



**** DRAFT ****

Hill ZBA

Special Meeting Minutes

July 23rd, 2020

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

Attendance: Stephen Thomson, Frank Marsh and Charlie Estes

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

The Chairman opened the Special ZBA meeting to consider all old business.

Minutes of the previous meeting were approved as amended.

On the agenda is the continued deliberations of the 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.

The Chairman reminded those present that again the Appeal of Administrative Decision is limited in scope to the basis of the denial by the Selectmen. 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.

The Chairman requested if there were any outstanding questions from the board members that remained unanswered. Charles Estes read allowed a prepared statement and submitted along with it, for the records, copies of emails, Town of Hill meeting minutes and remarks regarding the approval and/or construction or upgrade to an existing Right Of Way (ROW) referred to in this matter as the “Common Drive” located at Map R08/Lot15. Provided with a copy of the minutes is the following:

- a) Charles Estes written statement.
- b) A copy of the October 26th 2017 ZBA Meeting Minutes.
- c) November 21, 2019 Planning Board Minutes
- d) January, 8th, 2019 Selectmen’s Meeting Minutes (related to K. Higgins)
- e) February 2019 and November 2019 email correspondences.
- f) Email dated July 14th, 2020 related to the *second restriction. (?)

Charles Estes, ZBA Secretary, also reported to the Board that he performed a site review, with photographs taken, of Lot 08 and the ROW that has since 2018 been extended beyond the location identified on Map 11177. There appear to be extensive logging operations performed in the recent years on Lot 08 with a grand “View” of Ragged Mountain Ski Area; such that it appears the lot has been prepared for

potential development and/or for sale as a property ripe for development if the lot can be proven buildable.

Each of the documents supplied by C. Estes were read aloud. The relevance of these documents detail that on several occasions, previously, applicants were advised to seek guidance and approval for construction of a ROW from the **Planning Board** before attempting to obtain a building permit on lots adjacent to the Map R08/Lot 15. The Decision of the ZBA in 2017 was restricted to the "Common Drive" that services lot 15. It is noted the applicant seeks a building permit on Map R08/LOT 08. (not lot15) However, although the Planning Board is the proper and rightful Land Use Board to perform site plan review, give guidance and has oversight of new Driveways and "ALL OTHER ACCESSES," the Planning Board, concisely the Chairman, acting independent of the Board, without consulting the Board, abdicated the Board's responsibilities on several occasions. It is noted that during the November 2019 Planning Board Meeting the Chairman multiple times intentionally referred to this issue as "being a ZBA matter" by wrongfully proclaiming the existence of a ZBA variance related to the property. Subsequent to this profession, the Ex-Officio Selectmen on the Planning Board, (again independent of the PB and other Selectmen) followed by asserting this was a matter for the ZBA, stating, "*no matter, the planning board has no role to play in this.*" Nov. 2019 email.

As noted in the ZBA minutes from July 9th, 2020, the Chairman emphasized a case had 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 section I (b) (2). The ZBA Chairman reiterated that the Notice of Decision for Denial by the Selectmen (notation added by the Selectmen's Secretary) regarding Lot 15, should never have been included on an Notice of Decision for lot 08 where they are two completely separate Lots. The Decision of the ZBA was not a Variance. The ZBA upheld the current Town of Hill zoning ordinance at the time the case was decided.

After very little further discussion, The Board entertained a Motion as follows:

Stephen Thomson made the motion

[That the Appeal of Administrative Decision be Denied on the basis that there currently exists no adequate frontage on Map R08 Lot 08 <and> that the second condition is not an issue that the ZBA can rectify, which allows the Applicant to Re-Submit the proper application(s) with the Planning Board to properly address the construction/upgrade/development of a ROW for access to Map R08 Lot 08, if they so choose.]

The Motion was seconded and Passed – unanimously - as required.

The public departed. The Meeting adjourned at 8:00PM.

Respectfully Submitted,

Charlie Estes,
Secretary ZBA