

PUBLIC HEARING AND BUSINESS MEETING
FINAL

Call to Order: Vice Chairman A. Dittami called the meeting to order at 7:00 p.m.

Roll Call: A. Dittami, Vice Chairman; J. Deleire, D. French, M. Farinola, Members;
P. Young, T. Parker, P. Robart, Alternate Members;
L. Ruest, Administrative Assistant; K. Kelley, Building Inspector

Vice Chairman Dittami reported that he will be acting as Chairman until the Board reorganizes. He also stated that the public hearing would be taken out of order leaving reorganization to follow that discussion. L. Ruest stepped down from her duties as Administrative Assistant at 7:03 p.m. and Abby Tonry took minutes. Alternate Member P. Robart was designated a voting member.

Public Hearing

Case # 10-02: Application from Robert and Lori Ruest requesting an **Appeal from an Administrative Decision**. The applicants allege that the Building Inspector has made an error in the decision, determination, or requirement of January 29, 2010 to a zoning inquiry and hereby appeals said decision, which the applicants believe was made in error in Zone A on property located at 25 Coach Lane. (Map 8, Lot 83-14) *Continued from February meeting.*

7:08 Abby Tonry took over as acting secretary for Application 10-2

A. Dittami assigned P. Robart a voting member. A. Dittami offered to step down if anyone objected, hearing none the meeting continued.

K. Kelly stated that this originated as a verbal complaint as he did not get a written complaint until August 9, 2009 when Bob Ruest came to see E. Small who passed the complaint on to K. Kelly for investigation and enforcement if necessary.

A Dittami passed out a copy of Section 3.2.1 Powers of the Zoning Board of Adjustment; reviewing the options the Board has for this appeal. P. Young asked that the chairman explain to the audience how the meeting will be conducted. A. Dittami stated he would allow the applicant to speak first then K. Kelly and then rebuttal. Next the Board will ask its questions, then the audience may speak. Once the audience has finished the Board would consider and vote. A written decision will be presented to the applicant and K. Kelly with copies available to the public.

Attorney Sharon Cuddy Somers addressed the Board on behalf of the applicants. She referenced her letter of March 16, 2010. The applicant is requesting an Appeal of Administrative Decision by the code enforcement officer. Attorney Somers stated that the Ruests wanted it known that this is not a personal attack on anyone. Coach Lane is part of subdivision created prior to 1970. The applicants expect to be able to enjoy their property without excessive noise and commercial boat storage in the neighborhood. On January 29, 2010 K. Kelly made an administrative decision that boats are a customary use in the residential zone which the applicant feels is not correct.

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Section 3.10.1 states "Accessory uses and buildings customary to principal permitted use such as incidental storage facilities" they believe does not include boats as principal use of the residential property. Attorney Somers referenced Exhibit F that showed a list of boats, trailers and trucks found throughout town. Discussion resulted in the size and commercial status of boats. Also at issue is the number of boats on this property. Exhibit D shows the three boats, the center one is a recreational boat, the left one is old and in need of restoration and the right one appears active. Discussion regarding the registration of boats, commercial versus recreation. Recreation boats must be registered with the town as the middle boat is. Commercial boats under 5 ton must be registered with the state. When inquiry was made regarding the registration of two boats the state would not give out any information except to say that it is often that boats being built/rebuilt leave the numbers off until they are ready for launching.

D. French asked Attorney Somers if she considered a truck with lettering in a residential yard a permitted use. Attorney Somers stated that business trucks are customary use but a fleet of trucks or an 18-wheeler is not.

Attorney Somers stated that in addition to the number of boats in this yard the noise is a problem. That during the summer and fall that there is maintenance being done on the engines. On Labor Day an engine was run from dawn to dusk, the noise being similar to a chainsaw. That this is different from maintenance to rinse and flush the engine for a short time, that it is continual and repetitive repair on at least two commercial vehicles.

M. Farinola stated that commercial boats greater than 19' are too big to be trailered, that it is not the size that makes a boat commercial.

J. Delisle asked if we have a noise ordinance. K. Kelly stated that we do not but we have disorderly conduct. Statue 644.2 states that if there is noise for more than 15 minutes a person should call the police.

J. Delisle asked if there were any actionable offenses from this property. K. Kelly stated that he had conducted an investigation regarding a dog barking, roosters crowing and snow being piled up but these had only been verbal complaints. He stated that he also was not taking this issue personally and was glad that the whole Board was to make the final decision.

Attorney Somers' response to J. Delisle's question was to ask if having the police respond to noise complaints is the best use of police resources.

P. Young asked if the noise is like listening to a chainsaw how are people who heat with wood supposed to get wood cut, 14 minutes at a time? K. Kelly addressing 644.2 saying a snowblower at 2am might be necessary where a dog barking at that hour can be controlled.

Attorney Somers then addressed the issue of 100 lobster traps being stored on the property. She stated that NH law allows 5 traps for private use, over that requires a commercial license. There is also a tuna tower being stored on the property. She stated that they would hope that two boats

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be removed or enclosed in a building and the noise be contained within a building. That the number of boats not be allowed to increase allowing the aesthetics, value and enjoyment of the neighborhood to be preserved.

P. Young stated that she knew of precedence of over 300 traps, a boat over 15' in length, three boats at a time all being stored in plain site in the residential zone for over 70 years. Attorney Somers stated that although the Exhibit F was not scientific it showed that there are few large commercial boats in plain site from subdivision roads.

M. Farinola asked if rural tractors are considered commercial if not licensed. Attorney Somers stated that repair on these tractors is probably done in a barn or garage, not out in the open. P. Young asked if it were three 4-wheelers running all day long what should be the recourse? Attorney Somers said call the police.

K. Kelly then made his presentation. He stated that he felt this was an issue of neighbor versus neighbor, that the boats were only after the dogs, roosters and snowbanks. There were no police reports of noise. He is glad to have the Board decide this issue.

M. Farinola asked if there was any noise when K. Kelly visited the site. K. Kelly stated he had heard none.

A Dittami asked what makes something commercial, if he had a 5-ton dump truck on his property would it be commercial? K. Kelly stated that it would not be commercial and that a person is allowed only one unregistered vehicle. A. Dittami asked what if it were two caterpillar tractors? K. Kelly said they would not be commercial unless being used commercially. A. Dittami asked if this was an investigation or an enforcement. K. Kelly stated that it was not enforcement because he found no violation. A. Dittami asked if a formal complaint was made, does he have any discretion in handling the complaint? K. Kelly stated that as the Building Inspector and Code Enforcement Officer he does have power to execute enforcement.

A Dittami asked if a special exception from Section 3, 3.6 was granted? K. Kelly stated no, in his opinion, it does not apply.

P. Robart stated that these boats are not registered to an LLC or other commercial entity and the owner is clearly not making money off them.

M. Farinola asked if lobster traps being stored for winter was any different to that of apple crates? D. French wanted to know if there was any smell associated with these traps? K. Kelly answered that no other abutters have complained, although he agrees that the yard is a mess with an old dishwasher, tyvek falling off and pallets strewn about.

The Chairman opened the meeting to public comment.

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Dean Tsonas - Goodwin Road since 1976 has been fishing for 50 years. He stated that he felt this was a personal dispute that has spilled over into an industry. He stated that the use of the boat at the time determines its commercial versus recreational status. He also stated that an engine requires water to cool it and doubts an engine could be run for repair all day long out of water. A. Dittami asked what is the difference between private versus commercial licensing? D. Tsonas stated the difference is, if you sell your product you are commercial.

Jim Willwerth – Mill Lane, resident 9 years, over 30 years fishing has never had any complaints about his gear. He stated he believes the founders of Hampton Falls were probably fisherman as well as farmers.

Mike O’Leary - _____ Road- resident since 1989 stated that he has a 600 trap license and runs three commercial boats, one only 9’ long.

Chris Merrill- East Road- stated that everything outside of the 300’ of Route 1 zone is residential and he believes storing a boat on Route 88 is no different than storing one on Coach Lane.

M. Farinola stated that Wellington Farms has its own protective covenants that are controlled by the homeowner’s association.

A. Dittami asked if the definition of agriculture includes fishing. State Statues 21.34 includes “commercial raising, harvesting and sale of fresh water fish or other aquaculture products’.

Attorney Somers stated that although the statements of the lobstermen in the audience are legitimate, the applicants are not trying to put lobstermen out of business. They are seeking a balance between the people in town who do and who do not store boats on their property.

Mike Glavin – 5 Crank Road – has had no problems with neighbors regarding his fishing gear storage.

J. Delisle asked if there is any case law on accessory use. Attorney Somers stated that there has been no test of this type of accessory use. She stated that there have been cases about what is reasonable regarding scale, intensity, and patterns of behavior.

P. Robart stated that boats have been customary in town forever. Looking at Tsonas’ or O’ Leary’s properties the yards is neat and the fishing gear is hidden. The tipping point on this property is the owner has crossed the line of good taste in property use. The noise has exceeded neighborliness. It should not be about marine use when it is really about too much stuff in the yard.

P. Young wanted to know if we were going to start to tell people when they needed to mow their lawns?

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MOTION: M. Farinola made a motion to support the administrative decision of the Code Enforcement Officer of January 29, 2010. Seconded by D. French, passed 4-1. P. Robart abstained. L. Ruest regained her seat at 8:50pm.

L. Ruest resumed her seat at 8:45 p.m.

Organizational Meeting

1. Nomination of Chairman:

MOTION: To nominate and elect Alex Dittami as Chairman 2010-2011.

MOTION: D. FRENCH
SECOND: M. FARINOLA

No other nominations were heard.

VOTE: 4 IN FAVOR, 1 ABSTENTION, PASSES

2. Nomination of Vice Chairman:

MOTION: To nominate and elect John Deleire as Vice Chairman 2010-2011.

MOTION: M. FARINOLA
SECOND: P. ROBART

No other nominations were heard

VOTE: UNANIMOUS

3. Alternate Members

Chairman Dittami reported that with R. McDermott's resignation in February, the Board has one vacant member seat and that the Board of Selectmen will need to appoint a member. A. Dittami inquired as to whether any of the three alternate members were interested in a full member seat on the Board. T. Parker and P. Robart stated that their work schedules do not allow for this commitment and P. Young stated she is not interested in a full member position. Following discussion, P. Young was recommended for full member.

MOTION: To recommend P. Young as full member to the Board of Selectmen.

MOTION: A. DITTAMI
SECOND: P. ROBART
UNANIMOUS

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Alternate Members P. Robart and T. Parker agreed to continue for another year. The Board of Selectmen will need to consider these appointments as well.

Review Of Minutes Of The Previous Meeting:

T. Parker suggested that the reference to "A. Tonry" read "Abigail Tonry" so as not to confuse her with her mother. P. Young amended paragraph three of page three to read as follows:

*J. Deleire stated that he would be more comfortable if all abutters were happy, however, looking at the plan, there are three plan references back to 1984 that allowed an opportunity to see where the lot lines were. A. Dittami noted that the plan shows that bounds have been found on a number of corners; with these, it is not difficult to figure out where lot lines are. P. Young questioned what **price made moving the shed unreasonable** ~~difference setting a price to move the shed makes~~ and was told that this is one criteria used when granting an equitable waiver as outlined in the statute. D. French expressed concern with setting a precedent by granting a waiver for a mistake that has been done in good faith and questioned whether a waiver could be granted in such a way as to discourage other situations like this from happening in the future.*

MOTION: To approve the minutes of the February meeting as amended.

MOTION: A. DITTAMI
SECOND: J. DELEIRE
4 IN FAVOR, 1 ABSTENTION, PASSES

Other Business

- Spring Planning and Zoning Conference, Saturday, May 8, 2010, Nashua, NH: Board Members were asked to complete registration forms and forward them to L. Ruest for registration and payment of registration fees.
- ZBA Work Session: A. Dittami stated that given the late hour, this work session relating to an anonymous complaint regarding 356 Exeter Road (Map 6, Lot 22) will not be held this evening. He stated that he would like to take 15-20 minutes each meeting to address any concerns that might arise in order to get better educated with regard to the powers and authority of the ZBA.

MOTION: To schedule 10-15 minutes each meeting to review certain aspects of the bylaws to become more educated of the role and authority of the ZBA.

MOTION: A. DITTAMI
SECOND: J. DELEIRE
4 IN FAVOR, 1 OPPOSED, PASSES

ZONING BOARD OF ADJUSTMENT
MARCH 25, 2010

7:00 PM
TOWN HAL

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Comments or Questions from the Floor: No comments or questions were heard from the public at this time.

Adjournment:

MOTION: To adjourn the meeting at 9:04 p.m.

MOTION: P. ROBERT
SECOND: J. DELEIRE
UNANIMOUS

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