

TOWN OF WEBSTER, New Hampshire
Zoning Board of Adjustment
945 Battle Street/Rte 127
Webster, NH 03303
Tel. (603) 648-2272

MINUTES FROM ZBA MEETING 11/03/2008

Members present: Chairman Marty Bender, Members Pat Inman, David Barnes, Bobby Drown, Linda Hook, and Shawn Smith.

This was a special meeting held to discuss the Cold Brook Campground's Motion for Rehearing regarding their Special Exception Application.

Chairman Bender first noted that Member Don Koberski, who had been one of the five who voted on the application heard on September 9, was not present. Member Pat Inman was in attendance, but since she was not present for the September 9, it was decided that Alternate Shawn Smith would cast the fifth vote.

The first topic of discussion was Attorney McGrath's assertion that the Board failed to meet the Juror Standard of impartiality and should be recused from further action on the application. After discussion among the members and reading RSA 673:14 "Disqualification of Member", all members felt that they could move forward and remain impartial.

The next point of discussion was whether or not we should have proceeded with the hearing on the application submitted on August 20, 2008. Attorney McGrath's assertion is that this application is materially different from the one filed in 2007. After discussing the evidence once again, it was the Board's feeling that there was nothing in the current attachments that could be considered "materially different". The Board also expressed concern that the existing Zoning violations had not been addressed.

Attorney McGrath also asserts that the Morgenstern v. Town of Rye case, in which a rehearing was granted, is analogous to Cold Brook. The Board, however, noted that in the Morgenstern case, the Supreme Court pointed out that "in its pleadings submitted to Superior Court, the town essentially *invited* the plaintiff to file a new application." This certainly did not happen in this instance.

The Board voted unanimously to uphold the original decision not to hear the application.

The meeting was adjourned at 8:15PM.

Respectfully Submitted,

Pat Inman, Board Secretary