

November 18, 2013

Frank Benesh, Chairman  
Jackson Board of Adjustment  
PO Box 268  
Jackson, NH 03846

RE: Schoennagel Appeal of Administrative Decision

Dear Frank,

As abutters of Map V-2 Lot 53 we want to let the Board know of our agreement with the Board of Selectmen's decision to deny approval of a 5 bedroom septic system on this property. Below are some of our comments and concerns.

It is clear that under prior owners, the property has not been in compliance with state and town regulations regarding waste disposal for many years according to the public record and statements of the applicant's engineer, Bob Tafuto, at the September 5, 2013 Board of Selectmen meeting. (We do not have the details, but it also appears that the structures may be within the setback to the road, neighbors, or the brook which would also be non-conforming.)

"Bob noted the Ski Club had sixty four bunks; they over-used it and the system failed in the 1970s; it has been dumping effluent into the brook since then." The minutes later state: "Bob noted this property should have had a new system in the 1970s or 80s, this property would never support sixty-four bunks; the lot won't even support a one-bedroom system, however, at the very least an existing lot of record can have two bedrooms."(Emphasis added)

We think the statements and record show that the cesspool and the number of occupants using the building were not consistent even with acceptable regulations and laws in the past, regardless of the use.

Mr. Tafuto's statements make us question whether a lot that has been out of compliance with state and town regulations for more than 40 years qualifies for grandfathered status for a new 5 bedroom system that would exceed capacity according to current septic system design and minimum lot size soil calculations.

Certainly anything would be an improvement but it doesn't follow logically that doing something illegally for over 40 years supports a right to waive and overlook current town and state safety and health regulations.

The history of the use of this property and the information submitted and Mr. Tafuto's public comments are insufficient and contradictory at best. We think the grandfathering claim has not been legally proven in order to determine whether or not a 5 bedroom use legally exists or has been abandoned taking into account NH statutes and case law,

especially for properties with flowing water. We believe the Board of Selectmen acted correctly based on the public record for this property.

Review of any changes should also take into consideration the Jackson Master Plan Regulatory Goal which in part specifies that the town enforce land use regulations reasonably and uniformly regarding existing land uses and structures “whenever the opportunity arises”. (Emphasis added)

Bringing the septic system into compliance with current regulations seems to be required because of the environmental and health issues involved due to the location of the property on a brook that flows past the Jackson Grammar School and into the Wildcat River.

The public record showed that this lot had “hazardous issues” prior to Mr. Schoennagel’s purchase of the property. (See the June 16, 2013 Board of Selectmen meeting minutes for comments from Building Inspector Andy Chalmers). The September 9, 2013 Board of Selectmen minutes also indicate that Bob Tafuto agreed with Selectman Thompson’s comments that the buyers knew about the septic system failure and “that there was not a state-approved system for five bedrooms.”

We appreciate Mr. Schoennagel’s effort to improve the property but don’t think it should be at the expense of the public welfare. We believe a legally approved 2 bedroom septic system will allow him to enjoy his property for many years to come. However, should he decide to sell the property in the near future, we believe the improvements will allow him to receive a good return on his investment.

We think the Board of Selectmen and Town Engineer Burr Phillips acted correctly and responsibly in denying the 5 bedroom septic system and enforcing the zoning ordinance and state rules that are in place to protect public safety.

We request that the Board of Adjustment deny this Appeal of Administrative Decision.

Sincerely,

David and Helene Matesky, Abutters  
PO Box 458  
Jackson, NH 03846