

MINUTES
CITY OF БЕЛОIT BOARD OF APPEALS
Meeting of April 6, 2022

A Meeting of the City of Beloit Board of Appeals was held on Wednesday, April 6, 2022, in The Forum of Beloit City Hall, 100 State Street. Chairperson Kara Purviance called the meeting to order at 5:10 PM. All Board members participated virtually.

1. **Call to Order and Roll Call**

Director of Planning & Building Services Drew Pennington called the roll. Present were: Kara Purviance, Dustin Gronau, John Petersen, David Baker, and Susan Adams. Brooke Joos was absent.

2. **Business Items**

a. **Discussion and possible action on Motion to Stay Further Construction of Medical Facility at 2102 Freeman Pkwy filed by Beloit Health System and Nommo Donald.**

Chairperson Purviance acknowledged that each Board member had received the following documents in advance: Appellants' Motion to Stay Further Construction; City of Beloit's Opposition to Motion to Stay Further Construction; City of Beloit's Proposed Findings, Conclusions, and Order to Stay Further Construction; and Orthollinois' Proposed Findings, Conclusions, and Order re: Motion to Stay Further Construction.

Chairperson Purviance stated that oral arguments on items 2a and 2b would be heard together before the Board discussed them together in closed session. Chairperson Purviance announced that presentations would be limited to three minutes per party.

Attorney Colin Roth introduced himself as representing the City of Beloit. Attorney Roth referenced the City's brief and stressed the City's position that the Board does not have authority to halt construction under the circumstances, and that even if the Board does have authority, the City's position is that there are no "proceedings" to be stayed - only construction with an issued permit.

Attorney Duffy Dillon introduced himself as representing Orthollinois. Attorney Dillon stated his agreement with the City's position that there are no legal "proceedings" to be stayed and that physical construction is distinct from legal proceedings. Attorney Dillon stated his agreement with the City's assertion that the Board lack's authority to stop construction. Attorney Dillon noted that the appellant's concerns relate only to the secondary or accessory use and not the principal use of an ambulatory surgery center.

Attorney Tim Feeley introduced himself as representing Beloit Health System. Attorney Feeley stated his position that the State Statutes and City Ordinances grant the Board authority to issue a stay when overriding the Zoning Officer's certification that a stay would cause imminent harm. Attorney Feeley argued that the effect of the Zoning Officer's approvals is a legal proceeding that can be stayed, and that the City's ordinance 2-1004 allows the Board to "stay all proceedings." Attorney Feeley argued that the stay should be automatically granted. Chairperson Purviance reminded Attorney Feeley of the three minute limit and asked him to conclude his remarks. Attorney Feeley referenced Exhibit OI 662-663 relating to Residential Care Apartment Complexes (RCAC) and stated that the City allegedly relied on Orthollinois' plans to construct an RCAC when granting approval. Attorney Feeley argued that the City erred in approving an RCAC without state approval in violation of the Zoning Ordinance.

*Note that the vote on this item (2a) was held after the Board heard oral arguments on item 2b below and went into and out of closed session as described further below.

After emerging from closed session described under item 2b below, Mr. Baker moved to deny the Appellant's Motion to Stay Further Construction (Item 2a), and asked the Board's Attorney Fleming to read the grounds for denial that the Board agreed upon in closed session. Attorney Fleming read the Board's determination that construction activity is not a legal proceeding, and that the Board lacks authority to order a stop to construction. Mr. Baker confirmed that his motion was based upon those grounds. Mr. Petersen seconded the motion. The motion to deny the Appellant's Motion to Stay Further Construction passed (4-1), roll call vote, with Mr. Peterson voting against the motion.

b. Discussion and possible action on Motion to Stay Proceedings on April 12, 2022 filed by Beloit Health System and Nommo Donald.

Chairperson Purviance announced that each Board member previously received a copy of the Appellants' Motion to Stay Proceedings on April 12, 2022. Chairperson Purviance asked Attorney Feeley to summarize what records he is waiting for from the State and City and their relevance.

Attorney Feeley stated that Orthollinois has acknowledged that they are seeking approval of an RCAC by the State of Wisconsin, and that he is expecting records related to that submittal. Attorney Feeley announced that he submitted an open records request to the Wisconsin Dept. of Health Services (DHS) that is relevant to the proceedings and that the appellants need to know exactly what type of medical facility is being proposed.

Attorney Feeley argued that the Board needs to know what type of care is to be provided in the overnight suites.

Attorney Dillon asked Chairperson Purviance for an opportunity to respond. Chairperson Purviance asked the Board's Attorney Matt Fleming for his opinion. Attorney Fleming agreed to allow Attorney Dillon to give brief remarks. Attorney Feeley stated his agreement that both parties should be able to respond.

Attorney Roth, representing the City, stated the City's position that the hearing on April 12, 2022 should move forward as the City has released all records on which the decision was made and that records from Wisconsin DHS are irrelevant documents related to licensing decisions by the State. Attorney Roth argued that the only question before the Board is whether the proposed development complies with the City's Zoning Ordinance as a medical facility.

Attorney Dillon agreed with Attorney Roth's comments, and noted that the specific layout of the development in terms of room sizes and features is irrelevant. Attorney Dillon stated that Orthollinois will fully comply with state and local requirements and that Orthollinois cannot be indefinitely delayed by BHS' open records request to Wisconsin DHS.

Chairperson Purviance entertained a motion to go into closed session. Mr. Baker made a motion to go into closed session pursuant to Section 19.85(1)(a) of Wisconsin Statutes, which was seconded by Mr. Petersen. Motion passed (5-0), roll call vote.

The Board returned to open session after approximately one hour.

*The Board made a decision on item 2a as described above and then proceeded to a decision on item 2b as described below.

Mrs. Adams moved to deny the Appellant's Motion to Stay Proceedings on April 12, 2022 (Item 2b), thereby allowing the contested case hearing to proceed with available evidence, with the stipulation that the parties could move for adjournment if they believe that additional evidence is necessary. Mr. Baker seconded the motion. The motion to deny the Appellant's Motion to Stay Proceedings on April 12, 2022 passed (5-0), roll call vote.

c. Discussion of Procedures for upcoming April 12, 2022 Board of Appeals meeting.

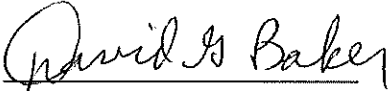
Board of Appeals Attorney Fleming noted that the Board will follow the Board's Rules of Procedure for a contested case proceeding, and that Orthollinois will be a party to the proceedings. Attorney Fleming stated

that written findings will be needed, which may not happen during only one meeting and that the Board can hold additional meetings for deliberation. Mrs. Adams asked about the volume of documents and Attorney Fleming asked Mr. Pennington to describe the meeting room technology. Mr. Pennington stated that the meeting room will have I-pads for Board members and that hard copies can be requested.

Attorney Dillon stated that Attorney Feeley filed a motion earlier in the day asking that Attorney Dillon be called as a witness. Attorney Dillon noted that he has no objections to that motion provided he is allowed to continue to represent Orthollinois at the hearing. Attorney Fleming suggested that the attorneys for all parties participate in a witness conference on April 7, 2022. The attorneys for all parties agreed to meet to discuss the specific matter of Attorney Dillon acting as a witness. The parties agreed to bring hard copies of their exhibits for witness use during the hearing on April 12, 2022. Attorney Feeley asked about time limits at the hearing, and Attorney Fleming noted that it was the Board's discretion. Mr. Petersen asked if neighbors can speak at the hearing, and Attorney Fleming stated that the Board's Rules of Procedure allow interested parties to speak.

3. Adjournment

Mr. Baker made a motion to adjourn, which was seconded by Mr. Petersen. The motion passed, voice vote (5-0). The meeting adjourned at 7:13 PM.


Board of Appeals Chair