

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Joe Barresi, Member
Tom Emero, Member



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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

Wednesday, September 21, 2022, at 7:30 p.m.

Sanford Hall

Medway Town Hall

155 Village Street Medway, MA

MINUTES

Members Present: Brian White, Chair; Gibb Phenegar, Vice Chair; Joe Barresi, Member; Tom Emero, Member

Members Participating Remotely: none

Members Absent: Christina Oster, Clerk

Also Present: Barbara Saint Andre, Director, Community and Economic Development; Anna Rice, Administrative Assistant, Community and Economic Development; Attorney Amy Kwesell, KP Law, Town Counsel

Call to Order

Mr. White called the meeting to order at 7:36 p.m. and stated that this meeting is being recorded by Medway Cable Access.

25 Winthrop Street – The application is an **appeal** under M.G.L chapter 40A section 8 seeking to reverse a Cease-and-Desist order issued July 27, 2022, by the Building Commissioner acting as Zoning Enforcement Officer, which prohibits the applicant from operating at the site.

Attorney Amy Kwesell, KP Law, was present as town counsel to advise the Board. Attorney Kwesell reviewed the history of the appeal, stating the initial cease-and-desist order was issued July 1, 2021, by Jack Mee, Building Commissioner, and was appealed to the Board on July 20, 2021. Attorney Kwesell read a portion of that cease-and-desist order, which stated that “You have indicated this is a composting operation that provides this product [compost] to add nutrients to Mr. Briggs’ growing fields. It has become quite apparent that this operation is a commercial enterprise which is not allowed in the AR-1 zoning district.” The Board in denying the appeal found that the operation on the site was a commercial enterprise in a decision dated October 1, 2021 (date of filing with Town Clerk), and the Applicant appealed this decision to the Superior Court. The appeal to the Superior Court was dismissed due to a procedural error on the part of the Plaintiff (the Applicant), rendering the decision made by the Zoning Board of Appeals final.

Attorney Kwesell continued that on July 27, 2022, Mr. Mee issued another cease-and-desist, for the same operations as the order from 2021. That cease and desist stated in part: “While you have indicated that your composting operation is an agricultural use associated with Mr. Briggs’ agricultural use, it has become quite apparent that this operation is a commercial enterprise, which is not allowed within the

AR-1 zoning district.” Attorney Kwesell stated that the two cease and desists were for the same operation. She cited M.G.L chapter 40A section 16:

No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting or permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

She stated that, under this statute, the Board needs to determine if there are any specific and material changes since its previous decision.

John Maciolek, the Applicant’s attorney, was present and stated that the use of the property has always been agricultural, which is allowed in the AR-I zoning district. Therefore, he stated the cease-and-desist order of July 27th was not justified. Mr. White asked attorney Maciolek if there is any new information to be presented to the Board to allow them to make new findings. Attorney Maciolek noted the documents provided to the Board contain the information for the appeal. Mr. White again asked attorney Maciolek if he had any information with respect to material changes and attorney Maciolek stated he did not. Mr. Phenegar asked if there is any information that is materially different than the information presented to the Board in 2021, attorney Maciolek stated he had not compared the documents submitted. Mr. Phenegar and Mr. White stated that there appears to be no substantive differences between the information given to the Board in 2021 and 2022. Mr. White reiterated that the Board is looking to see if there is any new information to be presented by the Applicant that has not already been reviewed and decided on previously, Attorney Maciolek said there is not, and stated he believes the use of the land is agricultural.

Attorney Kwesell reiterated the language of M.G.L chapter 40A section 16 and stated that the applicant has not provided any information as to specific and material changes as required by the law. Mr. White asked for comments from town staff or members of the public, there was none. Mr. Phenegar stated he does not see any substantive changes to the information provided to the Board, Mr. White agreed that there were no specific and material changes in the conditions upon which the previous unfavorable action was based.

Motion to find that there are no specific and material changes in the conditions upon which the previous unfavorable action was based that has been presented to us made by Gibb Phenegar, seconded by Tom Emero, passed by a vote of 4-0.

Motion to deny the appeal based on this being a repetitive filing pursuant to M.G.L chapter 40A section 16 made by Gibb Phenegar, seconded by Tom Emero, passed by a vote of 4-0.

Motion to close the public hearing for 25 Winthrop Street and to allow any one member of the Board to sign the decision, made by Gibb Phenegar, seconded by Tom Emero, passed by a vote of 4-0.

3. Other Business

4. Approval of Minutes

- September 7, 2022

Motion to approve the minutes for the September 7, 2022 meeting, as presented, made by Gibb Phenegar, seconded by Tom Emero, passed by a vote of 4-0.

5. Upcoming Meetings

- October 5, 2022 - Due to the Yom Kippur holiday on October 5, there will be no meeting.
- October 19, 2022 – The Board has not received any applications yet, the deadline is September 26, 2022.

6. Adjournment

Motion to adjourn the meeting at 7:54 p.m., made by Gibb Phenegar, seconded by Tom Emero, passed by a vote of 4-0.

Respectfully submitted,

Anna Rice

Administrative Assistant, Community and Economic Development