

SUDBURY ZONING BOARD OF APPEALS
EXECUTIVE SESSION MINUTES
APRIL 9, 2018

The Board consisted of:

John D. Riordan, Chair; William Ray, Clerk; Jonathan G. Gossels; Nancy G. Rubenstein and Benjamin Stevenson.

- 1) Vote to enter into Executive Session and not to return to Open Session for the purpose of discussing strategy with respect to litigation as an open meeting may have a detrimental effect on the litigating position of the Zoning Board of Appeals and the Chair so declares, with respect to Linda Mills, et al v. Zoning Board of Appeals, (41 Prides Crossing Road) pursuant to General Laws chapter 30A, §21(a)(3).

At 9:38 p.m. entering Executive Session as of declared by the Chairman via roll call vote:

John D. Riordan Aye
Nancy G. Rubenstein Aye
Jonathan G. Gossels Aye
William Ray Aye
Benjamin Stevenson Aye

Chair Riordan made a point of order stating, Minutes of this executive session will not become available to the public until such time that the issues discussed are no longer sensitive.

The Board is in receipt of correspondence from Town Counsel, George Pucci on April 5, 2018 with a recommendation for the Board to Vote authorizing Town Counsel to sign a joint motion with Plaintiffs' Counsel, Mark J. Lanza to enter judgment annulling ZBA Decision 18-3 for a limited special permit for a Kennel at 41 Prides Crossing Road.

Chair Riordan updated the Board regarding the Land Court case and reminded the Board about the hearing for the proposed kennel application, how the application was extensively reviewed by the Board and approved with conditions *inter alia*, for a term of six (6) months. He further stated the Board will need to take action on this matter at this meeting.

Mr. Stevenson stated that this matter seems to be a procedural matter and it seems the Applicant is withdrawing its intent to purchase the property and to operate a kennel.

Chair Riordan replied that the recommendation in front of the Board from the Plaintiffs and Town Counsel George Pucci is to annul the decision, and further stated there are some things not clear about this case, the first being that the Applicant was represented by an attorney at the hearing, the Planning Office heard from the seller of the property, Jackie Downing, that the Applicant, Isys Johnson, She's A Keeper, Corp., decided not to pursue the purchase of 41 Prides Crossing Road. Then the Applicant herself sent an email to the Planning office confirming she decided not to purchase the property. The Board never heard from the Applicant's attorney Alex Parra, from D'Agostine, Levine, Parra & Netburn, P.C. Chair Riordan reminded the Board a group of neighbors filed a timely appeal of this decision predecessor on March 2, 2018. Chair Riordan added that the recommendation from, Town Counsel, Barbara Saint Andre, was to file a joint motion asking to annul the decision. Town Counsel representing the Board at the present time is Attorney George Pucci from KPLaw, as Barbara Saint Andre no longer represents the Town, but both counsels agreed on this recommendation to the Board.

Chair Riordan expressed he was concerned about the precedent the Board will set if the Board agrees to an annulment of its decision, by order of the Court and reminded the Board the decision 18-3 was for a term of only 6 months, starting September 1, 2018 and ending on February 28, 2019. Chair Riordan asked the Board

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to consider if they would like to go with Town Counsel recommendation or if they have any other opinion or recommended course of action.

Mr. Gossels stated he felt disappointed because he voted in favor of this application and usually he is never in favor of kennels in residential neighborhoods. He felt annulling the decision will be wrong because the Board reviewed this Application very carefully before voting to approve.

Mr. Stevenson stated that he does not see the need to do a joint a motion for annulment, in his opinion the Board will be arguing about hypotheticals.

Ms. Rubenstein asked what would happen if the Board decides not to joint in a motion of annulment.

Mr. Stevenson replied if the Board signs off on this joint motion, it is signing off on the merits of the appeal. Instead, the Board could ask for a stipulation of dismissal, stating there is nothing to argue about because it is all moot due to the actions of the Applicant, his recommendation to the Board was not to sign this motion.

Mr. Ray asked if this case will even go to court before February 28, 2019.

Chair Riordan commented he agreed with Mr. Stevenson, he added he asked Ms. Donoghue, Director of Planning, to get in touch with Town Counsel about this matter, but did not hear back from them in time for this executive session. In his opinion if the Board signs off on this judgement it might appear as the Board did something inappropriate either procedurally or in substance by approving this Application. Chair Riordan asked Ms. Donoghue to get in touch with Town Counsel regarding a stipulation for dismissal. Chair Riordan added, Attorney Pucci inherited this case from Barbara Saint Andre and received the same recommendation to enter into a joint a motion for annulment.

Mr. Stevenson recommended the Board to reach out to Town Counsel and state the Board recommends entering into a stipulation for dismissal and it is unwilling to enter into an agreement for annulment of its decision, two very different legal outcomes.

Motion made seconded and voted to reject the proposal to authorize Town Counsel to enter into a joint motion for entry of judgement, the Board instead would accept a stipulation for dismissal, with prejudice, via Roll call vote:

John D. Riordan Aye
Nancy G. Rubenstein Aye
Jonathan G. Gossels Aye
William Ray Aye
Benjamin Stevenson Aye

Motion made and seconded to adjourn Executive Session and not to return to Regular Session via roll call vote:

John D. Riordan Aye
Nancy G. Rubenstein Aye
Jonathan G. Gossels Aye
William Ray Aye
Benjamin Stevenson Aye

There being no further business, the meeting was adjourned at 10:08 p.m.