



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

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TOWN OF WESTMINSTER

**Meeting Minutes
May 2, 2017**

Call to Order:

The meeting of the Zoning Board of Appeals was called to order at 7:00 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. Town Counsel of KP Law, Jeff Blake was also present.

Approval of Minutes of previous meeting(s):

The minutes of the meeting of April 20th were not available for review.

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

The Chairman made a motion to reopen the public hearing and he stated he would receive additional testimony and representation from the Rod and Gun Clubs attorney, Justin Raphaelson. The Chairman stated the board is required to find out what the current use of the club is compared to what it was at the inception of the zoning ordinance in 1974.

Justin Raphaelson, Esq. on behalf of Westminister Rod and Gun Club:

- Read cease and desist order. He argued that there are no grounds for valid cease and desist according to statutory law.
- He submitted affidavits from members: R.E. Chatigny, of 74 West Main Street, Westminister, MA; Dan Mason, of Baldwinville, MA and Michael Morin, of 50 Ellis Road, Westminister, MA.
- He requested the board to realize this case is very limited in scope. The scope is limited to frequency of use of the premises. Not about a safety. He stated you cannot take any testimony in regards to safety as determination.
- He stated the Building Inspector has withdrawn multiple cease and desist orders in the past.
- He then reviewed the definition of a substantial expansion.
- He stated that two abutters with small children were at last meeting and have no issues.
- He then read the non-conforming use law. He argues the use is contributed to the original non-conforming use.
- He stated that there were 300 members prior to 1974 and there are less at this time.

Witnesses for applicant:

Roland LeClair, 76 Carter Road. His testimony in writing is attached.

Joe Bilodeau of Hubbardston. His testimony in writing is attached.

Bruce Seiber of 228 Ellis Rd, Westminster. His testimony in writing attached. He argues with some of the neighbors claims. He stated the shooting does not occur all day long. He opens the gate, drives in, shoots and never sees other members there. Competitions are varied in attendance. He stated that there has not been a major increase. He stated that probably more so when police trained there and would be there for a good portion of the day. Each member key is numbered, and members can bring one guest.

Al Hatch. Westminster resident. Member of Rod and Club. Board of Directors. Mr. Hatch states he argues many of Mr. Fortins claims from first hearing. He stated Mr. Fortin trespasses on sight. He stated the shooting and types of firearms have not changed at club. He feels that property values has not changed. Neighbors bought property near a shooting range and nothing has changed and the use of club has not changed.

Chairman Frigoletto asked Mr. Hatch how long he has been a member? He stated since 2010 and he has been on the board of directors for the last three years. He stated there are 123-126 members at this time. He believes they have lost members since the cease and desist order. Chairman Frigoletto asked what has club done for neighbors concerns? He answered that there is no shooting before 10 a.m on Sunday and the club complies with MA State law as far as legal shooting hours of operation. The Chairman asked what is the age restriction at the club? He stated there is no pistol shooting allowed for anyone under the age of 21. Chairman asked him how many people can shoot at same time. He answered 3-4 because of space and safety.

Attorney Raphelson stood and stated that the questions by the chairman sounds like discovery. The chairman stated the board is trying to make a determination.

The Chairman asked about the log book. Co-counsel, Atty. Martha Dean answered and stated the log book is protected by disclosure. Pre 1974 is not available.

Peter Chalapatras of 18 Miles Avenue. He has been a member since 2004 and he spends a lot of his time at the club. He considers himself a range officer. He feels his rights have been taken away and would like the board to make a rational decision. He stated Mr. Fortin harasses the club. He believes the club will work with neighbors. He said the clubs name was changed from Tophet because the definition of the word may be offensive.

Speaking in opposition was Darlene Wildes of 66 Minott Road. She said she submitted a letter at the last meeting (note: need to add to April 20 minutes). She stated there is no safety officer. Shooting into her property. Shooting from dawn until dusk 7 days a week. Not good for her health. Not a clean club.

Mike Morin of 50 Ellis Road. He would like to see town work with club instead of trying to shut it down. He believes testimony has been biased. In regards to equipment and use? The firearms used today were designed way before 1974. Activity? He stated now and prior to 1974, the weather effects activity. He stated membership has fluctuated from 100-300. As far as the type of activity? No more skeet shooting, so activity has lessened.

John Anderson, Westminster. He stated he is getting the impression that board had made up their mind. He wanted to know why the board shut the range down? The Chairman answered that is why we are here. Member Denault stated the board did not shut the club down but the Building Inspector issued the cease and desist order and he explained the process of the appeal of the rod and gun club.

Thomas Peck of 30 Newcomb Rd. He stated he has been shooting at the range since 1962 . There is a value to have the rod and gun club there. The Chairman asked if he knew when the last turkey shoot was? He answered that he had no idea. He said there have been other events there before 1974 with large attendance.

Dave Couture of 29 Knowler Rd, ½ mile from club. Shooting does not bother him. Suggests a compromise with neighbors.

Quen Farley, 187 Knowler Rd stated she is in favor of the supporting the club.

Opposed: Nancy Maki. Has Increased since 1974. Gunshots are constant. Morning until night.

Donald Sawtelle, 270 Minott Rd. Has logged in for 20 years. Can attest that there is not a lot of shooting.

Atty Blake noted that the Westminster Rod and Gun Club has rights on noise pollution under Massachusetts General Laws. The ZBA is trying to determine as to preexisting non-conforming use and if has expanded substantially.

Mr, Carrigan, 189 Knowler Rd. He stated he rides by every day and notices very little traffic there, about 3 cars per week.

Dave Siden of 324 Knowler Road. Reiterates testimony from last meeting. Decreased activity.

Garry Macewen of 330 Knowler Road. He stated he has no problem with gun club and activity and he feels the level has decreased.

Concerned citizen: Mr. Robert Mason. 201 West Princeton Rd. Fewer people going to range. His father was a member. Late 70's. He believes there is no increased activity.

Opposed: Don and Joyce Shank, 88 Minott Rd. The club was fish and game club and never a shooting range. They do not want to take rights away but safety is concern.

Jay Shultz of 157 Minott Rd. No increased shooting in last 6 years.

Dick Hancock who is an NRA instructor, spoke in support of the club.

Bruce Sieber, 228 Ellis Rd asked the chairman of the contents of the binder that was submitted to the board by Mr. Fortin? The Chairman stated that the rod & gun club's attorney has a copy and he can review it.

Atty Raphaelson stated that he would like to see a compromise but if not he asks the board to make a decision. He stated the club is open to speak to neighbors. He stated he would like to conclude.

Chairman Frigoletto stated the board will not make a decision this evening. The next meeting is scheduled for Tuesday, May 16, 2017.

Atty Blake stated the board will need to make a decision by June 8th unless there is a request in writing. Typically, the chairman will close the public portion of the hearing at this meeting. He stated at the next

hearing, the board will deliberate and make a decision. The Chairman requested the board members of the rod and gun club meet at a neutral location with the neighbors to come to an agreement.

The Secretary of the club stated they have a meeting tomorrow (Wed, May 3rd) night but will hold meeting with the neighbors at a later date to give them more notification.

Atty. Raphaelson made his closing remarks:

- Burden of proof has been shown by rod and gun club
- Building Inspectors determination has no factual evidence to support the cease and desist.
- Safety is not a concern and is limited to the zoning issue
- The neighbors who are complaining have been living at the location and are now retired. In 1974 they were not at their homes during the day, i.e working. They are hearing more gunfire but that does not mean there is more
- He cited the non-conforming use and its protection under the law.

Atty, Martha Dean made her closing remarks:

- ZBA is not supposed to be experts on noise, etc.
- The witnesses for the club and their testimony have shown burden of proof which are: the types of events, number of days, hours of operation, etc.
- She asked the board to make decision so that the club can reopen. If the cease and desist is upheld, the club will appeal and go to court and the taxpayers would need to incur cost with an appeal.
- There have been no findings on building inspector's determination.
- The non-conforming use is a vested right that pre-dates zoning. The actual activity has protection under the constitution, the 2nd amendment and the members have a right to have a place to shoot.
- The cease and desist has caused loss of revenue to club. It would be unfortunate if ZBA let neighbors hijack the hearing and turn into a court proceeding. The ZBA does not have authority or responsibility to do so.

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

Atty. Blake stated that at the next meeting, the board will determine what the use was in 1974 and if there is a change to the non-conforming use. If they determine there has been a change in use, then there is a 3 part test to determine whether the current use of the property is protected as a non-conforming use. An existing use will lose the protection afforded a nonconforming use for failure to satisfy even of these tests:

- 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?

Mr. Denault made a motion to close the hearing and continue to May 16, 2017 at 7:00 p.m. This motion was seconded by Ms. Brasili and approved by a unanimous vote.

The next regularly scheduled meeting of the ZBA is Thursday, May 18, 2017.

Donald Frigoletto, Chairman	Date
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Anne R. DeLuca 7/10/17

PTW M. Basu 7/10/17

Peter S. Romano 7/10/17