

Letter from Templeton attorney to Boone Board of Adjustment

Written by Lauren Ohnesorge
Wednesday, 23 May 2007 06:54

Templeton's attorney, Tony di Santi, drafted a letter to the Boone Board of Adjustment earlier this week. The letter, as well as correspondence leading up to it, is below.

The following comes from Boone's Unified Development Ordinance (UDO) Section 74, and is the motivation for the continued controversy.

"The Board of Adjustment shall consider whether the application is complete.

The Board of Adjustment shall consider whether the application complies with all applicable requirements of the Town of Boone Unified Development Ordinance. If the Board of Adjustment concludes that all requirements are met, **it shall issue the Special Use Permit unless it adopts a motion to deny the application...**"

The first two considerations were voted on and unanimously confirmed by the Board.

At the May 1st meeting, a motion was made and carried out- a motion to **grant** the Special Use Permit. This terminology is at the heart of the recent controversy. Town of Boone supervisor George W. Cole sent a letter to Templeton's representative James West to advise him of the results of the May 1st meeting.

“After hearing all input from the applicant and members of the public; a motion was made to approve the project. This motion was not approved by a vote of three ayes and five nays. No other motions were offered. **The result of this vote was that the application was denied,**” Cole wrote.

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According to Phil Templeton's son Jeff Templeton, not approving a motion to grant the request is not the same thing as denying the request altogether.

In response to Cole's letter, Templeton's attorney, Tony di Santi drafted a reply.

"It is correct that a motion was made to approve the project with conditions pursuant to Section 75 of the Unified Development Ordinance (UDO) or the Town of Boone, and that this particular motion failed by a vote of three ayes and five nays. However, it is incorrect that the result of this vote was that the application was denied. The result of this vote is that the conditions that the applicant proposed were not imposed by the Board of Adjustment," he wrote.

Planning supervisor George W. Cole replied in a letter to James West.

"In light of your position that the meeting was not concluded and all votes not taken we have scheduled a Continuation Meeting of the Board of Adjustment to Conclude Action on the Application for a Special Use Permit... This continuation meeting will be held at 5:30 p.m. on May 21, 2007 in the Town Council Chambers at 1500 Blowing Rock Road," Cole wrote.

According to Jeff Templeton, this action does not comply with the rules. He said once the Board voted on May 1, the issue could not be reopened in that manner. Templeton appeared to agree. A petition for Writ of Certiorari was made by Templeton Properties on May 18. According to Jeff Templeton, it was time for the courts to decide. The Town of Boone's attorney, Samuel F. Furgiuele Jr., was served notice of the suit on May 21. At that point in time, according to Jeff Templeton, Furgiuele should have known the permit was an issue for the courts and stripped it from the May 21 agenda.

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Also on May 21 before the meeting. Di Santi sent a letter to Richard Foster, chairman of the Town of Boone Board of Adjustment.

The letter is as follows:

Mr. Richard H. Foster, II, Chairman

Town of Boone Board of Adjustment

1510 Blowing Rock Road

Boone, NC 28607

Re: Templeton Medical Clinic

SU20070107

Dear Rick:

On behalf of Templeton Properties, LP, I am submitting this correspondence regarding Templeton Properties, LP's application for a Special Use Permit, 20070107, for the development of a medical clinic on its property located at 315 State Farm Road, Boone, NC, 28607. Templeton Properties, LP will not participate in the "Continuation Meeting of the Board of Adjustment" scheduled for 5:30 p.m. today. It is the position of Templeton Properties, LP that the "Continuation Meeting of the Board of Adjustment" is an illegal meeting as a result of the following:

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1. At the conclusion of the valid continuation hearing on May 1, 2007, there was no motion to continue that meeting. The meeting was adjourned by you as the chairman;

2. Since there was no motion to continue the May 1, 2007 hearing, the hearing was concluded, and thus, the application for Special Use Permit 20070107 was adjudicated;

3. Proper notice of the "Continuation Meeting of the Board of Adjustment" as required by Section 119 of the Town of Boone Unified Development Ordinance has not been given;

4. A Petition for *Writ of Certiorari* was filed by Templeton Properties, LP against the Town of Boone and the Town of Boone Board of Adjustment on May 18, 2007. The Superior Court of Watauga County issued its *Writ of Certiorari* on May 19, 2007. A copy of the Petition for *Writ of Certiorari* and the *Writ of Certiorari* is included in this correspondence. Therefore, based upon the *certiorari* order issued by the Superior Court of Watauga County, the Town of Boone Board of Adjustment no longer has any jurisdiction regarding this issue.

I do wish to correct an erroneous statement made by Mr. Cole in his correspondence of May 14, 2007 to James West regarding the "Continuation Meeting of the Board of Adjustment". Mr. Cole states that Templeton Properties, LP has stated a position that the continuation hearing of May 1, 2007 was not concluded and all necessary votes were not taken. There was no such assertion in my correspondence of May 8, 2007 to Mr. Cole, and Templeton Properties LP asserts a completely different position. Pursuant to Section 74 of the UDO, only two votes are required to be taken by the Board of Adjustment. Pursuant to Section 74 [a][1], the first required vote is to consider whether the application is complete. The minutes of the May 1, 2007 continuation of the April 5, 2007 hearing will reflect that this motion was made, and that the motion received the unanimous vote of the Board of Adjustment. Pursuant to Section 74[a][2], the second required vote is to consider whether the application complies with all of the applicable requirements of the UDO. The minutes will reflect that a motion was made and duly seconded that the application complied with all of the applicable requirements of the UDO, and the motion received the unanimous vote of the Board of Adjustment. No other vote is necessary

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or required by Section 74 of the UDO, and a hearing, based upon these two votes, is adjudicated.

After the two mandatory votes are taken, the Board of Adjustment has two discretionary votes which it may consider, but which are not required to be considered. The Board of Adjustment has the discretion to issue a special use permit with conditions pursuant to Section 74[a][3], or the board has the discretion to deny the application if an appropriate motion and vote, with sufficient findings of fact, is made pursuant to Section 69 of the UDO. The minutes will reflect that the first discretionary motion was made, but it failed, therefore, the special use permit was not issued with the conditions offered by Templeton Properties LP. The second discretionary motion and vote that could have been made and considered pursuant to Section 69 of the UDO was not made or considered. Therefore, Mr. Cole is in error when he states that all of the votes necessary to rule on the application were not taken and that the matter was not concluded. The matter was concluded and completely adjudicated pursuant to the requirements of the UDO, and it is the position of Templeton Properties, LP that it is entitled to the issuance of Special Use Permit 20070107 pursuant to the terms of its application. This issue is now within the jurisdiction of the Superior Court of Watauga County for resolution.

Very truly yours,

DI SANTI WATSON CAPUA & WILSON

Anthony S. di Santi