bill Kearney called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara, Diane Chubb, Alternate Heather Patterson, Planner/Zoning Administrator Jennifer Beauregard

ABSENT: Alternate Darlene Culbert, Alternate Deb Ryan, Alternate Thomas Kenney, Alternate Lance Ouellette

PLEDGE OF ALLEGIANCE

ELECTION OF OFFICERS

Ms. Paliy nominated herself for Chair. Ms. Chubb seconded.

Mr. Hennessey nominated Mr. Kearney for Chair. He believed Ms. Paliy was capable, and appreciated her insights, involvement and debate, but felt Mr. Kearney could run the meeting smoother. Mr. McNamara seconded.

There were no other nominations. Mr. Hennessey asked Ms. Paliy and Mr. Kearney to speak.

Ms. Paliy stated she had been on the Board for fifteen years, attended training and knew the rules and regulations. She said they had seen Mr. Kearney run a meeting and in one example, spoke about how people weren't allowed to speak or explain how a meeting should be conducted. She disagreed with Mr. Hennessey's nomination.

Mr. Kearney believed he had a good understanding of the Zoning Ordinance and felt confident and competent from his training to conduct meetings. He said the importance of the Chair was to maintain control, get through the agenda and follow procedures.

Mr. Hennessey stated it was time for him to step down and felt the Board would be well served by either person nominated.

The Board voted by ballot. Ms. Beauregard stated there were four votes for Mr. Kearney and one vote for Ms. Paliy. Mr. Kearney would take over as Chair (for the next year).

Mr. Hennessey accepted nominations for Vice Chair.

Mr. McNamara nominated Ms. Paliy for Vice Chair. Ms. Chubb seconded.

MOTION: (McNamara/Chubb) To appoint Ms. Paliy as Vice Chair (for the next year)

VOTE: (5-0-0) The motion carried.

Mr. Hennessey accepted nominations for Secretary.

Ms. Chubb nominated herself. Mr. McNamara seconded.

MOTION: (Chubb/McNamara) To appoint Ms. Chubb as Secretary (for the next year)

VOTE: (5-0-0) The motion carried.

CONTINUED HEARING(S)

Case #ZO2017-00029

Map 31 Lot 11-33

KLECZKOWSKI, Charles Jr. - Spring Street Off - Seeking a Variance concerning Articles X, XIII, III & XV Sections 307-58(B)(3), 307-83(C), 307-84, 307-86, 307-87(C), 307-88(A)(2a), 307-12, Table 1, 307-14 & 307-100 - to permit the construction, operation and maintenance of a Wireless Communication Facility

Mr. Kearney read aloud a letter submitted by the applicant's representative requesting a continuance to the June 11, 2018 meeting. The applicant is evaluating an alternative site and requested the continuance in anticipation of a new filing (including abutter notification). The letter referenced the Federal Communications Commission - 'shot clock' for the case; the applicant was willing to extend the decision timeline (with concurrence of the Zoning Board) to June 29, 2018.

Mr. Kearney opened the discussion to public input.

Mr. Larry Horgan, 32 Blueberry Circle asked for further clarification regarding the shot clock. He wanted to know if the extension to June 29th gave the Town a deadline. Mr. Kearney explained that the Board had to act within 150 days from the time the application is submitted. He said through a previous continuance they've gone beyond the initial 150 days and the applicant was requesting an additional continuance. He believed the Board could extend the date provided it was mutually agreed upon between the Board and the applicant. Mr. Horgan understood that the Board would have to make a decision at their June 11th meeting, unless the applicant requested another continuance. Mr. Kearney replied the Board would have to make a decision at that point to determine if it was best for all involved. Mr. Horgan asked if he could have a copy of the letter Mr. Kearney read aloud. Mr. Kearney answered yes.

Mr. Horgan questioned if there were additional abutters that would have to be notified. Mr. Kearney replied the potential new location would require the applicant to submit a new application including abutter notification.

Ms. Chubb understood that the shot clock ran with the current application. She asked if a new application would start another shot clock. Mr. Kearney answered yes.

Ms. Paliy wanted to know if the applicant previously extended the shot clock. Ms. Beauregard replied the applicant previously extended the shot clock and they were now asking to extend it further. Ms. Paliy was concerned with the day count and felt the Board should consider asking the applicant for a new application. Mr. Kearney understood the applicant was doing their due diligence in reviewing a (possible) new application. Ms. Chubb noted the applicant hadn't given the present application up yet. It was Ms. Paliy's opinion because of the clock, and the fact that the applicant didn't have access for what they were trying to

do, the Board shouldn't take a chance on running too close with the clock. She said it wasn't a good application to begin with and felt the Board should deny the request. She said they could start a new clock when a new application is submitted.

Ms. Chubb wanted to know the consequences of not giving the applicant the extension. Ms. Beauregard believed the Board would be forced to have to make a decision to either approve or deny the plan. Ms. Chubb questioned if they would be able to appeal that decision. Ms. Beauregard replied they could request a rehearing with the Board. Ms. Paliy said her point was that the application was never good because the applicant never had access to the tower site. For this she didn't feel they would appeal. She was concerned with allowing another extension because it might seem like the Board was indicating the application was good; from a legal point she didn't like the position. Ms. Chubb noted there was a big law firm involved and believed they wouldn't give up their opportunity to file an appeal to preserve their rights. She argued that the Board should extend the clock rather than opening themselves up to something that may or may not be in front of them for a decision.

Mr. Hennessey agreed with Ms. Chubb and believed the Board should grant the request for the extension. He also felt that they should make a stipulation that notice be re-sent (to abutters), just in case they revert to the old site.

MOTION: (Hennessey/Chubb) If the Board grants the requested extension, re-notification shall be sent to all abutters.

VOTE: (5-0-0) The motion carried.

Ms. Paliy asked Mr. McNamara if he felt the application was good to begin with. Mr. McNamara said it was but recalled there was a contested right-of-way that hadn't yet been resolved. As far as the application, he said it was very complete. He commented that the Board didn't want to find itself in court with the Federal Telecommunications Act unless they had a very solid case based on the record. He said were the Board to deny the extension they would lose any kind of good will they had with the applicant. From what he understood the applicant was attempting to work on a new application and they didn't want to give the current application up.

MOTION: (McNamara/Chubb) To continue the case (to June 11, 2018 with condition in motion to re-notify all abutters).

VOTE: (5-0-0) The motion carried.

Mr. McNamara questioned if abutters would be notified if the applicant decided to withdraw the case on or before the scheduled hearing. Ms. Beauregard said they wouldn't normally be but felt in this case it would be fair to notify abutters if the application is withdrawn. Mr. Hennessey felt they should be notified either way.

MINUTES REVIEW

March 12, 2018

MOTION: (Chubb/McNamara) To approve the March 12, 2018 meeting minutes as written.

VOTE: (5-0-0) The motion carried.

ADJOURNMENT

MOTION: (Hennessey/Chubb) To adjourn the meeting.

VOTE: (5-0-0) The motion carried.

The meeting was adjourned at approximately 7:30pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary