



**TOWN OF WESTMINSTER
ZONING BOARD OF APPEALS
11 SOUTH STREET
WESTMINSTER, MA 01473**

RECEIVED
2017 JUL 11 AM 10:19
TOWN OF WESTMINSTER

**Meeting Minutes
May 16, 2017**

Call to Order:

The meeting of the Zoning Board of Appeals was called to order at 7:02 PM at the Westminister Elementary School, 9 Academy Hill Road, Westminister, MA by Chairman Don Frigoletto.

Roll Call:

The following members were present: Chm. Don Frigoletto, Members, Robin Brasili, and Aime Denault and Town Counsel of KP Law, Jeff Blake.

Case #17-01 – 175 Knower Road, Westminister, MA:

The Chairman made a motion to reopen the public hearing. He stated the board will deliberate and come to a decision. The Chairman stated no public comment or testimony will be taken.

He explained that the ZBA is a 3 member board, all volunteers are appointed by the selectmen. The ZBA is the board of non-permitted uses. He stated the board always try to make common sense decisions. He stated that this case is a neighborhood dispute and this should not be a zoning board decision in his opinion. The Chairman then read from the By-Laws of the Westminister Rod and Gun Club.

The Chairman stated that in 1974, the Westminister Zoning was adopted which caused the current use of a social club to a preexisting non-conforming use. The Chairman then noted his findings on the matter:

In 1974, there were occasional shooting events. Hours of shooting varied but did not last all day long.

In 1991, the Tophet Fish and Game Club changed its name to the Westminister Rod and Gun Club and the excavation of the shooting range was preformed unlawfully.

In early 2000, complaints about the use at the club began.

In 2014 to present, numerous complaints are reported in regards to continuous shooting.

Today, shooting range. Main focus is for shooting weapons.

Member Denault asked the Chairman if the neighbors have met with the club's directors. The chairman stated, no, the neighbors did not think it was an appropriate time.

Justin Raphaelson, Attorney for the Westminister Rod and Gun Club noted that certified mail was sent out to the neighbors notifying them of the meeting to be held on May 10, 2017. He stated that none of the abutters that have challenged the club's standing showed up. A neutral venue was booked, the VFW at 7:00 p.m on that date.

Mr. Denault stated that the board cannot determine in the year 1974 of how much shooting occurred at that time. He stated that the point someone made that most people were working in the neighborhood is valid. Now a lot of them are probably retired and hearing more of the noise from the club. There is no getting

away from shooting at that location and neither party will be happy with the outcome of the decision. He stated the ZBA cannot control the noise. Mr. DeNault feels that the shooting existed prior to and should not have been ordered a cease and desist in his opinion.

The Chairman stated the protected use of property is not of what it is today. It consisted of a stock pond, where members fished and had non shooting events as well. Now it is different, in character as well as degree of use.

Atty. Blake stated the Chairman is trying to determine the use prior to 1974 and now. He also stated a unanimous vote would need to take place or the current cease and desist order will stand. The question remaining is, does the protected use (the consistency of shooting prior to 1974) exceed what its current use is? Then deliberate on the following powers test:

- a. Does the use reflect the nature and purpose of the use prevailing when the zoning by law took effect?
- b. Is there a difference in the quality of character as well as the degree of use?
- c. Is the current use different in kind in its effect on the neighborhood?

Member Brasili noted that the members could shoot everyday back in 1974 if they wanted to so what would be the difference now?

The Chairman stated that as far as testimony given there is more shooting but increased complaints by neighbors have only been in the last 5 years or so. Has the shooting increased? Mr. Denault stated maybe it has but it's the noise that is affecting the neighbors. The Chairman stated that possibly when they enlarged their shooting range in 1991, may have allowed them to shoot more. Mr. Denault argued the barrier that was built was for safety, not necessarily more shooting. Chairman stated that just increasing the size of range, creates more activity. It is safer but allows more people to shoot.

Mr. Denault stated that he feels basic use is the same as in 1974 and there may be less people now. Mr. Denault feels the ZBA may be denying something they shouldn't be. Mr. Denault asked the chairman if they can make stipulations to the club. The Chairman stated no, only to determine what was existing in 1974 and make their decision.

Mr. Denault stated he understands what the board is required to do. The Chairman stated its difficult to determine and almost impossible.

Ms. Brasili stated the use has fluctuated over the years, but does not know how the board can determine use at all. Atty. Blake stated that the board can use the powers test as outline above. If you can determine set frequency of use from 1974, by testimony, that would be protected use.

The Chairman stated he feels the club changed from a social club to a gun range.

The board recessed for 10 min and reconvened at 8:34 p.m.

The chairman asked the board if they could come to an agreement on the use in 1974 with the evidence given on both sides.

Mr. DeNault then made a motion to grant the Rod and Gun Club's appeal of the Building Commissioner's Cease and Desist Order in this matter as the current use of the property is not a substantial increase in the

lawful pre-existing non-conforming use of the property as a Fish and Game club with attendant shooting was seconded by Ms. Brasili and passed unanimously.

Chairman explained the appeal period and the process.

Mr. Denault made a motion to close the hearing. This motion was seconded by Ms. Brasili and approved by a unanimous vote.

The next regularly scheduled meeting of the ZBA is Thursday, ^{June}~~July~~ 15, 2017.

Donald Frigoletto, Chairman	Date
<i>Don Frigoletto</i>	7/10/17
<i>Chris L. Desautels</i>	7/10/17
<i>Peter J. Romano</i>	7/10/17