

Poland Zoning Board of Appeals Meeting
August 25, 2014 – 7:00 pm
Town Office Conference Room

MINUTES

CALL TO ORDER

Chairman Richard Carlson called the meeting to order at 7:00 pm with members Joseph Radziszewski, Holly Bubier, Mark Hyland, and Erland Torrey present.

MINUTES

July 28, 2014

- Member Erland Torrey makes a motion to accept the minutes for July 28, 2014 as presented, seconded by Vice Chairman Joseph Radziszewski.
 - Member Mark Hyland is concerned that there are some details from the discussion that have been omitted in the minutes and decision letter for the Appeal by Jeffrey Coolidge. He would like to see the minutes corrected and any information pertaining to reasoning behind the board's decision added for the next meeting.
 - The rest of the board agrees.
 - Member Erland Torrey withdraws his motion, and Vice Chairman Joseph Radziszewski withdraws his second.
 - Member Mark Hyland makes a motion to table the minutes until the next meeting, with revisions, seconded by Vice Chairman Joseph Radziszewski. No discussion.

Vote: YES – 5 NO – 0

COMMUNICATIONS

Copy of Decision Letter to Jeffrey Coolidge

Copy of Decision Letter to Scott and Debra Rudel

NEW BUSINESS

Jeremy & Lisa Lothrop, Administrative Appeal – Map 46, Lot 19A

- **Appellants Mr. and Mrs. Lothrop, as well as Code Enforcement Officer Nick Adams are present.**
- **Standing:** Vice Chairman Joseph Radziszewski would like to discuss standing before the appeal is even discussed. He is unclear that the appellants have standing as the owner of the property in question.
 - David Polley, of 19 Nuthatch Lane informs the board that his deed does include a right of way to the lake, which is the property in question. A copy of this deed was not submitted to the Board.
 - Vice Chairman Joseph Radziszewski understands that many people have a right of way to the lake through this small property; however his concern is that while there may be many rights of ways there is no deeded owner. A right of way through a property does not necessary provide standing for an appeal.
 - Mr. Lothrop states that all of the deeds will reference the original subdivision plan, which includes the right of ways, from 1965. He also notes that there are no restrictions for docks in the subdivision plan. According to the tax assessor, the taxes for the lot are divided up amongst the home owners in the subdivision.

- Stella Messer, of 154 Schellinger Road believes the deeds of the Worlys, Polleys, and Messers mention that they have ownership of the lot, not just a right of way.
 - Vice Chairman Joseph Radziszewski believes that one of them would need to apply for the appeal.
 - Appellant Jeremy Lothrop asks if they would be able to apply for a permit, and the Board suggests that is their next action. It is also recommended that the group of residents hire a lawyer to review their deeds further and possibly form an association. If an association is created with ownership of the road and right of ways a permit for the dock will not be an issue.
- Member Mark Hyland informs the appellant and members of the public that there is case law from the Maine Supreme Court pertaining to this exact issue. In summary it states that the applicant cannot put a dock on a right of way.
 - Ms. Messer asks if the lot could be grandfathered.
 - Member Mark Hyland reminds her that unless there is something specific in the ordinance that states all previous uses are legal, then they do not have that ability. The ordinance is clear that to build a dock on a lot in Poland one must provide proof of ownership.
- Chairman Richard Carlson summarizes that the Board has found the submitted information to be insufficient. Unless a deed is presenting proving ownership of the lot, a permit for a dock should not be allowed.
 - Member Mark Hyland adds that having a right of way to, on, or through a lot does not mean you own that lot. You would simply have a right to use or pass through it, depending on the terms and conditions.
 - Debra Polley, 19 Nuthatch Lane asks if a structure that is not attached the shore, or floating would be allowed.
 - This question was left unanswered.
- Mr. Lothrop asks the Board who would be allowed to perform any maintenance on the lot. He asks specifically if someone plants an invasive species or a shrub on the right of way, would the other residents be allowed to remove it.
 - Removal of vegetation would require a permit, which would also need proof of ownership. Members of the subdivision should not be planting anything on the right of way. Member Mark Hyland suggests that this would become a civil issue.
 - Debra Rudel, 64 West Shore, admits that she planted the shrubs on the right of way by request of the Polleys. She had wanted to plant them on her property but Mr. Polley did not want them blocking his view of the water. She did go door to door in the neighborhood and no one had any issues with her planting the shrubs on the right of way.
- Code Enforcement Officer Nick Adams believes that the Board has both standing and jurisdiction to hear the appeal on the grounds that they are appealing a denied building permit by him, for Map 46 Lot 19A, which Mr. and Mrs. Lothrop do own. He has read all of the deeds for the subdivision and none show ownership of the lot. He believes that the original owner still has ownership of the road and right of ways.

- The Board agrees that they have jurisdiction, but they do not feel they have standing to hear the appeal. Member Mark Hyland suggests that the appellant withdraw their application until standing is established.
 - Code Enforcement Officer reminds the Board that he issued a notice of violation for the dock on August 8, 2014.
 - Mr. Lothrop agrees to withdraw the appeal and remove the dock before September 8, 2014.
 - Member Erland Torrey requests that the Code Enforcement Officer file a letter with the Board of Selectmen asking that the appellants receive a refund for the hearing fee, minus any notification expenses accrued by the Town Office.
 - Mr. Lothrop will send a formal withdrawal letter.

OTHER BUSINESS

None


ADJOURNMENT

Vice Chairman Joseph Radziszewski makes a motion to adjourn at 7:50 pm, seconded by Member Erland Torrey. No discussion.

Vote: YES – 5 NO – 0

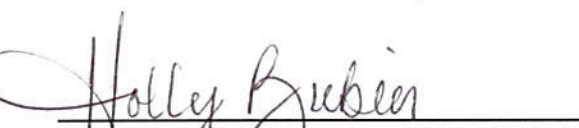
Recorded by Alex Sirois

Date Approved: 2/4/15
Board of Appeals

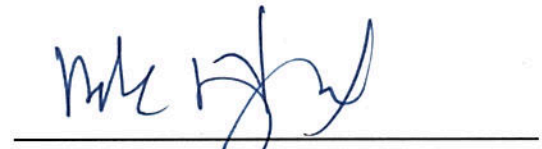


Richard Carlson, Chairman

Joseph Radziszewski Jr., Vice Chairman



Holly Bubier, Secretary



Mark Hyland, Member

Erland Torrey, Member