

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

DATE: AUGUST 20, 2014

CASE NO.: 8/20/2014-2

Applicant: ROBERT CASEY
26 PINE STREET
LONDONDERRY, NH 03053

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

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR
NEIL DUNN, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
ANNETTE STOLLER, VOTING ALTERNATE
DAVID PAQUETTE, CLERK

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

PRESENTATION: Case No. 8/20/2014-2 was read into the record with one previous case listed.

DAVID PAQUETTE: Case number 8/20/2014-2, Casey Robert a relief of administrative...Robert Casey requests a release of administrative decision in accordance with the provisions of RSA 676:5 at 26 Pine Street, map three, lot seventy...in AR1 zone. There is one previous case...and...the case was number 5/13/69-4...requested by William Jr Batman, variance to install a mobile home on lot. No finding allowed according to the subdivision plan. There is one letter regarding the continuation..."Please accept this correspondence as my clients request to continue the subject...appeal hearing...from August to September," given the circumstances that the attorney had a scheduling conflict with ZBA's meeting. Mr. Chairman I would like to raise a motion....

WILLIAM BERARDINO: Can we speak on this matter right now before you vote on it?

JIM SMITH: What is your relationship to it?

WILLIAM BERARDINO: I am the property owner behind this business...Casey...Robert Casey...I live at 3 Fir Street...which my house is directly right behind his.

NEIL DUNN: Just let him continue...

WILLIAM BERARDINO: If all this is a ploy to get his equipment out so he doesn't get the fines that he supposed to be getting...every day he is supposed to be getting fined so his lawyer had a scheduling conflict...it was a

45 month and a half ago that he was told that he was supposed to come here and now his lawyer has
46 a...a...previous engagement. This is wrong. It is not a business it is a residential area. A cease and desist order
47 was submitted, people went down there...even the Town Manager...shows that the business is being run out
48 of there. Why is this going to get continued? I work...I take the day off...my wife had to take the day off. I
49 mean, to appease this gentleman who is illegally running the business.

50
51 JIM SMITH: Well...again...we are not in a position to make a judgment because we haven't had the case
52 presented to us and so forth...

53
54 WILLIAM BERARDINO: I understand that.

55
56 JIM SMITH: All we can do is go by what the request...

57
58 WILLIAM BERARDINO: You have the decision not to continue though. You can make that decision. You don't
59 have to continue this. The board...

60
61 JIM SMITH: Well...

62
63 WILLIAM BERARDINO: Deny the continuation to next month.

64
65 JIM SMITH: Well wait a minute...wait a minute...excuse me...you need...if you're going to talk you have to go to
66 the mic because we need to get it on the record and again we need your name and address...

67
68 WILLIAM BERARDINO: William Berardino, 3 Fir Street, Londonderry...I have pictures from the Chamber of
69 Commerce with his business address listed as 26 Pine Street.

70
71 JIM SMITH: Well a...a...again...part of what we are faced with and I think part...we have an additional
72 complication in that the Zoning Administrator is injured...he isn't present so generally on this type of a case we
73 would need his impute as well. So...

74
75 WILLIAM BERARDINO: So isn't there any way...there was a letter there was...

76
77 JIM SMITH: Well again...we are not...

78
79 WILLIAM BERARDINO: There was a finding that there is a cease and desist order for running this business. It
80 seems like this...this Town is just giving him months and months and months of time to get his equipment out
81 of the year.

82
83 JIM SMITH: Well...again...part of what you are faced with on any case like this...it is a procedure that you have
84 to go through and once you start the process...it takes a certain amount of time to go through it. We have a
85 letter...and as far as we have to consider it legitimate. We...we are not prevue to what...what behind scenes of
86 anything else because the case has not been brought to us yet. So we...all we can go by is what we have got in
87 front of us.

89 WILLIAM BERARDINO: Ok...
90
91 JIM SMITH: At this point all we have is a request.
92
93 WILLIAM BERARDINO: Now when did Mr. Casey find out this wasn't going through tonight?
94
95 JIM SMITH: I have no idea...
96
97 WILLIAM BERARDINO: Well because I am here, he's in his backyard lighting off fireworks laughing all about
98 this. So...I...I mean I have my rights too. I have the right to live and exist in this Town peacefully. And it is not
99 being done.
100
101 JIM SMITH: The case will be heard in due process but at this point all we can...can consider is that we have a
102 request for continuance and it states that the lawyer is not available so than we have to go on the face of that.
103
104 WILLIAM BERARDINO: It...well you can deny the continuance.
105
106 JIM SMITH: I am not...really.
107
108 WILLIAM BERARDINO: Why not...let him go to court and fight it. Don't let him come up here and fight it. Let
109 him go to court and fight it too.
110
111 JIM SMITH: No...no wait a minute. You have to realize in a lot of these procedures you have to go through the
112 Zoning Board first before you can go to court.
113
114 WILLIAM BERARDINO: We have been going through this for seven years now. I have waited seven years for
115 this night sir. Seven years...
116
117 JIM SMITH: Well...again...you know we have to follow the procedures and this is all we can do at this point.
118
119 WILLIAM BERARDINO: So it will be going until next September...and then his lawyer will be out again on a
120 vacation to Florida somewhere or something...not to make a mockery of you and what is going on up here. I
121 am just tired of it. Why can't this Town rule on something that they know exist?
122
123 JIM SMITH: Because again you go through a procedure.
124
125 WILLIAM BERARDINO: I know the procedure...I am a union official...I do know procedures. I work with them
126 every day. I mean...but enough is enough.
127
128 JIM SMITH: We...we really shouldn't be taking any impute at this point anyways but we...we'll...
129
130 WILLIAM BERARDINO: Ok so when...when can I file these that Chamber of Commerce, 26 Pine...let's
131 see...signs, fifty thousand square feet of equipment...phone lines to his house for him business...when does

132 this all come about that have already proven and proven and proven the company is being run out of this
133 address...but the Town seems to do nothing about it.

134
135 JIM SMITH: Well, once the case is heard...

136
137 WILLIAM BERARDINO: My next...I mean...

138
139 JIM SMITH: You will be given an opportunity to...talk at that point...

140
141 WILLIAM BERARDINO: I mean...thank you...it's just frustration...

142
143 JIM SMITH: I understand that...

144
145 WILLIAM BERARDINO: This is just really a lot of frustration...

146
147 JIM SMITH: I know that's why I gave you an opportunity to vent a little bit.

148
149 WILLIAM BERARDINO: Alright thank you.

150
151 NEIL DUNN: If I may? Just...I...it kind of seems valid to me your concern...do we know that the fine is on hold
152 until we make a ruling.

153
154 JIM SMITH: I believe so...I think that is typical of any case like this...

155
156 WILLIAM BERARDINO: Yeah...yeah the fine is continued...it is...you can fine five hundred and fifty-five dollars a
157 day since two months ago when the claim went it.

158
159 JIM SMITH: But is...you have to go through...

160
161 WILLIAM BERARDINO: Or since the members went down and verified...even the Town Manager verified that
162 this is a business...

163
164 JIM SMITH: Ok...again...the Town doesn't impose the fine so...

165
166 WILLIAM BERARDINO: No...no I understand that...

167
168 JIM SMITH: It has to go...

169
170 WILLIAM BERARDINO: It is a running fine until the board...you know...

171
172 JIM SMITH: But again...there is no guarantee that they are going to give...the court is going to award a...a
173 certain amount of money for every day...so it is up to the court to actually determine what the fine is going to
174 be. That is what is could be under the law...but it doesn't necessarily hold true that that is what it is going to
175 be.

176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219

WILLIAM BERARDINO: So could I ask you if this is going through you guys right now it has to go to a court next?

JIM SMITH: I believe so...

WILLIAM BERARDINO: So what is your purpose?

JIM SMITH: We have...when the Zoning Board...Zoning Officer makes the decision, one of the procedures is you can appeal his decision to the Zoning Board...whether it is correct or not...once it comes to us we have to determine if that decision is correct and when we go through that procedure, the Zoning Board than assumes the...the authority of the Zoning Officer in the tiding whether it is appropriate...a true violation. Once it is...than it goes on from there. Any administration decision can be appealed.

WILLIAM BERARDINO: So we are looking at next month to come back and basically do the same thing again. We will get a letter in the mail saying it has come up again at a certain date and...

JIM SMITH: Well...I can't predict the future...

WILLIAM BERARDINO: Well than there is no one to abut his choice if he is here and we are not...what are we going to do if we don't know about it?

JIM SMITH: Well...a...again...one of the problems we have tonight is that our Zoning Officer is injured and he is out of work and we really need his impute on this type of a case. So...for the two reasons I would say it is not...

WILLIAM BERARDINO: And who...who is that?

JIM SMITH: Richard Canuel.

WILLIAM BERARDINO: Ok so...you can't go by his report that he submitted?

JIM SMITH: It...it is not really fair to him. We really need his input. We need his input...

WILLIAM BERARDINO: He is the one writing the report...you just need to read the report.

JIM SMITH: Again...

WILLIAM BERARDINO: Alright thank you...thank you folks. Sorry to vent.

JIM SMITH: So...who is going to make a motion?

DAVID PAQUETTE: Mr. Chairman...I would like to raise a motion to continue case number 8/20/2014-2 based...

JIM SMITH: Is there a second?

220

221 JIM TIRABASSI: Second...

222

223 JIM SMITH: All those in favor?

224

225 ANNETTE STOLLER: Aye.

226

227 NEIL DUNN: Aye.

228

229 JIM SMITH: Aye.

230

231 JIM TIRABASSI: Aye.

232

233 DAVID PAQUETTE: Aye.

234

235 JIM SMITH: It will be continued to the September seventeenth...one thing you have to be aware of...there
236 won't be any additional notifications. That was once of the reason I wanted to get those two cases out of the
237 way because who knows what was going to happen on those.

238

239 RESULT: THE MOTION TO CONITNUE CASE NO. 8/20/2014-1 TO THE SEPTEMBER 17, 2014 MEETING WAS
240 APPROVED, 5-0-0.

241

242 RESPECTFULLY SUBMITTED,

243

244

245

246 DAVID PAQUETTE, CLERK

247

248 TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

249

250 **APPROVED SEPTEMBER 17, 2014** WITH A MOTION MADE BY DAVID PAQUETTE, SECONDED BY JIM TIRABASSI
251 AND APPROVED 3-0-1 WITH JACKIE BENARD ABSTAINING AS SHE HAD NOT ATTENDED THE MEETING.