

The following members attended the public meeting:

- Doreen Prouty - Chairperson**
- James Marmo - Vice Chairperson**
- Joseph Conte-Clerk**
- Gary Suffriti-Alternate**
- Larry Hoague-Alternate**
- Jennifer Bonfiglio - Secretary**

**1. Discussion on whether to seek funds for legal counsel**

Chairperson Prouty opened the meeting at 11:55 AM. Gary Suffriti indicated that he called Doreen Prouty for a decision as to whether to petition council for funds to hire legal counsel, particularly for the current suit against the Board of Appeals members and Six Flags. Member Suffriti feels the need for independent counsel and feels the Town Solicitor represent the Building Inspector and the mayor. He also feels that the Board is autonomous to the Town and should have separate counsel. Council President Gina Letellier questions if funds are wanted for the Six Flags suit only. Gary indicated that no, the Board would like funds for other suits as needed. Council President Letellier would like to deal with each issue separately. Chairperson Prouty feels there is no conflict of interest with the Board using the Town Solicitor. She advised the Board that she called Don Schmidt; Director, Smart Growth Zoning Program. Doreen read the following questions and answers to the Board as well as a memorandum dated 8/7/07 from Associate Solicitor Kim Stevens.

*Doreen’s Question:* When a decision of the ZBA is appealed, should the board ask for independent legal representation or can the board use the Town solicitor?

*Don Schmidt:* ZBAs are always represented by the City/Town Solicitor

*Doreen’s Question:* How about, when another Town official is involved? For example: the ZBA decision is being appealed; at the same time, building inspector issued a stop-work order for other reason?

*Schmidt asked why stop-work order? Doreen answered:* started to build without building permit. Schmidt stated there is no conflict of interest. Schmidt stated ZBA represented by Solicitor unless solicitor determines he has conflict of interest and then must recuse himself from case.

*Kim Stevens memorandum to ZBA, August 7, 2007* talks about memo that Tom Locke wrote in 1996 to City Council Regarding the Berkshire Power case.

**#5 IS IT A “CONFLICT OF INTEREST” OR “UNETHICAL” FOR THE LAW DEPARTMENT TO REPRESENT THE BOARD OF APPEALS IN THE BERKSHIRE POWER APPEAL?**

NO. There is no legal conflict of interest under Massachusetts General Laws, Chapter 268A for the Law Department to represent the Board of Appeals in the Berkshire Power appeal. It is not unethical under the rules of ethics which govern attorneys or the rules which govern public officials for the Law Department to represent the Board of Appeals in the Berkshire Power appeal.

Counsilor Jill Messick checked with the Westfield, West Springfield and Southwick Board of Appeals and all use Town Solicitor as Counsel.

Member Larry Hoague feels there may be conflicts of interest between Board and Town Officials. In the past he felt the legal representation was representing the Mayor's interest. Member Hoague does feel that the Solicitor should be the first stop on smaller issues, but not on law suits. Member Joe Conte also feels the Solicitor should handle smaller legal issues, not large suits. He is concerned that if the Board disagrees with the Solicitor what will their options be. He also feels there are cases where outside representation is needed. He also indicated the Town Solicitor is already representing the Building Inspector in other cases not relevant to Six Flags.

Member Hoague is concerned and questions what will happen if the Solicitor is used by ZBA and the Building Inspector becomes involved in the suit.

Member Suffriti has issue that the Town Solicitor serves at the pleasure of the Mayor. If the Mayor wants something the Solicitor holds the interest of the Mayor and not the Board.

Chairperson Prouty opens the meeting to the public.

Council President Letellier states that the Council received \$10,000 annually for legal counsel. She does not feel that the BOA should also have a line item in the budget. She also advised the Board that the Mayor has already indicated she would veto that proposal. Council President Letellier agrees with Member Hoague concerning split decisions. Conflicts with Dept. Heads do need separate counsel. She also believes in this case that the Insurance Co. will represent the Board with the Solicitor. Member Hoague feels the Insurance Co. represents themselves to limit damages only.

Council President Letellier advised she could put a resolution for a \$10,000 line item in the budget, although she does not feel that today, based on the facts, she would support funds for counsel. Discussion continues over budget. Member Conte states the Board used to have their own budget. Council President Letellier advised the board to out a resolution before the council if that is what they want. Member Suffriti feels the Board has been stripped down and no longer has any control. Council President Letellier recommended the Chairperson meet with the Mayor then go to the budget sub-committee meetings.

Nick Urbinati references the Liquori lawsuit where the Solicitor represents the Board and himself. Also a future case concerning Longbrook where there is a Variance appeal which will also need representation for Nick and the Board.

Chairperson Prouty feels that Members Suffriti, Hoague, and Conte should vote.

Member Suffriti would like to petition the City Council for \$2500 to cover potential legal counsel. Council President Letellier states that if money is put aside, under the Charter, only the Mayor will have the authority to enter into contract with outside counsel. The power to contract is not with the Council. Chairperson Prouty would like to vote for Six Flags representation and separately for a line item.

Motion by Member Suffriti to petition the City Council for funds for outside legal representation in regards to the Conner/Biscaldi case against Six Flags and Board of Appeals.

Member Suffriti- Yes  
Member Hoague- Yes  
Member Conte- No

2. **Six Flags Discussion-**

The Board discusses whether Six Flags must come back before the Board of Appeals. Nick Urbinati presents a map of what was approved and what is currently built. The building has been moved 10 (ten) feet. Nick also presents a description of proposed project and changes from Six Flags listing five issues that need to be amended in Case # 1810 and Case #1811.

Member Conte feels there are significant changes and Six Flags should come back to the Board. Nick Urbinati advised the Board that he has the Special Permit applications with him from Six Flags. He also advised the Six Flags currently has no approvals or permits issued.

Motion by Member Hoague to have Six Flags come back before the Board of Appeals to amend previously granted Special Permits. Second by Member Suffriti. Vote: Unanimous.

Chairperson Prouty advises the Board that the Board does not have control of the interior of the coaster building, only the exterior.

3. Anthony Veillux states to the Board that he feels he should have been refunded his filing fee because his temporary parking permit application was withdrawn at the direction of the Board. Council President Letellier advises him to petition the Council if he feels he should be refunded.

4. Meeting closed at 12:45 PM