

**GREENLAND ZONING BOARD
PUBLIC HEARING**

TUESDAY, April 20, 2010

Members Present: Mr. Chris Halligan, Chair
Ms. Liz Cummings, Vice Chair
Mr. Don Arsenault
Mr. Sean Conner
Mr. John Samonas
Mr. Ron Gross, Alternate

Staff: Ms. Amy Leonard, Secretary

Chairman Halligan opened the public meeting of the Greenland Zoning Board of Adjustment at 7:00 P.M. and a roll call was taken. He announced the procedures of the Zoning Board of Adjustment and stated they had a quorum. Mr. Halligan noted the meeting was being recorded and the minutes would be available to the public when completed.

The Board welcomed the newly elected member, John Samonas.

Public Meeting

1. Nomination of ZBA officers and alternate appointments for the upcoming year

The Board discussed nominations for the chair and vice chair positions. After the discussion, the following motions were made:

Motion 1: Don Arsenault moved to nominate Chris Halligan as the chairman for the 2010 term. Lizbeth Cummings seconded the motion. All were in favor. MOTION CARRIED.

Motion 2: Don Arsenault moved to nominate Lizbeth Cummings as the vice chair for the 2010 term. John Samonas seconded the motion. All were in favor. MOTION CARRIED.

Mr. Gross indicated his desire to stay on the Zoning Board as an alternate member. With that said, the following motion was made:

Motion 3: Chris Halligan moved to nominate Ron Gross as an alternate member for a three-year term. Lizbeth Cummings seconded the motion. All were in favor. MOTION CARRIED.

2. Any business that may legally come before the Board but does not call for public hearing, including: review of previous meeting minutes, consideration of their approval, consideration of timely-filed motions for rehearing, and consideration of further motions.

a) Chair Halligan stated the Board received a Petition for Rehearing from abutters Jim and Stephanie Glennon regarding the 445 Portsmouth Avenue, LLC application that was approved on March 3, 2010. Mr. Samonas stated he would be stepping down from discussing this matter, as he had not been on the Board during that vote. The Board asked Mr. Gross to sit as an alternate for the discussion. They determined he had taken his oath and had been previously sworn in. Before the discussion ensued, the following motion was made:

Motion 4: Don Arsenault moved to deny the Request for Rehearing regarding the Appeal of Administrative Decisions and Open Space Variance for undefined "Proposed Business" that had been approved for 445 Portsmouth Avenue, Map U4, Lot 27. Ron Gross seconded the motion.

Mr. Arsenault stated he was disappointed that the only abutter opposing this matter has never attended any of the meetings. He noted he received the 27-page petition submitted by the Glennon's and found it to be a repeat of the petition that was submitted after the Board voted in favor of rehearing the application back in November that was found to be prematurely submitted (by Town Attorney). Mr. Arsenault stated as he was going through the petition, he noticed Ms. Glennon had questioned the legitimacy of Mr. Gross sitting on the Board as an alternate and found nothing wrong with him doing so. He noted she had quoted RSA 673:11, which she felt was the authority that existed; but it was subsequently pointed out that if they read paragraph 3 of that RSA, it gives the chairman the authority to use an alternate to sit in a missing member's seat. Another fact Ms. Glennon had pointed out was the legitimacy of Mr. Connor's vote in November as he had missed the first meeting regarding this matter. Mr. Arsenault stated Mr. Connor indicated, at the November meeting, that he had read the minutes and all the documents involved with this case and felt he could make a competent decision. Mr. Arsenault stated this same sort of issue arose during the Packard Development application and the courts determined that a member could be eligible to vote if they had reviewed the minutes and all the materials submitted; that case being Laura Fox et al vs. Town of Greenland et al (December 29, 2004). Mr. Arsenault stated he also found no new evidence with Ms. Glennon's argument regarding the approved open space variance. He felt the Board did not err in any way during the review and process of this application.

Mr. Halligan reminded the Board that when considering this petition, they need to focus on whether the process they used in arriving at their decision was done correctly, not the decision itself. He agreed with Mr. Arsenault and did not feel the Board erred in the process. Mr. Connor spoke of his absence at that first meeting in October and stated he reviewed the zoning book's rules and procedures, specifically section #4.6 that speaks to a member's absence. He stated he had reviewed all the materials and after discussing it with the Board in November, felt he could make a competent decision. Mr. Gross agreed that the Board did not err.

Ms. Cummings began with Ms. Glennon's belief that there may have been prejudgment on the Board's part, due to the secretary asking Ms. Glennon herself what the exact procedure and scheduling of a motion for rehearing was, if one was granted. Ms. Cummings did not feel the secretary did anything wrong, but rather was simply asking a question. She stated the secretary is not a member of the Board and obviously knew the answer if the motion for rehearing was not granted. Ms. Cummings did not feel it was an acceptable belief on Ms. Glennon's part. Ms. Cummings stated she did not agree with Ms. Glennon's question regarding why the Board did not hold a meeting in January or February and proceeded to remind the Board that two of the members were sick and there would not have been a quorum in January; and there was a snow storm in February. The Board rescheduled the February meeting as soon as possible and held it on March 3rd. Mr. Gross read RSA 673:10, paragraph I, and felt the Board's actions were appropriate. Ms. Cummings stated she agreed that it was appropriate for Mr. Connor to vote at the November meeting for the reasons already mentioned. She did not feel the Board erred in their process regarding the granted area variance. She disagreed with Ms. Glennon's statement that the Aquifer Protection District had not been discussed or contested, and noted the applicant himself addressed the matter. Ms. Cummings stated there was no new evidence or information produced in the petition and agreed with the rest of the Board that they had not erred in the process. Mr. Halligan also agreed with the rest of the Board that they had not erred in the process. He further noted on the legitimacy of Mr. Gross sitting as an alternate by reminding the Board of Town Attorney's opinion that they acted appropriately. He felt the Board did nothing wrong procedurally while navigating through the application.

After the lengthy discussion, the following vote was taken on Motion 4:

There was a vote taken on Motion 4 to deny the Petition for Rehearing, with the outcome being 5 in favor and 0 against. MOTION CARRIED.

b) The Board reviewed the minutes of March 3, 2010. There were no suggested changes made to the minutes and the following motion was made:

Motion 5: Lizbeth Cummings moved to approve the minutes of March 3, 2010 as presented and Ron Gross seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.

Being no further business, the meeting was adjourned at 7:28 P.M.

Motion 6: Lizbeth Cummings moved to adjourn the meeting at 7:28 P.M. and Don Arsenault seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.

Recorded, transcribed and typed by:

Amy Leonard
Secretary, Zoning Board of Adjustment

Attachments:

1. Agenda, dated 4/20/10

Approved by the Greenland Zoning Board on May 18, 2010.