

**PUBLIC MEETING
FINAL**

CALL TO ORDER: A. Dittami called the meeting to order at 6:30 PM.

ROLL CALL: A Dittami, Chairman; J. Deleire, Vice-Chairman: D. French, P. Young,, Members; T. Parker, P. Robart, Alternates; K. Kelley, Building Inspector, A. Tonry, Acting Secretary
Not Present: M. Farinola, Selectmen's Representative.

WORK SESSION: A. Dittami provided members with an e-mail from counsel, Mark Beliveau, regarding jurisdiction. After reviewing the confidential correspondence the Chairman asked for member input.

P. Young voiced her dislike of the lack of decision the attorney provided and hopes the Board will not use him again. She did, however, feel the Board has jurisdiction.

J. Deleire stated the e-mail was no help and feels that jurisdiction is a gray area.

D. French agreed that it was a gray area but felt since the Board had gone this far they should continue. He reminded the Board they limited the attorney's time spent researching the matter.

P. Robart stated that the Board is already in the matter.

T. Parker was concerned the Board could become a fulltime mediator of neighborhood disputes but felt that the Board needed to continue on this matter.

A. Dittami stated that the Building Inspector did his job investigating the matter and made a decision. The ZBA, not aware of Section 3-2:1, (which had not been mentioned in the e-mail) had decided to take jurisdiction. This dispute is between Ruest's and the Building Inspection not the neighbor. He stated that the ZBA should not run to the lawyers every time but should make their own decisions.

D. French felt since this matter might go to court it was best to check and double check with the Board's attorney.

K. Kelley stated that the Board's hearing is the Ruest's due process. If the matter were not heard by the ZBA then the court would throw it back to the ZBA first to make a ruling.

A. Dittami then read an e-mail from M. Farinola in his absence. M. Farinola stated that he felt the matter was not a ZBA issue but if the Board decided to hear the matter he supports the Building Inspector's decision.

A. Dittami opened the meeting for public comment, hearing none, he closed the public comment.

A. Dittami then asked the Board members to review the ZBA application forms for next meeting as well as the ZBA procedures in the yellow pages of the By-Laws and Rules of Procedures for the purpose of modifying them. He believes that there is confusion between the information provided by officials and the application documentation provided. He would also like to discuss the fees - are they sufficient to cover the cost of publications and if an appeal or rehearing occurs should the applicant be charged for re-noticing abutters. The Town Bylaws allow the ZBA to change their procedures without a Town Meeting as long as there is a 30 day notice to do so. He wants to discuss these issues at the July 22nd meeting. D. French stated he would not be at that meeting but will e-mail his ideas to the Chairman.

7:00pm 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

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decision, which the applicants believe was made in error in Zone A on property located at 25 Coach Lane. (Map 8, Lot 83-14)

A. Dittami stated that since the Board was short one regular member that P. Robart would be voting.

Attorney Sharon Cuddy Somers thanked the Board for the discussion and decision regarding jurisdiction and the opportunity for the rehearing. She then provided the Board with blown-up color photographs of the property in question as well as other property around town where fishing equipment and boats are stored. She reminded the Board that the March 25th meeting's discussion was whether boats, commercial or not, are allowed in the residential district. The Board's decision tonight will be to reverse, uphold or modify the decision of the Building Inspector. The applicants would like the decision modified to force the property owner to provide shielding for the boats from the street. Attorney Somers stated that multiple boats appear to be customary in town but most are shielded from the street. The applicants are not here to speak badly about fishermen or put them out of business. She stated that the issue of noise has been resolved as the neighbor seems to have accepted perimeters to reduce the noise disturbance. She cited a Salem case which reminds Boards to first consider "What is the principle use?" of the property then "What is customary?" beyond that. Her conclusion being that multiple boats are customary if screened and that 24 Coach Lane is a big lot with plenty of room to locate the boats in an alternate building/gate/fence or behind the house.

Attorney Somers then provided the Board with a letter dated June 2, 2010 and two court cases. P. Young stated that the package should not be accepted on the night of the hearing. D. French asked for time to read the letter. Attorney Somers stated that if the documents were not accepted she would read the letter into the record.

D. French made a motion to accept the documents. The motion was not seconded.

A. Dittami stated that although he was uncomfortable accepting the last minute documents, the Board should accept the letter as an outline to follow the presentation but not the cases. T. Parker asked if Massachusetts's case law could be basis for consideration in New Hampshire.

MOTION: To accept Donahue, Tucker and Ciandella letter dated June 24, 2010 as well as the photographs presented earlier in the meeting, for information only and not as part of the official application.

MOTION: A. Dittami **SECOND:** J. Deleire Passes 5-0.

Attorney Somers then read the letter stating that aquaculture was the 'raising, harvesting and sale of fresh water fish'. In response to T. Parker's question she stated that since NH does not have case law covering this issue it is not unusual to look to neighboring states for case law concerning similar matters.

She then provided the Board with copies of Chapter 259, Sections 259:122 – Vehicles, 259:60 Motor Vehicles, 259:12-e Commercial Motor Vehicle, and 259:3 Agriculture and Farming. To be a commercial vehicle it was stated that a vehicle had to have a motor and be self-propelled. She stated that boats are covered under RSA 72-A: 1 Commercial Boats, and 270-E: 2 Commercial Vessels. Commercial boat status is driven by its registration. Larger boats are registered with the Federal Government, smaller ones with the State. The Board allowed the definitions admitted into the file. Attorney Somers suggested the neighbor might consider applying for a Special Exception.

J. Deleire stated he felt the applicants had produced no evidence showing how many is too many, why do three exceed the norm of the community. Attorney Somers countered with "What is

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customary?" He then asked why 672:1:3b General Provisions concerning agriculture does not apply? Attorney Somers stated that no fishing was going on at 25 Coach Lane and that she had received a verbal confirmation from a state official that the Dept of Agriculture did not consider fishing agriculture. J. Deleire stated that that statement was at odds with the state statues.

P. Robart asked if the unsightliness of the boats decreases the value of the street. Attorney Somers stated that it does.

D. French asked if having a boat visible from the street is a violation of the ordinance. Attorney Somers stated that the Board has the authority to modify the Building Inspector's decision and have the boats rearranged or screened. A. Dittami stated that there is no ordinance that limits the number of boats to less than three. P. Young stated the applicants have changed what they originally brought before the Board.

Attorney Somers stated that she has information from the state Department of Agriculture that fishing is not agriculture. J. Deleire asked if it is appropriate that the applicants obtained the photographs regarding boats around town. Attorney Somers stated that she could only comment on the documents provided.

K. Kelley stated that he knew of boats housed outside behind the Deli Barn on Marsh Lane. He stated that the applicants were now looking for a plea bargain. He stated the Special Exception suggested was totally different as it was for heavy road equipment. Mr. Belisle is a carpenter by trade not a fisherman. There have been no further noise complaints, why did none of the other neighbors complain? That Mr. Belisle's house is not completely sided, where does the job of the Building Inspector stop? He cited Dunlop v. Daigle, 122N.H. 295, 298 (1982) regarding substantial and unreasonable interference of one's property.

A. Dittami asked if there was an ordinance prohibiting the number of boats. K. Kelley stated that the ordinances are permissive, meaning that if it is not specifically restricted then it is allowed. P. Robart asked about a junkyard. K. Kelley stated that 263:20 allows for no more than one unregistered and uninspected vehicle in a residential yard. K. Kelley also stated that no other complaints were made by any other neighbors about noise from the property or the boats and lobster traps being stored there. A. Dittami opened the meeting for public comment. Chris Merrill- East Road stated that the applicant's request has changed and that he was aware of other properties including his own with boats and equipment. Maura Wisser- Dodge Road stated that it is now June and most boats are in the water and that during the off-season it is not unusual to see a yard with multiple boats. Dean Tsonas- Crank Road wanted the Board not to be swayed by the discussion; he felt it is an issue to be settled between neighbors. James Wilwerth- Mill Lane noted in support of the position that fishing was an ordinary and customary use of property in Hampton Falls, that the town seal dated 1722 has a fishing vessel on it. Chuck Graham- Crank Road as a practicing attorney is both NH and MA wanted the Board to remember that they should only consider evidence not argument. He then suggested that some Board members have an opinion of the matter and the people involved preventing impartiality and that they should therefore recuse themselves. A. Dittami suggested that he was off topic, that it was inappropriate to suggest the members of the Board might not be open-minded.

A. Dittami then closed the public hearing.

MOTION: To reaffirm the decision of the Building Inspector in letter dated December 16, 2009 and January 16, 2010 as his decision was properly constituted and the evidence presented was not sufficient to change the mind of the Board members.

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P. Robart defended the Building Inspector's decision. He concurred with the Building Inspector's opinion that "other 'materials' mentioned, lobster traps and other fishing gear are lawful accessory uses in this coastal community where fishing and lobstering are long-standing traditions. If the materials are in fact in the Yard setbacks they shall be moved when the weather allows the lot lines to be located." He further supported the Building Inspector's letter of January 29, 2010 saying " It is also the opinion of this Zoning Official that here is no difference between the clear plastic shelter for the property owners personal boat than the green or tan temporary structures that house personal vehicles and other equipment on many residential properties in town. They are accessory uses under the ordinance."

P. Young stated that they had provided no evidence to change her mind. Storing of multiple boats (and other types of agriculture and miscellaneous non-commercial type equipment, not expressly prohibited by the Bylaws) on residential property within the Town was an ordinary and customary use of residential property that was consistent with the Town Zoning Bylaws. Note that there were at least three other properties identified in Town with multiple boats that were not identified by the applicants "survey". A. Dittami stated that other houses with more than one boat or other stuff are not prohibited by ordinance. Although it might not be attractive it is his property, he has rights that we cannot interfere with. Neighbors must use common sense, no motors running at midnight or dynamite in the open. This is a subjective case as no statutes qualify it, therefore he agrees to reaffirm the Building Inspector's decision.

Motion: D. French

Second: J. Deleire

Passes 4-1, one abstention.

Review of Minutes of the Previous Meetings.

The Board felt they had already approved the April minutes.

MOTION: To approve the minutes of the May meeting.

MOTION: D. FRENCH **SECOND:** J. DELEIRE Passes 4-0

K. Kelley asked if the Board had received an e-mail regarding Fitzgerald. The Board stated they had not. K. Kelley stated that there is a complaint about more than one vehicle where the Special Exception allows for only one. He will try to work it out with the landowner if possible.

P. Young wanted the Board to know that although she is passionate about issues before the Board she is still listening and open-minded. A. Dittami reiterated that the Board voted for her to stay on the case.

MOTION: To adjourn the meeting at 8:55 pm.

MOTION: P. ROBART **SECOND:** J. DELEIRE Passes.

Respectfully submitted,
Abigail Tonry
Acting Secretary