

Frank Benesh <frank.h.benesh@icloud.com>

June 18, 2013 8:07 PM

To: Dave H Mason <dmason@mmins.com>, "jerrydougherty3@hotmail.com" <jerrydougherty3@hotmail.com>, Joan Aubrey <jraubrey@yahoo.com>, Dave Matesky <damesky@hotmail.com>, Brian Walker <bwalker651976@gmail.com>, Martha Benesh <MarthaBenesh@gmail.com>, Gino Funicella <gfunicella383@gmail.com>

Bcc: Frank Benesh <frank.h.benesh@icloud.com>

Possible Ex parte communication

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I received the following message from Jerry Dougherty IV that mentions the Evans case. I did not read beyond the first sentence. I will post on the web site as part of the materials for Evans.. I believe any such communication should occur at the public hearing / meeting - putting aside the question whether he meets the threshold of being a party directly affected by the matter under consideration.

Begin forwarded message:

**From:** Jerry Dougherty <jerrydougherty@hotmail.com>  
**Date:** June 17, 2013, 2:38:21 PM EDT  
**To:** Frank Benesh <frank.h.benesh@icloud.com>  
**Subject:** RE: RSA 674:41

Thanks for the response, I wasn't trying to start a discussion but was just trying to convey to you my newer understanding of this RSA.

As you know when I was Selectman we struggled with this RSA and how to deal with it and I think I am just now beginning to "get it".

It is a poorly written RSA that I believe is primarily trying to accomplish 3 things, safety and municipal services for the lot, future owners of the lot, and unfinished developments (related to proposed or existing streets).

I know you wanted to have a discussion with the BOS when this came up last and we should have and if there is to be a future discussion between the three boards my hope is that this may help in that, I don't really care how Evans is handled. I think any of the three options would ultimately be appropriate in that case.

Regards,  
Jerry

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CC: [andy@chalmersbuildingservices.com](mailto:andy@chalmersbuildingservices.com); [frank\\_benesh@alum.mit.edu](mailto:frank_benesh@alum.mit.edu)  
From: [frank.h.benesh@icloud.com](mailto:frank.h.benesh@icloud.com)  
Subject: Re: RSA 674:41  
Date: Mon, 17 Jun 2013 13:27:16 -0400  
To: [jerrydougherty@hotmail.com](mailto:jerrydougherty@hotmail.com)

I would like to refrain from having any discussion by email on this matter while there is an active case in front of the ZBA. We can discuss at our ZBA meeting on Wednesday if relevant to the decision at hand. Or later, if question of general policy not specific to Evans case. I will post and circulate to ZBA members.

Regards,

On Jun 17, 2013, at 1:20 PM, Jerry Dougherty <jerrydougherty@hotmail.com> wrote:

Hi,

I just wanted to share with you some of my concerns with the appeal filed by Evans' atty and statements made at the public hearing.

They incorrectly state that the Town will not give them a building permit and implied that this is at odds with how the property is taxed.

Under current conditions the Building Inspector cannot issue a permit without violating RSA 674:41. But RSA 674:41 does provide options for getting a permit. BTW this is another example of why it was important for the town to properly adopt the SBC and have a clearly defined duty of the Inspector to issue permits.

It was proper for the ZBA to "avoid" the tax argument but it does come into play when considering "unnecessary" hardship.

Cooper, Cargill, and Chant make a good argument for unnecessary hardship but I don't think one exists until the other options under the RSA

are exhausted. The Planning Board can plat the driveway as a street or the BOS can waive the requirements of the RSA with conditions. If the BOS were not willing to waive the requirements of the RSA they may have more explaining to do in regards to how the property is assessed. In other words it may be problematic for a BOS to say that a property can be assessed like any other buildable lot if they don't feel its safe to build on. This is why it may be important to give the BOS a shot at it. When the permit was denied we were in limbo as far as the AHJ was concerned between the BI and BOS but the roles of each can now be more clearly defined.

After reading RSA 674:41 for the hundreth time I have a little better understanding of it now and think Andy might have been misleading in his denial letter that they should go to the ZBA. I think a proper process for an applicant that does not meet the requirements of the RSA would be to go to the PB and/or BOS first. If the PB will not plat the "street" and the BOS will not waive the requirements of the RSA then a true "hardship" may in fact exist.

Big picture I don't think it matters to much on how this case goes, it may be too difficult at this point to get all the parties understanding the best solution and maybe the ZBA is the easiest out at this point but someone(ANDY :) ) should have a discussion with the BOS about the potential for assessment problems. Which is another reason the PB should get going on the build out analyses.

Again the Town is not saying that the property can not be used as a residence, it is a conforming use. The Town is just saying that one of three things has to happen in order for a building permit to be issued.

Hope this helps,  
Jerry 4