

Special Meeting Minutes May 22, 2006

Call to Order: Terry called the meeting to order at 7:21 pm. Dave Wishowsky has notified the members of the Commission that he will not be able to attend tonight's meeting and designated Terry to act as president pro tem for the meeting in his absence. Present are Scott Clouthier, Kathy MacDonough, Scott MacKenzie, Terry Thompson, and Curt Nass.

Terry announced that Dave would not be able to attend because of a work commitment. Kathy made a motion to name Terry as president pro tem for this meeting, seconded by Scott C., and passed unanimously.

Terry said that this Special Meeting was announced at the May 8 Town Meeting, and duly posted on the bulletin board and the town website on May 14.

The first agenda item was to interview any candidates for Building Inspector that may be present and to make a decision on the appointment prior to Joe Finocchiaro's announced June 6 resignation. Howard Border said that he was interested in the position, at the urging of Peter Gillott. Border has been a contractor for six years and has experience with several types of construction. He said he is familiar with many of the code requirements and is willing to study and be certified in ICC codes.

Terry asked if Scott Dagle, who had expressed interest through his wife, was present to be interviewed. He was not.

Max Walton, town attorney, explained that Freedom of Information Act requirements about public meetings will allow the discussion of qualifications for an appointed position if the candidates grant permission. Both Mark Barnwell and Howard Border gave permission for this discussion to take place in Executive Session.

The next agenda item is to clarify the term limits for the members of the Board of Adjustment who were named at the May 8 Town Meeting. Cheryl Bowers and Brian Donovan were present and expressed their willingness to serve for three years.

Kathy motioned to set the term limits for the Board of Adjustment members at one year for Jon Hill, two years for Rich Mulhern and Tom Byrne, and three years for Cheryl Bowers and Brian Donovan, seconded by Terry, and the motion passed unanimously.

The next agenda items was to review the suggestions from Town attorney Max Walton for the Board of Adjustment's attorney. The suggestions are John Tracey of Young Conaway Stargatt, former attorney for the NCC Board of Adjustment at \$300/hr.; and Glenn Mandalas of Prickett Taylor Jones Elliot for \$250/hr. and \$300/hr. for senior consultation. Terry expressed concern about Mandalas being based on Dover and charging for transportation time. Scott M. expressed concern that Tracey now exclusively represents developers and that there could be a conflict of interest if a developer challenges Bellefonte's Zoning codes. Cheryl Bowers asked to be

recognized and said that the Board of Adjustment is a new entity and that all of the members are new to this. She feels that we should not be concerned so much about cost as we are about getting the best advice we can get to make sure that everything is done properly. Mr. James of 1123 Brandywine Blvd. asked if there was a local "country lawyer" that we could get for less money. Max Walton said that, unfortunately, land use is a specialized area of practice and that there are few attorneys he would recommend. Ann Frampton asked if Mr. Tracey had ever been a resident of Bellefonte. Max Walton said that he knows where he lives now, but didn't know whether he was formerly of Bellefonte.

Kathy moved that the Commission appoint John Tracey as attorney for the Board of Adjustment and that Cheryl Bowers be the liaison between the BoA and Mr. Tracey, seconded by Scott C., and approved unanimously.

Curt passed out a report that contained Town expenses to date, projected expenses through the end of May, and a draft line item budget. The Commissioners began to reassign values to the budget lines, and there was general disagreement about the budget. Kathy motioned to table the issue of the annual budget until the end of the meeting, since there are many more agenda items, seconded by Scott C., and passed unanimously.

Max Walton clarified the requirements of the Freedom of Information Act regarding consultation of the Commission with its attorney regarding pending lawsuits. It was noted that the agenda as posted duly noted that an Executive Session was being called at this meeting to discuss the course of action regarding motions before Superior Court.

Kathy moved to go into Executive Session to discuss pending litigation, and to discuss the qualifications of nominees for Building Inspector, seconded by Scott C., and passed unanimously. The vote was Aye: Scott M., Scott C., Kathy, and Terry.

Before recessing, Ann Frampton asked if she could ask a question because her oxygen tank was going empty and would need to leave soon. She asked if the Superior Court ruling regarding Kostyshyn v. Bellefonte Town Commission which ruled that the variance for Cindy Anker was procedurally invalid and needed to be heard again meant that the other two variances granted during that meeting were also invalid. Max answered that this matter was being discussed in the Executive Session.

The Meeting passed into Executive Session at 8:17 pm.

Executive Session:

Max explained to the Commissioners that only the items as posted on the notice and voted for as the reason for the Executive Session may be discussed, according to FOIA requirements.

With regard to pending motions before the Court, Max said that Miroslaw Kostyshyn filed a motion in Superior Court claiming that Ordinance 2006-01 was passed in violation of the State Enabling Act of 1932 and of Delaware Code. Max said that Kostyshyn obviously doesn't know that the Enabling Act has been amended several times since then. He asked for permission to file a motion to dismiss and to request an early court date so that the BoA can proceed with its

procedures and hearings. He plans to ask for dismissal on the basis of : 1) can't appeal a legislative act, 2) no violation of SEA as amended, and 3) with regard to his accusation of "fraudulent acts" he failed to give details of the fraud ("failed to name with particularity"). Scott M. asked if there was any way to go after him for making such a slanderous accusation. Max said that he recommended taking the high road and letting the court decide when Kostyshyn had gone too far. The Commissioners agreed to his recommendation regarding the motion to dismiss.

Max also informed the Commission of another motion Kostyshyn filed appealing the Court's ruling of Kostyshyn v. Bellefonte (Anker variance) requesting that costs be refunded to him. Max said that this is his second motion regarding this case, and his third for cost. He added that he had completed the wrong form for this motion, which might lead to an outright dismissal by the judge. Max said that the Court will be getting tired of motions regarding judgements already passed, and counseled the Commission to do likewise with this motion, again with a motion to dismiss. The Commissioners agreed with his recommendation.

The Commissioners discussed the two candidates for Building Inspector. The Commissioners agreed that Howard Border seems to be knowledgeable about codes, but has never done code inspection. In addition, it seems that he was at the meeting at the urging of Pete Gillott and not so much because he is interested in the position. In contrast, Mark Barnwell has worked as a code inspector, has multiple credentials for training in different areas of inspection, and presented himself with many written recommendations for the position. The Commissioners agreed to name Mark to the position, effective June 6, the date of Joe Finocchiaro's resignation (from his letter of resignation). Barring any unforeseen problems, the Commission will then reappoint him following the election, as mandated by the Charter.

The Executive Session was ended at 8:32 pm. Max left and the Commissioners rejoined the public meeting and called it back into session at 8:36 pm.

Terry announced to those attending that Max had counseled the Commission on pending litigation and that the Commission had agreed to Max's suggestions regarding our response and that he will handle the actions.

Scott C. made a motion to appoint Mark Barnwell as Bellefonte Building Inspector effective June 6, seconded by Kathy. The motion passed unanimously.

Budget – The Commissioners again went through the annual budget line by line. Scott said that he could only endorse a budget that contained the money carried over from the current operating budget, along with the money currently invested. Without this information, the residents cannot get a complete picture of the financial state of the Town. Terry said that he is concerned that the residents will think that the Commission intends on spending all the money in the accounts if it is all listed as part of the budget. It was agreed that the budget will contain the beginning balance, and will also show an ending balance as cash reserves. The budget was balanced.

Scott M. made a motion to pass the budget with \$222,000 in expenses, \$328,000 in receipts (and beg. Balance carried over), and 106,000 in cash reserves (ending balance, 5/30/07), seconded by Kathy, and passed unanimously.

Kathy said that she had received some information regarding an auditor, but was waiting for an estimate from another firm. Kathy made a motion to hold a Special Meeting on May 30th, 7 pm, for the sole purpose of appointing the auditor, seconded by Scott C, and passed. The vote was Aye = Scott C., Terry, and Kathy. Abstain: Scott M. Scott M. noted that he would just be returning from Holland that day and may not be able to attend, but would try. This Special Meeting is made necessary because the Charter requires that an auditor be appointed in May before the new budget commences. This Special Meeting will be duly posted.

Terry called for any other urgent business that could not wait until the June Town Meeting. There being none, Scott M. motioned to adjourn the meeting, seconded by Scott C., and passed unanimously at 9:40 pm.

Respectfully submitted,
Scott L. MacKenzie
Secretary