



**** DRAFT ****

Hill ZBA

Meeting Minutes

January 13, 2022

In-Person Regularly Scheduled Meeting

Attendance:

Stephen Thomson, Frank Marsh, Charlie Estes, Frank Razzaboni, and Stephen Arruda

Meeting was brought to order by Steve Thomson at 7:00 p.m.

Public Audience: There were approximately 10 public residents and non residents in attendance. There were no remarks from the audience sufficient to capture names or context of the comment.

Old Business:

A motion was made and seconded to accept the minutes of the previous meeting. The motion passed and minutes were accepted as presented.

New Business:

On December 28th 2021, the ZBA Secretary received a Request for Rehearing pursuant to NH RSA 677:2 submitted by Green Acres Woodlands, Inc. by and through its Counsel Maria Dolder, from the Law Offices of Hebert and Dolder, PA,. The board is required to review and render a decision on the request within 30 day of receipt <or> in the alternative, “Stay” the Board's decision regarding the application for special exception until such time as the motion can be brought before the board. In this instance, the board moved to review the request at its next regularly scheduled meeting without a Stay of the current decision.

Before beginning review and consideration of the request, the board reviewed the current status of its membership. Frank Razzaboni, prior to the public hearing in September, recused himself from all things related to Green Acres Woodland’s pursuit of an excavation operation on Poverty Pond Rd. Mr. Razzaboni properly recognized this Request for Rehearing as a continuation of GAW's pursuit of the same excavation site approval. He reiterated that his recusal was correct and proper for this matter and included the submission of this request. We Thank him and greatly appreciate his integrity and humility in this area. Stephen Arruda, member since November 16th 2021, proffered at the December 2nd 2021 ZBA meeting that his knowledge and experience with this matter was quite limited and suggested that would result, at that time, in him abstaining from a vote on the GAW application for special exception. In the months that have followed, Mr. Arruda reviewed meeting minutes from all town boards related to GAW, submissions of applications by the applicant and all documents presented to the board during previous public hearings.

He asserts that he is prepared to join the board in review of this request for rehearing. The board Thanks him for his diligence in catching himself up on all the materials and being prepared to engage. The board agrees that his participation at this stage is appropriate. The board membership stands at 5 members with 1 recused and 4 participating members for review and consideration of the Request for Rehearing.

Charles Estes, Secretary suggested that the Board consider the submission of the request in two parts. Paragraphs 1 through 22 outline the applicant's request for rehearing while paragraphs 23 through completion set forth the grounds for appeal in the event the matter is brought to Superior Court. The members all confirmed they had individually read the request in its entirety and are prepared to review the request collectively in order to render a decision. Taking each paragraph into consideration, giving each member an opportunity to include comments, the following is a compilation of the Board's collective remarks.

In response, the Board states as follows:

- 1) The Board does not dispute the applicant's assertion in paragraph 1.
- 2) After review of the Selectmen's meeting minutes of November 5th, 2019 referenced by the applicant, the minutes do not convey the affirmation the applicant suggests. One Selectman is no longer in office, another is deceased and the 3rd was not present to comment. Notwithstanding, the board was able to determine that any discussion of a potential excavation site was in the form of initial consultation where no application or submission of documents of any kind would prompt a decision by the Selectmen. It was likely the Selectmen were being typically casual and congenial. Therefore, the ZBA disputes paragraph 2.
- 3) The applicant moved forward with submission of an application to the State of NH at their own risk and without the Town of Hill approval of the Planning Board who should have immediately made the applicant aware of Hill Excavation Regulations or made notice to the applicant of NH RSA 155 E which requires an application of special exception be approved by the local ZBA. The applicant submitted an intent to cut on May 05th 2020 for several lots, one of which was the lot of the proposed excavation site. The intent to cut is required for logging operations. Upgrades were performed to the Class VI Road known as Poverty Pond Rd. The alterations to Poverty Pond Road were performed without the written authorization of the municipality. Logging operations intended to be temporary have continued in the vicinity of the proposed excavation site.
- 4) The applicant's makes references to a Driveway Permit submitted to the Selectmen's office without saying what the driveway application was for. The applicant has been performing logging operations on multiple lots located in the surrounding area. The applicant next suggests that communications with the Town of Hill Planning Board Chairman [Robert Helmers] took place, however there have not been any correspondences produced between GAW, Inc. and Former Planning Board Chairman. {It is noteworthy that following the July 15th, 2021 public hearing, after several special meetings as a result of numerous complaints related to the Chairman's departure from civility during the hearing, the Selectmen requested Mr. Helmers submit a resignation from the Planning Board. Mr. Helmers submitted a resignation that was accepted.}

There are no Planning Board minutes between November 2019 and February 2021 that identify GAW, Inc. consulted with the planning board as a whole or formally. Any communications between GAW, Inc. and the former planning board chairman were independent of the board as a whole and are therefore unreliable.

- 5) The ZBA has no response except to say, any reliance upon communications that occurred with an individual, separate and independent of the town board or committee of which that individual represents, is at the risk of the individual acting upon those communications. GAW, Inc. was at their own risk when relying on an individual independent of the board.
- 6) The ZBA disagrees with this assertion by the applicant. The ZBA remanded the application to the Planning Board as an “incomplete” application. Members of the ZBA advised the planning board in the best way to proceed procedurally. The Planning Board did not heed the ZBA's sound advice. The Planning Board voted against holding any kind of joint hearing and proceeded at the direction of former chairman.
- 7) The ZBA does not disagree with the applicant's assertion. The assertion by the applicant that the Planning Board Chairman claimed the ZBA cannot require an applicant to obtain additional permits refers to a NH RSA not applicable in this situation. Legal counsel for the Town of Hill and NH Municipal Associate, Natch Grieves, both supported the ZBA's “suggestion” to perform a limited site plan review prior to approving Hill Zoning Ordinance requirement Article VIII, D, 2. It was the decision of the Planning Board Chairman Robert Helmers not to perform site plan in any capacity before or during the planning board's public hearing of July 15th. This decision not to review any more than the essential minimum to satisfy Article VIII D, 2, is referred to as “Helmers own discretion.” He rejected Town Counsel's advice and put the note referred to by applicant in the minutes as a justification for his decision not to perform site plan review. What’s more, Helmers did not put the question before the Planning Board for consideration. He made the decision to hold the public hearing on July 15th, independent of the planning board members and only notified members of his discretion via email.
- 8) The ZBA does not disagree or dispute.
- 9) The ZBA does not disagree or dispute.
- 10) The ZBA disputes that Town Counsel had determined the ZBA would have no jurisdiction in this matter. Regardless of whether the Planning Board enacted Town of Hill Excavation Regulations or relied on NH RSA 155 E, the indisputable fact remains that approval of a special exception by the ZBA was required in order for an excavation application to proceed.
- 11) The ZBA disputes the applicant's inference that the ZBA was procedurally inaccurate in any way. The ZBA did process two appeals of administrative decision that arose out of the Public Hearing on July 15, 2021. The ZBA handled the appeals appropriately. As the applicant rightfully asserts, the application was finally ripe for consideration and was properly taken up by the ZBA as of September 9th, 2021. It was as of this date that the ZBA received and began to process a “Complete” application for special exception.
- 12) The ZBA disputes there is any wrong doing, as the Notice of Application for Special Exception was properly posted and the Public Hearing with the ZBA was held at the next regularly scheduled meeting which the applicant agreed to.
- 13) The ZBA does not disagree with or dispute applicant’s assertion.

- 14) The ZBA does not disagree with or dispute applicant's assertion. Two members of the 3 person active board were ill on the date set for final deliberations. All parties were notified in advance and agreed to rescheduling final deliberations for a date that all active members could be present.
- 15) The ZBA does not disagree with or dispute applicant's assertion. It is noteworthy however that throughout the process, on separate occasions, GAW, Inc was advised the board was a 3 member board. At the beginning of the Public Hearing of October 14th, GAW, Inc. was again advised the board consisted of 3 participating members, which meant that any decision of the board needed to be unanimously established. Given the option to postpone, GAW, Inc. chose to proceed with a 3 member board.
- 16) The ZBA disagrees with and therefore disputes applicant's assertion. Chairman Thomson of the ZBA initially raised again his rejection of the planning board's finding of the site for suitability for its intended use being located in a Non-Residential area. Charles Estes reiterated again the planning board's 3-1 decision to only consider a very narrow view of the "SITE." The planning board chose not to take a "30,000 ft. view" of the zone, district or area where the proposed excavation was to be located. But instead took an aerial "100 ft. view" of the "Site" (the lot only) of where the excavation was proposed. Deliberation notes provided to all parties as incorporated by reference in the meeting minutes of December 02, 2021 define this point. The ZBA set aside initially the argument of suitability of the "Site" accepting the Planning Board's determination, as was the decision of the Munson Coalition appeal. The ZBA moved forward with review of the application pursuant to NH RSA 155 E, 4, taking into consideration the "30,000 ft view" the planning board disregarded. Subject to the "30,000 ft view," are the full trucking route as a matter of ingress and egress. Included in the ZBA'S broadened view was hazardous road conditions and the close proximity of more that 45 residential properties, existing road conditions and the safety concerns automobilist, pedestrians, livestock, domestic pets and natural wildlife. Wildlife studies provided by GAW, Inc. were generally limited to the "site" and immediate surroundings.
- 17) The ZBA disagrees with and therefore disputes applicant's assertion that a hearing could take place on or before June 10th, 2021. Article VIII D 2 of the Town's Zoning Ordinance requires that the Planning Board find the site suitable for its intended use before the ZBA can accept an application for special exception. On April 15th, 2021 the ZBA sent the application back to the planning board finding the application incomplete and finding the planning board had failed to perform this requirement. It was at the discretion of the planning board chairman to hold a public hearing on July 15th to determine site suitability in accordance with Article VIII, D, 2. Therefore, there was no time prior to July 15th, the application was acceptable.
- 18) The ZBA disagrees with and therefore disputes applicant's assertion. The Zoning Ordinance is what it is, it is the law of the land and must be followed unless or until it has been changed by legislative process. GAW, Inc. Made its presentation to the Town of Hill, including the introduction of applicant at the hearing of July 15th. The applicant was met with strong indignation by residents opposed to the proposed excavation at the July 15th hearing. In fact a petition bearing hundreds of signatures was presented to the Planning Board Chairman, who tossed aside the envelope without it being opened. The applicant Agent of GAW, Inc. began his introduction and opening remarks in the exact manner as before. Had the applicant met with civility and congeniality at the previous hearing, this would have been a prudent way to begin again. Having been met with strong opposition at the first hearing, the

applicant might have considered a different approach. The applicant was met with rude comments, interruptions and indignation. The ZBA admonished individuals for their behaviours and proceeded with civility enduring rude comments and threats of their own. Suffice to say, the residents of Hill do not want this proposal approved.

- 19) The ZBA disagrees with and therefore disputes applicant's assertion. The ZBA was procedurally accurate in its handling of all aspects of this matter.
- 20) The applicant has not submitted a new evidence, now has the applicant asserted that new evidence could be presented upon granting a rehearing. While the planning board may have erred in its performance or response to the applicant, it was the result of an individual acting independent of the fullness of the planning board. Notwithstanding, actions of the individual acting upon his own cannot be misconstrued as procedural insufficiency of the ZBA. The ZBA was procedurally correct in its actions in response to an application for special exception.
- 21) The ZBA disagrees with and therefore disputes applicant's assertion. The ZBA was procedurally accurate in its handling of all aspects of this matter. In all areas where the ZBA was delayed to confer with counsel, delayed in deliberation or delayed in production of documentation, all parties were consulted and parties, including GAW Inc., waived procedural insufficiency as to delays or rescheduling. At no time prior to this Request for a Rehearing has the applicant brought forth any dispute or challenge to the procedures of the Town of Hill Selectmen's office, Town of Hill Planning Board or the Town of Hill Zoning Board of Adjustment.
- 22) The ZBA disagrees with and therefore disputes applicant's assertion. The ZBA only set aside temporarily the finding by planning board of "site" suitability in order to define for the public the definition of "Site." (Refer again to paragraph 16)
- 23) Through 51) The ZBA disagrees with and therefore disputes applicant's assertion. The ZBA was procedurally inaccurate in handling of all aspects of this matter. The Town of Hill objects to Green Acres Woodlands, Inc., submission of a Motion for Rehearing and hereby reserves the right to state its objections to paragraphs 23 through 51 in an when the time is appropriate to do so.

As a result of these findings:

Steve Thomson made a motion to deny the request for rehearing on the grounds that the request for rehearing does not satisfy the requirements of New Hampshire RSA 677:2 for the reasons stated the minutes. Motion was seconded by Steve Arruda. The motion passed 4 to 0.

New Business Continued –

The Board will hold election of officers at the first regularly scheduled meeting following Town Elections.

Charles Estes noted that his term in office on the ZBA is ending and he is up for re-appointment. Charles asked the board members if there was any objection to his re-appointment to another term. The board members resoundingly showed support for a re-appointment to another term.

The board agreed that at the next meeting the board would resume review of town ordinances, processes and procedures to see where improvements can be made. Shaun Bresnahan, from the public audience, stated the Planning Board is proposing some changes including the removal of the requirement of Article VIII D, 2, or wording to the effect that the Planning Board's consideration of Article VIII D, 2, be considered advisory in nature an non biding.

The board having no other business, adjourned at 8:22 pm.

Respectfully Submitted,
Charlie Estes, Secretary