

May 4, 2004

MEMBERS PRESENT: Mr. Graney, Mrs. Picton, Mr. Smith, Mr. Talbot, Mr. Treadway

ALTERNATES PRESENT: Mrs. Boyer, Mrs. Rives

ALTERNATES ABSENT: Mr. Chute

STAFF PRESENT: Mrs. Shade

OTHERS PRESENT: Atty. David Miles

SPECIAL MEETING

Mr. Graney opened the Special Meeting at 7:35PM. He seated the members and seated Alternate Boyer for Mr. Talbot and Alternate Rives for Mr. Smith. He welcomed Atty. Miles and thanked him for coming to the discussion regarding enforcement.

Mr. Graney began by stating the Commission needs help with two issues:

1. The process by which to notify someone who is in violation of their C of A.
2. What to do in cases where a fee would not mean anything to the applicant. Could HDC put a notice of violation on the land records like Inland-Wetlands does?

Atty. Miles replied just because an applicant is willing to pay a fine doesn't mean they can then ignore the violation. He also said the Inland-Wetlands statutes specifically authorize them to place notices on the land records. HDC is not authorized. It is risky to put a lien on a property without authorization to do so - there have been lawsuits. He added, the state statutes are pretty strong when it comes to enforcement so the Historic Commission would have as much enforcement authority as any other commission.

Mr. Smith arrived at 7:40PM. Mr. Talbot arrived shortly thereafter.

Mrs. Boyer asked if the Commission would be allowed to post violations on the Town Hall bulletin board, newspaper, etc. Atty. Miles suggested attending a Selectmen's meeting to publicly ask for more money for injunctions in the legal budget - there is always a reporter at the Selectmen's meeting. Mr. Graney commented injunctions are above the HDC budget. Atty. Miles said not to shy away - go to the Selectmen, they will support the commission.

Mrs. Boyer wanted to know what to do in the case of an applicant who is given a C of A and does not build according to the plans noted in the C of A and then comes back to the Commission with a new application. Can the Commission refuse the new application? Atty. Miles said probably not, but you can do it anyway and let them sue. If they are in clear violation, you could get court costs and legal fees back.

Mr. Graney said the Commission is faced with two issues; Mr. Greenfield's fence and Mr. Ross' addition.

Greenfield /12 Ives Road. The members gave Atty. Miles a brief history of the fence. Mr. Greenfield is in violation of Zoning and Historic. He built the fence with no permits and as Mr. Talbot said, a fence that meets building code needs to be around the entire pool, not just along one side. The ZEO wrote him a letter, sent him all the forms and explained he would need Historic approval before Zoning could sign off. Mr. Greenfield did come to a couple of meetings and HDC did a site visit. The Commission made some recommendations and asked them to consider lowering the fence. Mr. Greenfield was to come back to the Commission with some new proposals. All they offered so far was a planting plan to cover the fence. The Commission does not consider plantings. A couple of the members were to go to the site and see how high the fence needed to be for privacy.

Mrs. Boyer asked if HDC should work with Zoning on this matter. Atty. Miles said work in concert with them but do not meet together. Talk with Selectman Dick Sears for support. He also suggested the Commission write a letter to Mr. Greenfield. Mr. Graney asked Atty. Miles if HDC could assess fines if the letter is ignored. Yes, but you have to go to court. If it is a clear violation, HDC may get court costs and legal fees along with an injunction to force them to remove the violation. Mr. Smith reiterated: 1) Go to the Selectmen regarding the budget to get backing against violators, 2) have Atty. Miles write a letter, 3) if nothing happens, go to court.

Mr. Graney commented that may be the next step to try regarding the fence, but he is not sure the same steps can be taken with Mr. Ross.

Mr. Ross /10 Sunny Ridge Road. Mr. Smith noted the final approval for C of A was conditional upon Mr. Ross closing the driveway and building a berm. Mr. Talbot expressed his concern that earthwork and plantings do not come under the purview of HDC, but Atty. Byrne said the Commission had to accept the berm. Mr. Treadway said perhaps Mr. Ross has not built the berm because it might affect the wetlands. He also observed Mr. Ross has his house on the market and wondered if he can sell the house when he finishes remediation of the wetlands. Atty. Miles said he can sell the house if there are no violations on the land records.

Mr. Smith said HDC should remind Mr. Ross he still has unfinished business with the Commission. Atty. Miles said basically, Mr. Ross is in violation, but that will be resolved if it cannot be seen from the road. Mr. Talbot stated, even with the berm, the addition with dormers will be visible. Atty. Miles said trees and berm would take Mr. Ross out of violation. Mr. Talbot commented he should build the berm or correct the building. Mr. Smith suggested, a lawyer working with HDC needs to read all the material in the Ross file in order to have a clear grasp of the situation. Right now Mr. Ross is in violation.

Mr. Graney asked how a potential buyer would know about the violation. Mrs. Picton asked if HDC could add something to the Inland-Wetlands violation on the land records. NO. Atty. Miles asked if Mr. Ross had applied to Wetlands to build a berm. Mr. Treadway said Mr. Ross is working with wetlands but is not finished with his remediation.

Mrs. Boyer suggested asking Inland-Wetlands the status. Or, could one of the members go to an IWCC meeting, that way any comments would be in the minutes. Mr. Treadway thought the Commission should write to Dorothy Hill, Chairman of IWCC advising her HDC has open issues with Mr. Ross. Atty. Miles said rather than going to Inland-Wetlands first, write a letter to Mr. Ross telling him the matter is still open, he is in violation and needs to resolve the problem.

Mr. Talbot suggested putting the Building Official on notice that HDC has not signed off on Mr. Ross's addition. If Building cannot issue a permit without HDC approval, how can he issue a C.O. without a C of A.

Mr. Graney reviewed the steps to be taken: 1) Write a letter to Mr. Ross (show to Selectman Sears), 2) If no response to letter, or bad response, go to Selectmen's meeting to ask for support, and 3) Get attorney to write a letter.

The members discussed trees and shrubs as screening. Mr. Talbot said in the past the members have paid no attention to trees and shrubs listed on applications. Mr. Smith said the State Commission agrees - trees don't exist. Mr. Talbot asked, should planting material become something we include in the C of A's and indicate it on the land records? Would the building be in violation if the trees were cut down?

Mrs. Boyer wondered if the Commission had done a bad thing by making an exception with Mr. Ross. Atty. Byrne said probably yes, but each case is always decided on its own merits.

Mr. Graney asked if there were any other questions or comments. There were none.

MOTION: To adjourn the meeting.

Mr. Graney adjourned the meeting at 9:15PM.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Martha T. Shade, Secretary