**TOWN OF NAHANT**

**Planning Board**

**October 21, 2021**

**LOCATION: ZOOM CONFERENCING, NAHANT, MA**

**Executive Session Minutes**

Dan Berman called the meeting to order at 8:23 pm, stating that the meeting was properly noticed, and called the roll of those members attending:

Daniel Berman, Chairman – Here

Calvin Hastings, Vice Chairman – Here

Sheila Hambleton – Here

Patrick O’Reilly – Here

J Shannon Bianchi – Here

Steven Viviano – Here

Rob Steinberg, Recording Secretary – Here

Kristen Standish (alternative member) – Here

John Stabile (alternate member) - Here

Jeff Blake (Town Counsel) – also attended

Dan Berman opened the meeting by asking for a motion to convene an executive session pursuant to G.L. c. 30A, s 21(a)(3) to discuss strategy with respect to litigation in the matter of Northeastern University v. Town of Nahant Planning Board where a discussion in open session will have a detrimental effect on the Planning Board’s litigation position and the chair so declares. Shannon so moved, seconded by Cal. The Chair did so declare. The Board voted as follows:

Daniel Berman, Chairman – Yes

Calvin Hastings, Vice Chairman – Yes

Shelia Hambleton - Yes

Patrick O’Reilly – Yes

J Shannon Bianchi – Yes

Steven Viviano - Yes

Rob Steinberg, Recording Secretary – Yes

Dan asked Jeff Blake to provide a summary of the litigation and Jeff provided a general summary of what was likely to occur. Jeff Blake noted that no answer is required by individual defendants because it is a zoning appeal. Jeff said he expects Northeastern to move for summary judgment.

Dan inquired about the naming of individual Planning Board members. Jeff said that Planning Board members are routinely named as parties in matters of this type. Dan noted that the appeal was not filed by someone other than the original applicant so individuals should not be parties, and asked if we can be removed as defendants. Jeff said we are named in our capacity as a member of the Planning Board and there is no liability. Jeff noted that this is the Planning Board being sued and he did not believe there were grounds to dismiss the individual members.

Jeff said the height ruling has the most traction. Dan asked what he thinks about Northeastern stonewalling. Jeff said it was expected and the appeal was expected.

In response to Shannon’s question about D&O insurance, Jeff noted that the Town’s D&O insurance does not apply to this claim because there is no monetary damages or individual liability; it is a straight appeal of the PB opinion.

Rob asked if there is deference to the expertise of the PB despite this being a de novo hearing. Jeff said there would be.

Jeff said if NU tries to now buttress the record, they are agreeing that they didn’t provide us with the necessary information and the case should be remanded back to the Board.

Shannon asked about Exhibit I at the end of the complaint and the import of the email from Tony Barletta to the former members of the Board of Selectmen. Shannon argued that Tony has violated the law in his email referenced in the complaint and the email he sent to the Planning Board applying pressure. Shannon said NU is using the Town Administrator against the Planning Board. Jeff did not provide a direct answer to Shannon’s concern and seemed to indicate it was not an issue of concern.

Jeff noted that NU has made public records request and they can use these documents. Shannon asked if we can make public records requests and use those documents. Jeff said yes.

Dan asked what discovery we might want against NU. Dan noted that we can get more information on NU’s possible noneducational uses and what they have told others. Dan said we don’t have their fundraising pitches, and information about what NU meant by convening – NU did not reveal for whom and for what purposes. Shannon said NOAA was asked for funding in 2014 for the NU expansion in Nahant based on a referral from Ed Markey. Shannon said we could make a FOIA request. Jeff said they could ask for certified copies of relevant documents from NOAA.

Dan then said NU completely disrespected us as a governmental body with a legal obligation to perform and decision to make. Dan said we would have been derelict in our duty to determine NU is engaged in a Dover use based on unsubstantiated assertions that their uses are and will be educational.

Shannon said that NU colluded with Town Hall to change the FEMA maps. Dan noted that NU accused us of collusion, and Shannon alleged that NU worked with Selectmen to change the FEMA maps.

Jeff asked members to provide any specific information that he should seek. Dan recommended defendants ask for all materials sent to potential donors for fundraising and all materials provided to governmental officials; all contracts with commercial ventures on NU’s properties; descriptions of educational use in Nahant; and all documents sought during the administrative proceeding.

Rob asked if Jeff considered a stay of the case. Dan said that NU might claim we delayed them and caused damages if we seek a stay. Jeff said that wasn’t necessarily the case since the court grants the stay and he wanted to think about a stay. Jeff said he would talk to eminent domain counsel about stays of the PB and ConCom cases.

Dan asked if the PB allowed KNW to make a presentation. Shannon said yes. However, it was the consensus of the Board that KNW initiated the request to make this presentation and was not asked by the PB to appear. Cal said the NU came very early on to make a presentation before KNW did.

Dan then asked for a motion to close the meeting. Cal so moved, seconded by Sheila. The Board voted as follows:

Daniel Berman, Chairman – Yes

Calvin Hastings, Vice Chairman – Yes

Shelia Hambleton - Yes

Patrick O’Reilly – Yes

J Shannon Bianchi – Yes

Steven Viviano – Yes

Rob Steinberg, Recording Secretary – Yes

Meeting adjourned at 9:52 pm

Meeting Minutes prepared by Recording Secretary Rob Steinberg.

Approved by Planning Board on December 7, 2021.