



**MINUTES OF THE BOARD OF APPEALS
CASE #2023-03 ROD N REEL INC/DONOVAN ESTATES LLC
CONTINUATION HEARING
MARCH 14, 2024**

- I. The hearing was opened at 6:30 p.m. by Chair Jody Hoon-Starr. In attendance were Chair Hoon-Starr, Paul Doherty, Amy Everett, and Richard Burch, Board of Appeals Members, Sharon L. Humm, Board Clerk, and Fred Sussman, Board Counsel. Absent was Stephen Sharp, Board Member.

Chair Hoon-Starr asked the Board Clerk if any public comments had been received since its last hearing. Board Clerk Humm stated for the record, no comments had been received.

- II. **Approval of the minutes of the February 8, 2024 Board of Appeals Case #2023-03 Rod n Reel Inc./Donovan Estates, LLC continuation hearing.**

MOTION: Mr. Doherty moved to approve the minutes of the February 8, 2024 Board of Appeals Case #2023-03 continuation hearing. Seconded by Mr. Burch, all in favor.

Chair Hoon-Starr noted, with tonight's session starting at 6:30 pm it will end at 8:30 pm. All questions are to be addressed to the Board Chair and/or Board Counsel. Tonight, third parties of record will have the opportunity to ask questions of any given testimony at the conclusion of that testimony. Questions will be limited in scope to testimony presented. With the order of presentation, the Appellant's Counsel continues his presentation of testimony and evidence. At the conclusion, third parties of record will be offered a chance to question any witnesses. Once completed, Mr. Pounds, representative for the Town, will then present his testimony and evidence. Once both parties have completed their presentation of testimony and evidence, the public will have the opportunity to be heard. Summary statements will then be provided. With that being said, tonight will not allow for verbal public comments but written comments will be accepted at any time.

Chair Hoon-Starr read into the record Board of Appeals Case #2023-03 Rod n Reel Inc./Donovan Estates LLC application request and asked Mr. Blitz to continue.

Mr. Blitz called Wesley Donovan for testimony. The Board Counsel swore in Mr. Donovan. Mr. Blitz had Mr. Donovan confirm duration of ownership of the Home Place property and the Stinnett property. Mr. Donovan testified in the late 40's to early 50's for Home Place, and 1936 for the Stinnett property. Both properties were later transferred to Rod n Reel, Inc. for development. Mr. Donovan testified that improvements had been completed on the Stinnett property, but no development of the project took place due to the unstable economy. During the Planning Commission's comprehensive planning, there was conversation in the latter part of 2020 about using the Stinnett property for a park/green space, which ignited the decision to move forward with the re-filing of the project in January 2021.

Mr. Blitz inquired of Mr. Donovan as to whether water and sewer capital connections had been purchased for any of these projects. Mr. Donovan confirmed paid capital connections for Home

Place, Stinnett Property, and when the Marina was purchased, water and sewer connections transferred with that property.

Exhibit 60 – 1) Letter dated April 14, 2016 from Town Treasurer Laurie Smith and letter dated November 19, 2008 from Leslie Porter with attachment of payment received for \$480,000 from Gerald and Fred Donovan for Home Place, and a water and sewer capital connection charge-payment agreement between the Town of Chesapeake Beach and Fishing Creek Landings Corp dated June of 2004.

Mr. Blitz stated, after the submission of the five site plan applications in January of 2021, Mr. Donovan received a response in February from the Town referencing a proposed moratorium. Mr. Blitz inquired of Mr. Donovan as to what his response was, if any. Mr. Donovan stated he requested a meeting with the Town. He met via zoom with the Mayor and Town Administrator, and individually with each Town Council member minus Mr. Pardieck. Mr. Blitz asked Mr. Donovan what was discussed.

Mr. Pounds objected. Chair Hoon-Starr sustained.

Mr. Blitz asked Mr. Donovan if there was any other communication from the Town once the moratorium was adopted. Mr. Donovan stated he received an email from Councilman Greg Morris.

It was noted for the record that this was a personal email from Mr. Morris as a council member, and not on behalf of the entire Town Council.

Exhibit 61 – An email from Greg Morris dated March 22, 2021 addressed to Wes Donovan. Mr. Blitz then read the email into the record. It was noted Mr. Donovan did not respond to Mr. Morris' email and added he did not hear from any other council member.

Mr. Blitz asked Mr. Donovan if records were kept of funds expended associated with site plan preparation. Mr. Donovan replied yes.

Mr. Pounds objected. Chair Hoon-Starr overruled.

Exhibit 62 – List of soft costs associated with Rod-n-Reel Site Plan Preparation - totaling \$172,109.50.

Mr. Blitz asked Mr. Donovan if he recalled that during the presentation it was stated that the moratorium was passed by resolution? He replied yes. Also, that the right under the Town's Charter to take an ordinance to referendum is available. He replied yes. He asked Mr. Donovan if he had personal experience with organizing a referendum petition. He replied yes.

Mr. Pounds objected, stating this was irrelevant to the case. Chair Hoon-Starr overruled.

Mr. Blitz asked Mr. Donovan to describe his experience with a referendum, which he did.

Mr. Pounds began his cross-examination of Mr. Donovan.

Mr. Pounds had Mr. Donovan confirm his position with Rod n Reel, Inc. Mr. Donovan stated he was the President. Mr. Pounds inquired of Mr. Donovan if Paul Woodburn was the civil engineer of the projects. He replied yes. The only engineer of the projects? Mr. Donovan replied yes.

Mr. Pounds asked Mr. Donovan what projects had approved permits and when. It was determined Stinnett and Harbor Vista South projects had permits but not Home Place, Harbor Vista West, or Harbor Vista North. Mr. Donovan confirmed, as requested by Mr. Pounds, that the decision not to go

forward with those projects was a decision made solely by the Rod n Reel, with no outside interference.

Mr. Pounds, referring to earlier testimony, asked Mr. Donovan, that with talk by the Planning Commission during the comprehensive planning of using the Stinnett property as a possible park/green space, why did he not make any effort to contact the Zoning Administrator or the Planning Commission to protect his interests. Mr. Donovan stated, in an effort to protect his interests, he filed site plan applications for the development of those projects.

Mr. Pounds asked Mr. Donovan about his familiarity regarding development, rezoning, climate change and flooding issues. Mr. Pounds asked Mr. Donovan if he was aware that the Town is addressing flooding issues which included flooding concerns associated with his properties. He replied yes.

Mr. Pounds stated, "So you want this Board to assist in the approval of development applications that the Town is classifying as flooding areas."

Mr. Blitz objected. Chair Hoon-Starr overruled.

Mr. Pounds restated his question asking Mr. Donovan is it fair to say that he knows there are flood risks associated with his properties other than Home Place. Mr. Donovan stated, from personal experience, he is well aware of what flooding can do, going back to Hurricane Isabelle and the damage it caused to the Stinnett restaurant. So, in preparation for Stinnett Place they raised the grade when the State raised Maryland Route 261 in that area. With that, Mr. Pounds asked if any permits were applied for, and/or approvals received from either the Army Corps of Engineers or the Department of Environment for that work. Mr. Donovan replied no.

Mr. Pounds presented to Mr. Donovan zoning permits that were approved and then renewed for several of his properties, asking confirmation from Mr. Donovan. Mr. Donovan confirmed what he had knowledge of. Mr. Pounds asked if he knew why the renewal of the permits did not go forward. Mr. Donovan could not say.

Mr. Pounds stated he was finished with his questioning of Mr. Donovan but presented a request to the Board. He would like to be able to cross-examine Mr. Woodburn and possibly Mr. Blitz and is requesting that Mr. Woodburn be called back. Chair Hoon-Starr stated there is nothing in the Board's Rules of Procedure pertaining to that but advised Mr. Pound's to make his request in writing to the Board. Though Mr. Woodburn cannot be forced to return they would however make that request to him.

Mr. Blitz took the opportunity to redirect. For the record, Mr. Blitz asked Mr. Donovan if the year 1972 or thereabouts would be the timeframe of the incorporation of the Rod n Reel? Mr. Donovan replied yes. Mr. Blitz stated that in earlier testimony, Mr. Donovan stated he did not believe a permit had been granted for the Harbor Vista North. For the record, Mr. Blitz showed Mr. Donovan previously submitted Exhibit 57, zoning permit with renewal date for Harbor Vista North, and asked Mr. Donovan to correct his testimony. Mr. Donovan reviewed the exhibit and confirmed. Mr. Blitz had Mr. Donovan confirm that though he did not personally meet with the Planning Commission, he did, however, throughout the comprehensive planning process, provide public testimony. Mr. Donovan replied yes. Lastly, Mr. Blitz had Mr. Donovan confirm that a grading permit was obtained for Home Place. Mr. Donovan confirmed.

Chair Hoon-Starr asked if there were any parties of record that would like to question the witness.

1. Randall Getman was sworn in by Board Counsel Sussman and proceeded with his questioning of the witness.
2. Board member Amy Everett asked Mr. Donovan, other than the economic state, was there any other hinderance to him moving forward on the projects. Mr. Donovan replied not to his knowledge.

Mr. Blitz continued with a short slide presentation, presenting arguments about the requested relief. It presents both the legal reasons as well as additional legal arguments. Expansive authority is given to the Board to craft relief under Maryland and Town law. (§4-306(f) of Land Use Article and §290-32G of the Zoning Ordinance). It allows the Board to assume all the powers of the Zoning Administrator and the Planning Commission in crafting relief to either:

- 1) review and approve site plans by the Board itself, and issue zoning permits according to the laws that existed on the date the applications were filed; or
- 2) order the Zoning Administrator and Planning Commission to review the site plans according to the law that existed on the date that the applications were filed and to order the Zoning Administrator to issue a permit if the site plans are approved.

Mr. Blitz reviewed for the Board the procedure for processing a site plan upon receipt by the Planning Commission.

Mr. Blitz submitted a timeline which allows to put into perspective the argument that the delay was unreasonable, which constrained Rod n Reel's rights to develop its properties.

Exhibit 63 – A timeline from January 21, 2021 when Applicant filed site plan applications for the five properties until current Board of Appeals hearings.

Approaching the end of the 2-hr session, Mr. Blitz will continue with his remaining presentation at the next meeting which will be held on the 17th day of April, 2024.

There being no further comments, upon motion duly made by Mr. Doherty and seconded by Ms. Everett, the Chair declared the hearing adjourned at 8:27 pm and to resume again on April 17, 2024, at 6:30 PM.

Submitted by,

Sharon L. Humm
Board of Appeals