



**\*\* DRAFT \*\***

**Hill ZBA**

**Meeting/Hearing Minutes**

**July 09<sup>th</sup>, 2020**

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Meeting was brought to order by Steven Thomson, Chairman, at 7:00 p.m.

Attendance: Steve Thomson, Frank Marsh and Charlie Estes

Public Audience – Tom Whitman, Nathan Mill, Tom Seymour, Gary Donoghue, Deborah Donoghue, Patricia Lynch and Counsel on behalf of Richard Pescinski, Christopher Swiniarski, PA.

The Chairman opened the regular ZBA meeting tabling old business until after the scheduled public hearing.

The ZBA received and reviewed an Appeal of Administrative Decision submitted by McLane Middleton attorneys at law on behalf of Richard Pescinski and Steven M. Burke, Trustee of the RFP Trust, property located on Poverty Pond Rd. Hill, NH Tax Map R08 / Lot 08, application received May 05, 2020.

Prior to completion of their review of the application, the board was asked to recognize Gary Donoghue who wishes to dispute the validity of the meeting and hearing. Mr. Donoghue asked if the meeting was being reconvened from a previously recessed meeting? His contention is that the prior meeting must first have been opened and then recessed in order for this meeting to be valid.

It was explained the regularly scheduled meeting for June, with the scheduled public hearing, was posted in the newspaper, posted in 3 public locations including the Town's website and abutter's notices were mailed via certified mail to the abutters on the list provided by the applicant. The public hearing needed to be postponed prior to the June meeting date and therefore the regularly scheduled meeting was cancelled with the proper notice of cancellation posted on the night of the meeting. The Public Hearing was rescheduled for the next regular meeting date on July 09<sup>th</sup>. The Hearing was reposted in three public areas including the town's website. Mr. Donoghue appeared satisfied with the explanation professing he didn't really have a problem with the hearing going forward, but wanted note of it.

Tom Whitman requested the meeting minutes reflect that he also protested the meeting and that the minutes reflect that he did not receive a certified mailing. Mr. Whitman confirmed he did receive notice of the meeting/hearing via emails from Charles Estes, Secretary. It is also noted Mr. Whitman is not on the abutter's list that was provided and that as he is not an abutter of the property related to the appeal.

The ZBA members concluded their review of the application, abutters list and public posting. The Board voted unanimously to accept the application as complete and to proceed with the public hearing.

**\*\* Public Hearing Minutes \*\* Draft -**

Stephen Thomson, ZBA Chairman declared the Public Hearing of the Appeal of Administrative Decision opened at 7:20PM. Those present were reminded that the Appeal is limited in scope to the basis of the Denial of Administrative Decision. The grounds for denial are stated as (1) Insufficient Frontage, (2) ....and ZBA Decision to prohibit additional construction on ROW. (Note added by the Office Administrator that is topic of

Roll call of the public in attendance:

In favor of Approval: (1) Opposed: (5) Abstained: (1)  
(This does not include the members of the Board)

The Chairman provided the applicant the opportunity to make the party's presentation. Appearing on behalf of the applicant was Attorney Christopher Swiniarski. Attorney Swiniarski opened by saying this is pretty straight forward as a similar case that has been decided by the Merrimack County, State of NH Superior Court ruled on the matter of Whitman, et al. v. Hill Zoning Board of Adjustment, "ZBA" et al. Case # 217-2018-cv-0006. The scope of that case was that the ZBA ruled rightfully that the Common Drive depicted on Map 11177 approved by the Town of Hill Planning Board met the requisite to be considered a "Street" when applying NH RSA 674:41 I (b) (2). Map # 3280 also showing the Common Drive as an approved ROW shows the = = = (dotted line) extended view of the ROW to continue past the Common Drive shown on Map 11177. Applicant contends that the combination of the two approved plats makes obvious that the ROW, although incomplete at the time of the registry and approvals, is shown to extend to the lot applying for a building permit. Applicant also contends that the ROW the ZBA approved on Map number 11177 are one in the same and that the decision applied to the "Common Drive" legally applies to the full ROW shown by the maps when combined. Attorney Swiniarski asserts the Court will take no time at all concluding as he has that the decision by the ZBA applied to the Common Drive shall be applied to the dotted line ROW shown on Map 3280. In addition to the application provided to the board, 18 pages in total, submitted is the Court's ruling referred to as "the Decision" that will be included with the Hearing Minutes. Mr. Swiniarski reserving the right to rebuttal, concluded his presentation.

The Chairman opened the meeting to abutters for remarks.

Mrs. Patricia Lynch, Trustee of the Lynch Family Trust, asked why an application for a non-buildable lot was allowed to be brought forward? It was explained by the board that the Town of Hill cannot reject an application, without review, unless the application is submitted and found to be incomplete or insufficient. This particular application for a building permit was denied on the grounds that there was "Insufficient Frontage" (without reference to the Hill Zoning ordinance or applicable NH RSA.)....and a second restriction (Y.T.D.) Mrs. Lynch Continued -

Mrs. Lynch questioned why Richard Pescinski's brother was not included in the abutters list? It was explained by the board requires the list of abutters be supplied by the applicant and that notices are mailed via certified (Verified) mail based upon

the list provided. Mr. Swiniarski advised that Mr. Pescinski's brother is aware the hearing is taking place and has no objection.

Mrs. Lynch provided the Board with a letter addressed to the ZBA that was not dated but appears current, a letter from Bob Helmers, Hill ZBA, dated 2007 and newspaper articles from the Concord monitor also from 2007. She also provided a tax map showing Lots 08 and 15 in relation to The Lynch Family Trust property which abuts Lot 08. (All documents will be scanned and made available for review upon request.) She asserts that Zoning applies to all with good reason and that she supports the Decision of the Selectmen. Mrs. Lynch concluded her remarks by sharing that her family has strived to protect large parcels of land in their original state {large and untouched} for future generations and wants the same for all those in Hill. Mrs. Lynch passed about an advertisement (Sales Card) promoting this lot for sale as a lot sufficient for an animal sanctuary or ripe for development. The latter being her primary concern.

Mr. Donoghue, spoke regarding his concern that the rules in the Town of Hill be followed. He expresses concern that the Selectmen's decision won't be upheld. He was concerned that Mr. and Mrs. Cameron were not advised of the meeting/hearing. The Camerons' owning Lot # 6 do not appear on the abutters list. It is pointed out that being an abutter of the "Common Drive" of a previous issue does not make one an abutter to the property of the application/appeal. He appeared satisfied with that assessment. Mrs. Donoghue was recognized but did not comment.

On behalf of the Selectmen:

Tom Seymour reasserted the selectmen's decision to deny a building permit on the grounds of insufficient frontage. Mr. Seymour professed he is both a Selectmen and resident of Hill and reiterated that while the Selectmen are opposed to development of the Town's natural wooded area of the rural district, as a resident he feels the same. The Selectmen want to assert that the Higgins appeal revolved around the submission of Plat 11177 as the controlling document. Additionally, it is part of the ZBA decision related to the Higgins case RE: Map R8 Lot 15, that the existing ROW aka "Common Drive" required extensive upgrade before any other construction could be approved and that was required prior to approval of a building permit of any other lot. The application seeking building permit approval was Map R08 Lot 08 which has no approval of an upgraded ROW. That Lot R08 is not the same as R15 and that R15 was not considered a buildable lot.

Tom Whitman

States – This whole thing started back in 2002 with Kathe Higgins. Mr. Whitman asserts that Kathe Higgins Misrepresented the land to Richard Pescinski by representing the land was a buildable lot. Mr. Whitman asserts "the {Decision} by the ZBA restricted construction on the ROW and he was never notified of any approval of ""anything"" (assumably the ROW) that goes across the bottom of his property."

Attorney Swiniarski asserted that the Court Ruling upheld the ZBA's "decision" in the Higgins matter and that is now settle law. It was based on Multiple Plats or "prints" of the property.

Mr. Whitman, vehemently asserted – "One Plat 11177 - not multiple."

Mr. Donoghue spoke up requesting again what the Selectmen recommended?

Stephen Thomson discontinued the dialoguing re-direct and regained the meeting. Mr. Thomson asked if there were any other public comments or remarks from abutter before the board begins deliberation?

Charles Estes asserted that the ZBA is constrained by the process and procedures to review only those issues of the Selectmen's Denial that are listed on the notice of Decision. The first is insufficient frontage. The second however remained a question as it was hand written in a separated notation on the application. The Notice of decision, accompanied by an email to Mr. Pescinski saying the same thing, states; "...and also the ZBA decision is a second restriction." Mr. Estes asked Mr. Seymour if he could ascertain what the restriction is that is being referred to where the ZBA has placed no such restriction on this property. (Lot R08) Mr. Seymour reviewed the document and said he would supply the board with an answer to that question.

The ZBA added that the Court Decision others reference will be noted in the minutes of the Hearing so that it may be referred to if needed.

Tom Whitman again asserted that the "decision" was based on one map.

Mr. Swiniarski again reiterated "Multiple Maps" were used in the Court's finding.

Mr. Thomson again regained the attention of the hearing – Suggesting "if there is no further public discussion;"

The Board had two specific points to raise during the public hearing in addition to the Selectmen's action item;

- 1) The board will be researching the question of frontage as it is believed there is an updated definition and change to a current made via a recent warrant article addressing road classification.
- 2) The Board makes note of the "Decision" being the Court Ruling in the matter of Whitman, Et al v. Town of Hill ZBA, et al # 217-2018-cv-00006 as it has been referred to for the purpose of review in the event the comment added by the Selectmen's office pertains to the ZBA's decision based on an unrelated lot (Map R08 lot 15 the former "Higgins" case.)
- 3) The board makes note of emails dating between February 11, 2019 to November 27, 2019 referring to the instructions given to Richard Pescinski by the Planning Board Chairman, ZBA Chairman and Selectmen Mike Brady.

The public hearing was then CLOSED as of 8:40 PM.

The Public Meeting Resumed -

The board engaged in deliberation concluding that several questions needed to be answered prior to being able to render a decision. A motion was made and carried unanimously to table any further discussion and schedule a special meeting to continue deliberation after researching certain legalities. The special meeting was scheduled for July 23<sup>rd</sup> at 7:00 PM at the Carolyn Robie Meeting rm (Library).

Nathan Mills addressed the Board requesting who would be the person to contact regarding drafting a warrant article related to the issue of Chickens in the village. Charles Estes recommended he contact Gerry Desrochers, Tom Seymour agreed with the recommendation.

The public all departed.

Tom Seymour was asked to remain for further discussion.

Minutes of Previous Meetings – A Motion was made to accept all previous minutes as Drafted or as amended where applicable. The motion carried.

Old Business – The Board asked the Selectmen to obtain a copy or have made a current copy of the ZONING MAP for ZBA reference. Tom agreed to look into it.

Additional discussion ensued about procedural standards for land use boards. Mr. Seymour suggested a meeting of the 3 board's Chairman/Chairperson at regular intervals to discuss any issues.

The Meeting was adjourned.

Respectfully Submitted,

Charlie Estes,  
Secretary ZBA