

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: APRIL 15, 2015

CASE NO.: 8/20/2014-2 (CONTINUED)

APPLICANT: ROBERT CASEY
26 PINE STREET
LONDONDERRY, NH 03053

LOCATION: 26 PINE STREET; 3-70, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
JACKIE BENARD, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
ANNETTE STOLLER, NON-VOTING ALTERNATE
BILL BERNADINO, NON-VOTING ALTERNATE
NEIL DUNN, ACTING CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
ADMINISTRATOR/HEALTH OFFICER

REQUEST: RELIEF OF ADMINISTRATIVE DECISION IN ACCORDANCE WITH THE
PROVISIONS OF RSA 676:5.

PRESENTATION:

JIM SMITH: I think we still have our same dilemma. We only really have four (4) people who would be able to sit on your case. Dave was supposed to be here, but he hasn't shown.

BRUCE MARSHALL: Understood Sir, we are requesting a continuance to next month's meeting.

JIM SMITH: Okay.

NEIL DUNN: Well, I...this has gone on so long, I think we have a quorum without the full Board. You know the statute statues we can continue it for a month, but to me it's getting out of control here. I think we should just try to resolve it and go forward? That's my thought. I don't know what the rest of the Board thinks?

JACKIE BENARD: I agree. It's been a long time and everybody's been coming out, and we will have a quorum.

JIM SMITH: Would the Zoning officer have any comments on this issue?

45 RICHARD CANUEL: Well, I'd just like to say that the Board has guidance from the Town's legal counsel
46 regarding the Boards responsibilities for continuance so I would advise the Board to review those. If you
47 haven't already?
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49 NEIL DUNN: The other option be wait? If we wait a few minutes to start another case, and see if Dave shows
50 up? He was supposed to attend. If you're concerned about the full quorum? To my point, we have a quorum
51 anyway, but...
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53 JIM SMITH: Yeah, yeah, ah...
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55 BRUCE MARSHALL: It's our position, I believe based on some of the discovery that's been given...Counsel...our
56 due process...to elaborate further on that, this case especially because the complainant is now a member of
57 the Zoning Board, and some of the recent discovery that's been given showing on the nights we show up the
58 complainant is a member of the Zoning Board...given the opportunity at the end of the meeting to criticize my
59 representation to the Zoning Board that occurred early that night...and two recused members at least a few
60 times at the end of the night having discussions about my client's case, and again the complainant criticizing
61 my conduct and representations to the Zoning Board, so given that detail...then I get emails where the Town is
62 sending very sympathetic emails to the complainant who is now a Zoning Board member. I'd like a five (5)
63 member panel to hear our case in full just because there are so many irregularities in my experience that have
64 gone on with this. Thank you. [Off Mic – some of this response was Indistinct]
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66 JACKIE BENARD: Well, can I state something? I have no idea what you're even talking about?
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68 [Overlapping laughter]
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70 JACKIE BENARD: So I got to tell you, I have no idea what you are talking about? So...
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72 BRUCE MARSHALL: Well, I encourage you...
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74 JACKIE BENARD: I'm just trying to tell you because what I'm hearing from you and what you're expressing is
75 that there's communication that may be impropriety going on, or things that are going back-n-forth, I really
76 don't know what you're talking about? So...
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78 BRUCE MARSHALL: The video of your meetings...
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80 JACKIE BENARD: Yeah.
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82 BRUCE MARSHALL: ...if you go through them and look and listen to everything, we come in and we get
83 continued, and it's closed. Then after all of your cases are done there's discussion about our case when we're
84 not even here.
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86 JIM TIRABASSI: Who's having the discussion?
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88 JACKIE BENARD: I still don't even...I don't...

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90 ANNETTE STOLLER: On the video?

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92 BRUCE MARSHALL: Yeah, I can provide you...

93

94 [Overlapping comments]

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96 BRUCH MARSHALL: ...on at least three (3) of them right?

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98 [Overlapping comments]

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100 JACKIE BENARD: And I have...

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102 BRUCE MARSHALL: Happy to...it's this stuff we've gotten discovery because, I think it was the
103 January/February meeting I raised the issue where we had several neighbors come in support of my client,
104 and I said to the Board...one instance we were getting concerned and we're going to do some more discovery
105 because...

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107 JIM SMITH: Oh...

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109 BRUCE MARSHALL: ...I was reporting...

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111 JIM SMITH: You need to get on a mic Sir?

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113 BRUCE MARSHALL: Oh okay, sorry.

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115 JIM SMITH: It's not that...

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117 BRUCE MARSHALL: ...that it was one of the neighbors had given us copies of text messages of someone
118 claiming influence with the Zoning Board. So we were going to do some more discovery to look into that. Part
119 of that was getting full records of all the meetings, and in at least...I'm pretty sure at least three (3) of the
120 meetings our case is brought up...in a one instance Mr. Bernadino um was complaining about my conduct
121 earlier in the evening when I raised the issue about text messages, and there's a discussion um I have the very
122 first August meeting that took place where um we were granted a continuance because I had a conflict and
123 wasn't able to appear and there's three (3) pages of transcript where Mr. Bernadino was able to go on at
124 nauseam making a lot of allegations and discussions with members of the Board that have since had to recuse
125 himself from the case. So when we throw all that into it, we'd like a full five (5) member panel and we think
126 under those circumstances it would...due process requires that we get that.

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128 JACKIE BENARD: Well guess what I want to make sure it that you understood that the absence of information
129 and, I can speak for myself that I take high regard to following procedures and I really don't know what you're
130 talking about, so when we talk about continuances and this has been going this long, and neighbors are
131 coming out and spending time out here. I just wanted to express that I felt that there would be fair due
132 process; I can assure you from myself. Okay.

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BRUCE MARSHALL: No, I appreciate that.

ANNETTE STOLLER: Mr. Chair?

JIM SMITH: The only thing I'd like to say about that first meeting, and when he was talking, I was trying to cut him off.

[Overlapping comments]

BRUCE MARSHALL: That was clear to me from...sorry...

[Overlapping comments]

JIM SMITH: I was trying to cut him off, but...

BRUCE MARSHALL: ...from the transcript.

JIM SMITH: Yeah. I was trying to cut him off, but you know there is a balance you have to do sometimes to let somebody vent their frustration, if nothing else.

BRUCE MARSHALL: Completely, understood...

JIM SMITH: You know, and...

BRUCE MARSHALL: ...and if it was just that...

JIM SMITH: ...that's...

BRUCE MARSHALL: ...that's why I didn't raise it before, but I have emails from the Town Manager, I have these...

JIM SMITH: Well, we have no control over emails he's doing.

[Overlapping comments]

BRUCE MARSHALL: Right, I understood, but there's lots of things there that in my opinion show some support from that text message I referenced earlier, and that's why I advised my client you should have five (5) members of the Board...

JIM SMITH: Okay.

BRUCE MARSHALL: ...that's all.

177 JIM SMITH: Okay. Having said all that, why don't we just...
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179 NEIL DUNN: Did Annette have a question?
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181 ANNETTE STOLLER: Well, I had a question about what the...
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183 [Overlapping comments]
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185 ANNETTE STOLLER: ...I had a question to direct to him about what the particular reference was to. I know I've
186 been at most of those meetings having missed the last two, but you know surgery over took me, but...I just
187 don't know exactly...just as Jackie said what this is about. If you could clearly give...if he could clearly give us
188 three or four sentences that would be helpful?
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190 JIM SMITH: I don't think we need to go into this any further tonight? I think we're going to have to continue.
191 We don't have...in a way this was helpful because I was hoping Dave would show up in this timeframe, but
192 obviously for some reason he is not here.
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194 ANNETTE STOLLER: Anyone know?
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196 JIM SMITH: No, we don't...
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198 [Overlapping comments]
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200 JIM SMITH: ...he had emailed us that he was going to attend. He must have had some sort of personal
201 problem, or something. I know one other time he had a family problem that came up at the last moment.
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203 BRUCE MARSHALL: Understandable...I'm must asking for...
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205 JIM SMITH: Yeah, yeah, okay. So I think at this point I'd entertain a motion to continue.
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207 NEIL DUNN: Mr. Chairman, in light of the concerns from the applicant and obviously some stuff that all of us
208 need to look into this coming month? I'll make a motion to continue the case until our next scheduled
209 meeting...
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211 JIM SMITH: May 20th.
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213 NEIL DUNN: ...May 20th, 2015.
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215 BRUCE MARSHALL: Excuse me, what was that date?
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217 JIM SMITH: May 20th.
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219 BRUCE MARSHALL: Thank you. Thank you.
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221 JIM SMITH: Okay, all those...do I have a second?

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223 JACKIE BENARD: Second.

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225 JIM SMITH: Jackie seconds. All those in favor?

226

227 ALL: Aye.

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229 RESULTS: THE MOTION TO CONTINUE CASE NO. 8/20/2014-2 TO MAY 20, 2015 WAS GRANTED, 5-0-0.

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231 RESPECTFULLY SUBMITTED,

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233 NEIL DUNN, ACTING CLERK

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235 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
236 SECRETARY.

237

238 **APPROVED MAY 20, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND
239 APPROVED 5-0-0.