

(SEAL)

COMMONWEALTH OF MASSACHUSETTS  
LAND COURT  
DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss.

18 PS 000253 (MDV)

BOXBOROUGH TOWN CENTER, LLC,

Plaintiff,

v.

TOWN OF BOXBOROUGH PLANNING  
BOARD, and JOHN MARKIEWICZ, EDUARDO  
PONTORIERO, ABBY REIP, HONGBING  
TANG and NANCY FILLMORE, as they are  
Members of the Town of Boxborough Planning  
Board,

Defendants.

**ORDER REMANDING CASE TO BOXBOROUGH PLANNING BOARD**

In May 2018, plaintiff Boxborough Town Center, LLC (“BTC”) filed in the Permit Session of this Court (*see* G.L. c. 185, § 3A) an eleven-count complaint against defendant Town of Boxborough Planning Board. BTC brought nine of the counts under G.L. c. 40A, § 17, as each is an appeal from the Board’s denial of BTC’s request for an approval, under the Town of Boxborough’s Zoning By-law, of a site plan for a proposed 100-unit elderly-occupancy residential development. A tenth count challenges the Board’s refusal to grant a “stone wall removal permit” under the Town’s general (that is, non-zoning) bylaws to facilitate the same development; the parties agree that the Court is able to review that permit denial under G.L. c. 249, § 4. The last count of BTC’s complaint claims that with respect to both denials, the Board acted out of bias and bad faith, something that (if true) only provides further fodder for review of each denial under the specific statutes that allow such review.

The parties filed today a Joint Motion for Remand. The Court ALLOWS the motion. It is further ORDERED:

1. This matter is remanded to the Board for a lawfully noticed public hearing (the "Remand Hearing"). The Board shall conduct the Remand Hearing *de novo* and base its decision on all documents and testimony previously submitted to the Board and any additional documents or testimony that anyone presents at the Remand Hearing.

2. BTC must submit to the Board, within fifteen days of this Order, a concept plan. Within 30 days of BTC's submission of the concept plan, the Board must (a) publish, post, and serve all notices of the Remand Hearing in accordance with governing law; and (b) open the Remand Hearing.

3. The parties shall file with the Court, within ten days after the Board opens the Remand Hearing, a joint notice of the opening of the hearing.

4. The Board shall conclude the Remand Hearing without any unreasonable delay, and in no event later than 90 days from the date it opens the Remand Hearing, unless such time is mutually extended by agreement of the parties.

5. The Board shall render and file with the Town Clerk its written decision within twenty days of the close of the Remand Hearing.

6. The parties shall file with the Court, within ten days after the Board files its decision with the Town Clerk, a copy of the Board's decision and any other matters the parties wish to present jointly.

7. The Court retains jurisdiction over this case, including but not limited to any appeal that BTC may take from the Board's decision following the Remand Hearing. If BTC is aggrieved by that decision, it does not need to file a new complaint appealing the decision. Instead, BTC must, within twenty days of the filing of the decision with the Town Clerk, (a) file with this Court (and serve on all parties) a motion for leave to amend the pleadings to assert a right to judicial review of the decision, with the form of the proposed amended pleading attached to the motion to amend; and (b) file with the Town Clerk, with a copy to counsel of record, written notice of having filed the motion to amend, accompanied by a copy of the motion to amend.

8. Nothing in this Order shall affect the rights of persons other than the parties to this action to appeal the Board's decision following the Remand Hearing.

*MDV* SO ORDERED.

By the Court (Vhay, J.)

Attest:

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Deborah J. Patterson, Recorder

Dated: January 25, 2019

A TRUE COPY  
ATTEST:  
*Deborah J. Patterson*  
RECORDER