

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
February 25, 2020

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Wednesday, February 25, 2020, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Steven Apicella, Adela Bertoldi, Dana Brown, Robert Gibbons, Robert Grimes, Brian Jenkins, Dean Larson, Jeffrey Spinnanger, Heather Stefl

MEMBERS ABSENT: None

STAFF PRESENT: Melody Musante, Stacie Stinnette, Jeffrey Harvey

ELECTION OF OFFICERS

Dr. Larson: I'll call the meeting to order. Since there are no public hearings, I'll dispense with the preamble. We have one, two, three... looks like we have 7 members voting and present. That's good. And the alternate; very good. Ah, okay, so the first item on the agenda is the Election of Officers. So, can we have nominations for the Election of Chairman?

A. Election of Chairman

Mr. Apicella: Mr. Chairman?

Ms. Bertoldi: I would like to... I'm sorry.

Mr. Apicella: I'd like to nominate Mr. Grimes.

Dr. Larson: Okay, Mr. Grimes.

Ms. Bertoldi: I would like to nominate... can we do more than one... *inaudible*... at the same time? Is that how we do it? Because I'd like to nominate somebody else.

Mr. Grimes: The rules, as I remember it, are everybody puts their nominations in and then they are voted in the order that they're presented. And whoever gets the majority of the votes first becomes the Chair.

Ms. Bertoldi: Okay, I would like...

Mr. Grimes: But that's just what I remember.

Dr. Larson: I don't think a second is necessary.

Ms. Bertoldi: I would, Mr. Chairman, like to nominate Heather Stefl for Chair.

Dr. Larson: Any other nominations for Chair? Alright, in the order which they were nominated, all those in favor of Mr. Grimes, raise your hand (Mr. Apicella, Mr. Grimes, Dr. Larson). Okay, all those in favor of Mrs. Stefl, raise your hand (Ms. Bertoldi, Mrs. Stefl, Mr. Jenkins, Ms. Brown). Okay, Mrs. Stefl, you are Chair. Congratulations.

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Mrs. Stefl: Thank you.

Ms. Bertoldi: Congratulations.

Mrs. Stefl: Thank you very much.

Dr. Larson: Uh, nominations for Vice Chair?

B. Election of Vice-Chairman

Mr. Apicella: Mr. Chairman, I'd like to nominate Mr. Grimes.

Dr. Larson: Mr. Grimes. Any other nominations for Vice Chair?

Mr. Jenkins: I'd like to nominate Ms. Brown.

Dr. Larson: Ms. Brown. Any other nominations for Vice Chair? Okay, those in favor of Mr. Grimes for Vice Chair, raise your hand (Mr. Apicella, Mr. Grimes, Dr. Larson). Those in favor of Ms. Brown, raise your hand (Ms. Bertoldi, Mrs. Stefl, Mr. Jenkins, Ms. Brown). Well Ms. Brown, you are the Vice Chair. Nominations for Secretary are open.

C. Election of Secretary

Ms. Brown: I'd like to nominate Ms. Bertoldi.

Dr. Larson: I'm sorry, who?

Ms. Brown: Ms. Bertoldi, Adela. Is my mic on? Can you guys hear me?

Dr. Larson: I'm having an echo or maybe it's just me. Okay, Ms. Bertoldi; any other nominations for Secretary? Okay, all those in favor of Ms. Bertoldi, raise your hand (unanimous). Ms. Bertoldi, congratulations; you're Secretary.

Ms. Bertoldi: Thank you very much.

DECLARATIONS OF DISQUALIFICATION

Dr. Larson: Okay, there are no public hearings; no unfinished business that I know of. Zoning Administrator's Report?

Mr. Apicella: Yeah, Mr. Chairman, I think you turn the floor over to Ms...

Ms. Bertoldi: You're no longer Chair.

Ms. Brown: *Inaudible, microphone not on.*

Ms. Bertoldi: Oh, is it? Oh, okay.

Dr. Larson: We decided that quite a while ago.

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Ms. Bertoldi: I don't remember; that's why I asked.

Ms. Brown: *Inaudible, microphone not on.*

Ms. Bertoldi: Oh, that's right.

PUBLIC HEARINGS

NONE

UNFINISHED BUSINESS

ZONING ADMINISTRATOR'S REPORT

Dr. Larson: Okay, Zoning Administrator's Report?

Ms. Musante: We don't have anything to report.

Dr. Larson: Okay. Minutes, October 22nd minutes.

ADOPTION OF MINUTES

October 22, 2019

Mr. Grimes: I move to approve the minutes from October 22, 2019.

Dr. Larson: Is there a second?

Mrs. Stefl: I'll second.

Dr. Larson: Any corrections? Okay, those in favor of adopting the minutes say aye.

Mr. Grimes: Aye.

Dr. Larson: Aye.

Mr. Apicella: Mr. Chairman, I'm abstaining.

Ms. Bertoldi: I'm abstaining as well as I was not here.

Dr. Larson: Alright.

Ms. Brown: I'll approve I just hadn't... didn't know we had these until tonight. So I'm just looking through them but I'll... I'll approve.

Dr. Larson: Okay, any other votes for the minutes? Okay, it looks like it passes 5 to 1... 5 to 0 with 2 abstentions (*Mr. Apicella and Ms. Bertoldi abstained*). Um, meeting calendar. It's toward the back of your package. Any objections to the dates shown?

OTHER BUSINESS

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- 2020 Meeting Calendar

Mr. Apicella: Mr. Chairman, I have some concerns with the November 24th date, which is two days from Thanksgiving. Lots of folks take off that week.

Ms. Brown: Last year we moved the... we didn't have one on Thanksgiving and we moved it to like early December, like the 4th of December or something. Do we want to consider that?

Dr. Larson: We have moved it in the past.

Ms. Brown: Yeah, this year... well, for 2019 I think.

Mrs. Stefl: Do we want to do it the following Tuesday, like December 1st?

Dr. Larson: Are there any objections to doing it... is December 1st a Tuesday?

Mr. Grimes/Ms. Bertoldi: Yes.

Dr. Larson: Any objections to doing it December 1st?

Ms. Brown: No, as long as the room's available.

Ms. Musante: That's a Board day.

Dr. Larson: A Board day.

Mrs. Stefl: Ah, that's right, the first Tuesday.

Dr. Larson: How about one week prior to Thanksgiving? Or one week prior to the Thursday before Thanksgiving, the 22nd... 15th?

Mr. Grimes: The 17th.

Dr. Larson: The 17th.

Ms. Musante: We believe that's a Board day as well.

Dr. Larson: Ah, yes.

Ms. Bertoldi: I think in the past we changed the actual day; it wasn't on a Tuesday. I thought one time we had it like on... yeah, but we did it like on a Monday. Am I wrong? I mean, didn't we change the date, like the actual day of the week?

Dr. Larson: We can do it as long as it's advertised, so as long as it's a public meeting, advertised meeting the requirements, we can do that.

Ms. Bertoldi: So, can we do like November 30th? Is that available?

Dr. Larson: What day is that?

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Ms. Brown: That's not great for me, but...

Mr. Grimes: Monday.

Ms. Brown: ... if you guys want to.

Mr. Jenkins: No issues with me.

Mr. Apicella: Works for me.

Dr. Larson: Okay, so... *inaudible*... Monday, you said?

Ms. Bertoldi: Is that... is the Board available?

Ms. Musante: We'll have to check and see.

Ms. Bertoldi: We can always change it, right?

Dr. Larson: Okay, so we're tentatively scheduling for Monday the 30th was it?

Ms. Bertoldi: Yes.

Dr. Larson: Okay, any other comments on the schedule? Hearing none. Next item is Annual Report.

Ms. Brown: Actually I had one comment on the schedule. Do we have a case next month since this is the deadline?

Ms. Musante: We do not.

Ms. Brown: We do not.

Ms. Musante: No.

Ms. Brown: So no meeting. Okay.

- 2019 Annual Report

Dr. Larson: Okay, any comments on the Annual Report?

Ms. Brown: I do have a question about the Annual Report. I don't know... On the attorney's fees, it talked about how we, you know, got the money we received last year and what we thought we needed. Do we know... did we get that this year or...? Do we have any money?

Ms. Musante: Jeff, do you know whether that's been approved or not?

Mr. Harvey: Mr. Chairman and Ms. Brown, staff put in for the same amount as previous years, plus we added... requested additional funding for attorney's costs. We have yet to see if that's going to make it through the budget process, because the Board's still working on its budget. But we made that request.

Ms. Brown: So, more than \$5,000 or we made it for \$10...?

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Mr. Harvey: Yes. If I remember correctly, we asked for an additional 15.

Mrs. Stefl: How much over did we go last year from our budget? I'm trying to recall.

Ms. Musante: Yeah, um...

Mrs. Stefl: Ballpark.

Ms. Musante: I believe last year was when we had to request an additional like \$12,000. It was up there.

Mrs. Stefl: That's what I thought.

Ms. Musante: We do have a positive balance right now, which is good.

Ms. Bertoldi: Of what?

Ms. Musante: I'll have to get you that information, sorry. I have it on my desk.

Ms. Bertoldi: Like ballpark, you don't know, like ballpark.

Ms. Musante: I want to say around \$8,000.

Ms. Bertoldi: Okay.

Ms. Brown: So, we're asking for more than that? Okay.

Ms. Bertoldi: Eight thousand is not a lot for a lawyer.

Mrs. Stefl: You have that over lunch.

Ms. Brown: No, no, I think he said we were...

Ms. Bertoldi: I wish.

Ms. Brown: Our Annual Report said we thought we could get by with 10, but you said you were asking for what we had last year, which was an additional 20 over the 5?

Ms. Bertoldi: How much are we asking for this year?

Mr. Harvey: Mr. Chairman, we can go back and verify. My recollection was that we were asking for an additional 15 above the 5 for a total of 20.

Ms. Brown: Okay.

Dr. Larson: Okay, thank you.

Ms. Musante: I can send out a report of the funds that have been spent this week to all of the members so you'll know.

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Mrs. Stefl: That'd be helpful, thank you. Did you hear? I had it on, I just probably didn't have it on quick enough. That would be helpful, thank you.

Ms. Musante: Sure.

Mr. Harvey: Mr. Chairman, I also wanted to bring one item to the Board's attention with regard to the Annual Report. This year, the Board of Supervisors is starting a new process. They're actually going to public the BZA's Annual Report once it's passed on a future Board agenda. By state code, the BZA is required to report to the Board of Supervisors on its annual activities, similar to the Planning Commission. This year we started the process with the Planning Commission's Annual Report that it'll be posted on a Board agenda as a Consent Agenda item, but it's available to the public for them to see online.

Dr. Larson: Okay. So, will this Annual report be published, or the next one?

Mr. Harvey: Yes sir, this Annual Report will be published depending upon when the BZA adopts the Annual Report and what available agenda we can put it on. But it'll probably be sometime in March; my guess may be March 17th.

Dr. Larson: Okay, thank you. Any other comments on the Annual Report? Okay. Do I hear a motion?

Mrs. Stefl: I just had one question to ask of Jeff. If it's put on the Board's agenda, is that... is there a possibility one of us would have to come and speak? I mean, it's just going to be a procedural putting it on the Consent Agenda, correct?

Mr. Harvey: Correct, Mrs. Stefl. It would be on the Consent Agenda. There is no resolution for the Board to take official action. It's more of an informational item.

Mrs. Stefl: Okay.

Mr. Harvey: If a Board member wanted to pull it off the Consent Agenda and discuss it, myself or the Zoning Administrator would be there to answer any questions that they may have.

Mrs. Stefl: Awesome. Okay, thank you very much.

Mr. Harvey: You're welcome.

Dr. Larson: Thank you. Is there a motion?

Ms. Bertoldi: I'll move to approve.

Dr. Larson: Is there a second?

Ms. Brown: Second.

Dr. Larson: Those in favor say aye.

Members: Aye.

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Dr. Larson: Any opposed? Okay, it passes. There's an item, FOIA Compliance. I don't know what that is.

- FOIA Compliance

Ms. Musante: Jeff, do you wanna give some insight on that one?

Mr. Harvey: Well, Mr. Chairman, recently the County Attorney's office provided FOIA training to members of the County government staff, as well as Boards and Commissions. I attended one of the sessions earlier this month and, at that meeting, was Mrs. Stefl and Ms. Bertoldi. And there were some questions that came up with regard to Boards and Commissions and the BZA in particular. And it's sort of a unique situation with the BZA because you're a quasi-judicial body, you are a government entity but you're not necessarily appointed by the Board of Supervisors. So, some of the things that were discussed during the meeting and then also follow-up discussions were that the BZA is considered an arm of Stafford County's government and is responsible to provide documents pursuant to a FOIA request. Any documents that you have should be funneled through Stacie and then we will send them through our office to Denise, who's our... Denise Knighting... who is our FOIA Manager. And then we route them through the County Attorney's Office and also the County Administration for a response back to the applicant. If, at any time, one of the BZA members feels that the volume of materials is significant enough that you need additional time, please let us know right away because we can request the requestor to grant the County an additional 7 seven. With a standard FOIA request we have 5 days to provide the responsive documents. And there is a lot of things that go into that. Like I mentioned, once we collect the documents, we send them to the County Attorney who reviews them to see if there's any information that should be redacted out of the emails or whatever the documents are, and then they will have to annotate what those redactions are and why. So, that does take a little bit of time. And so, we on staff, and also we ask the Board to be mindful of that when responding to FOIAs. So, generally, any of the correspondence and notes that you may take on your documents are all subject to FOIA. Correspondence can be email interaction with the staff or amongst yourselves, or even telephone texts. Staff encourages you to consider adopting, if you haven't already, a separate BZA email account or gmail account, however you want to set it up, that you can keep track of your BZA emails separate from your personal emails. It'll make it much easier for FOIA response. Staff did look into the opportunity if there was a chance for the BZA to have a County email address, and currently that option is not available from what we've been told. So, again, we would... on staff, we would encourage you to have your own separate email for BZA items. And, one other thing -- there was a discussion about request for reimbursement because some members have made paper copies of all the documents. Since you're an appointed body that is not compensated, the only reimbursement we can provide you from the County government is actual copy paper for the paper... to offset the paper that you provided. That applies to all Boards and Commissions that are voluntary in nature. And staff would encourage you to the extent possible to send things electronically, because we can bundle them up and process them accordingly. That's much easier then you don't have to come into the office to drop off your paper copies. But if you do decide to use paper, we'll accept that as well. And that was the extent of the discussions, and I see Ms. Bertoldi has some additional things to add.

Ms. Bertoldi: Yeah, just two things. One, just to add on with respect to the fees, and I spoke to Rysheda afterwards, you know, because I told her the reason why I printed everything out was because they... you know, even though there's an email chain, every time someone sends out an email chain you've got to print that off and so then it just gets longer and longer and longer and longer. And I said I printed it off so that I can, even if I scan it and send it, it's all in one format. I go, otherwise I'd be sending you, you know, 75 emails. And she said that was okay. She said that that is fine, that is their job. So, I wanted to pass that along which I was not aware of. So, if they want me, I will sit there and I will

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forward every single email. And if that meets the requirement, then that meets the requirement. So I wanted to pass that along because I thought that was important information because I would not have thought that they would have wanted, you know, 75 emails from every single one of us that are the same thing. So, I think that's important. The second thing is that you'd actually brought up, if we wanted we could have County emails. Rysheda had said the Board will have to decide that because, you know, we do have attorney-client privilege and even though the County does not look at emails, they have access to our emails. So, it would help with FOIA in that they would have access to everything. But, and they could provide us actual County emails, but that on the back end their tech people can look at that. So, she says we would have to make a decision as a Board. So, I wanted to throw that out there if, you know, we even want to have the discussion of having County emails or not or just keeping with our own BZA emails.

Mr. Harvey: Yes, Mr. Chairman, staff did check into that issue with the IT Department, and we were told that the County emails would not be available to the BZA.

Ms. Bertoldi: Like I said, fix that.

Dr. Larson: That's fine.

Ms. Brown: That would be a conflict of interest.

Dr. Larson: Yeah, I would be against it.

Ms. Brown: Yeah, I would, too.

Dr. Larson: Right now, anyway. But that's fine that it's not available.

Mr. Harvey: And also, along those lines, staff in the past has routinely advised the Planning Commissioners to consider copying staff on their correspondence via email. However, again, as Ms. Bertoldi said, the BZA, you have different attorney-client issues, so you may want to consider whether that's advisable for your own selves. You may want to not copy staff on certain items, especially if we get in the situation where it's dealing with... I'm forgetting the term now...

Ms. Bertoldi: Appeals?

Mr. Harvey: Excuse me?

Ms. Bertoldi: Dealing with appeals?

Dr. Larson: Conflict of interest?

Mrs. Stefl: Zoning Administrator's... *inaudible, microphone not on.*

Mr. Harvey: Yeah, with the appeals.

Ms. Bertoldi: So...

Mr. Harvey: Ex parte, thank you, yes.

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Ms. Bertoldi: So, just to be clear, if we cc: staff, then we don't have to provide those emails under a FOIA request because you already have them? Or do we still have to provide?

Mr. Harvey: As a process, staff will provide that automatically. However, as Ms.... as the County Attorney said, each individual person is responsible for providing your FOIA response. So, if you trust staff to provide the response for you, that's okay.

Ms. Bertoldi: Well, you also can have, you know, where the person requesting the FOIA says I don't see anything from Adela Bertoldi; why don't I see anything from her? They would be able to see that I didn't provide anything, even though they got all the information.

Ms. Brown: Adela, I asked about that.

Dr. Larson: Which would look like she didn't respond.

Ms. Brown: I asked specifically about that, and... because I went to the Thurs... whatever the night session was, Wednesday night or something. And the attorney, Dan I think is his name? Oh no, not Dan, whoever the man was. He said that we all have to do it. I said even if we're all on the same thing you want all 7 of us to send you the same email? He said yes. So, because we had that discussion last time, you know. If staff was copied, would they just be providing it for all of us? He said we need to all... each do it even if was duplication.

Mr. Apicella: Mr. Chairman, I would ask that we have a protocol that folks not respond Reply All to requests for attendance at this meeting. Most of the emails that I've had to respond and provide were emails saying yes, I'm going to attend this meeting, or no, I'm not going to attend this meeting. I don't need to know. I think the staff need to know. So I would ask that folks reply directly to staff rather than replying all on attendance type email requests.

Dr. Larson: That's fine with me. Just so you know, Mr. Harvey, we did have a couple of... we had a class ourselves earlier in the year which you may be aware of. We had two attorneys, our own and a County attorney, come in and talk to us about FOIA and attorney-client and work product type issues. Just to remind the Board that the attorney and work product type things belong to the Board as a whole, so you don't have the authority to turn those over all by yourself. The Board has to vote on that. So the process that we've adopted should be in the by-laws I think, but basically the Chairman collections the, uh, attorney... things that are attorney-client protected, and then goes from there. Go ahead.

Ms. Brown: I did ask several questions and, as you guys know, you know, they're somewhat reluctant to answer all of our questions since we are, you know, the BZA. But I did get two takeaways, and one of them was about that. It was about, you know, the emails. The words that I understood, and maybe Bobby could help me, emails are like letters, so it's not considered a meeting. A meeting would... it only be a... an open meeting's a violation if we were in a chat room and we were doing it simultaneously. I think we got that before from the lady the County hired, but I also asked it again the other night and that was confirmed. And then the other thing I asked was on FOIA, what was FOIA-able. Phone recordings are FOIA-able. So, that was... there are several Board members on various Boards that record phone conversations and those are all considered FOIA-able and should be turned over. So, I did ask about that.

Dr. Larson: *Inaudible, talking over another member...* text is also FOIA-able.

Ms. Brown: Yes.

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Dr. Larson: Okay.

Ms. Brown: Yes. They did say on a text message though, if you didn't want to keep it on your phone, you could, for the FOIA response, you could email it to yourself and then email it to... that could be your FOIA instead of having to have your phone.

Ms. Bertoldi: You can screen-shot it, too.

Ms. Brown: Yeah, but just send it to your email and it's part of the record then at that point and it can be submitted like that.

Dr. Larson: Okay.

Ms. Bertoldi: Mr. Chairman?

Dr. Larson: Yes?

Ms. Bertoldi: And one thing just along the lines of the attorney-client privilege, I also talked to Rysheda about that afterwards and she had said that if anything accidentally, that was attorney-client privilege, that they deemed to be attorney-client, that they would return it back to us.

Dr. Larson: Oh, good.

Ms. Bertoldi: She said that, right?

Dr. Larson: Good. For the record. Okay, any other discussion on FOIA?

Ms. Brown: Just again, just reiterate... we don't need to be so worried about the emails. Only if we're responding in live time or we're in a chat room. I know we've been kind of, you know, I'll email you, I'll email you, I'll email you. We can do a group email.

Dr. Larson: A mass email.

Ms. Brown: Yeah. We don't all respond at the same time, and as long as we're not like in a chat room, it's considered... an email is considered a letter, at least for now. The law could change, but at least for now that's how they described it.

Dr. Larson: Okay, thank you for asking for that clarification. Any other discussion on FOIA? That would appear to be the agenda.

Ms. Brown: We're done already? Before 7:30?

Dr. Larson: Is there a motion...?

Mr. Grimes: Motion to adjourn to get us out before 7:30; set the record.

Dr. Larson: Is there a motion to adjourn?

Ms. Bertoldi: Second.

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Dr. Larson: Okay, meeting's adjourned.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:26 p.m.