

MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING

May 8, 2014

7:00 PM

Meeting called to order by Chair Electra Alessio, present, Ray Donald vice chair, Daryl Branch, John Whittier, Ben Romano and Tammy Bakie. Mr. Whittier made a motion to approve the minutes for the March 13, 2014 meeting, Mr. Branch seconded, all in favor, Mr. Romano abstained.

Tax Map R-5, Lot 8-30, Jericho Drive

Ms. Ellen Faulconer on behalf of the Kingston Planning Board raised a point of order stating according to the RSA's the ZBA does not have jurisdiction over regulations only town ordinances, therefore the ZBA should not hear appeal. Ms. Alessio reiterated that the appeal is based on town regulations which the ZBA has no jurisdiction over. Attorney Jacqueline C. Fitzgerald-Boyd stated she did not receive a copy of the Planning Board's objections to the re-hearing sent to the ZBA. Mr. Whittier stated it was clear that the ZBA does not have jurisdiction, and made a motion to dismiss the request for the appeal. Mr. Donald seconded. Ms. Alessio provided material from the planning board. Ms. Faulconer again stated no ordinances were cited in the application only regulations which do not fall under the ZBA's purview. Ms. Fitzgerald-Boyd stated they felt part of the appeal was an ordinance and they couldn't move forward through the courts without coming before the ZBA. All in favor of the motion to deny the request for administrative appeal.

Tax Map R-41, Lot 1

Ms. Alessio stated she had attended an inspectors meeting where she relayed to them that she thought one of the reasons the equitable waiver was granted was because of the discrepancy of the town ordinance not specifically putting in a 10 year requirement where the state does. Ms. Alessio read a letter from Attorney Peter Loughlin, and the equitable waiver of dimensional requirement provisions A and B. Ms. Alessio recommended denying the selectmen's request for a re-hearing. Ms. Alessio stated she did not believe the board made an error in judgment. Ms. Alessio read a letter received from the South East Landtrust. Mr. Whittier asked about the availability of information the evening of the original hearing. Ms. Alessio stated she may have voted differently but the outcome would have been the same. Ms. Alessio stated the petitioner got the relief they were asking for. Ms. Alessio stated the board did not make an error and should deny the request for rehearing. Ms. Alessio stated she

had received a letter from Attorney Sullivan objecting to the re-hearing, because the inter office memo does not specifically request a re-hearing. Ms. Alessio stated she took it as a request. Ms. Alessio explained the process for a re-hearing. Mr. Donald stated he would not have changed his vote, and made a motion to deny the request for a re-hearing, Mr. Whittier seconded. A discussion followed regarding the equitable waiver 10 year requirement, access to the property, and if any information would have changed the vote. Mr. Romano stated it doesn't hurt to re-hear as the outcome would likely be the same. Ms. Alessio noted the lack of any new information. A discussion followed regarding the Department Heads concerns. Ms. Ellen Faulconer stated the inspectors were concerned about mis information or a lack of information. Ms. Faulconer stated there may have been a misunderstanding regarding the Southeast Land Trust's access. Mr. Peter Coffin state he was aware of the information the night of the hearing. Mr. Coffin stated he felt the requirements had been met, bottom line he would not have changed his vote. Mr. Romano suggested the Board of Selectmen could withdraw the application. Ms. Alessio stated she had spoken to selectman Heitz who stated the board could simply vote it down. Mr. Donald stated he didn't like to go against the Board of Selectmen but the matter had been discussed and all information was available. Ms. Alessio stated had she had information she may have voted in favor, the outcome would not be changed. Ms. Alessio stated she had learned from the process. Attorney Sullivan read an excerpt from the office of state planning. Attorney Sullivan stated there is no compelling reason, no right to reopen with the same set of facts. Attorney Sullivan stated there was time and money associated with the issue and does not believe the board has a good reason for a re-hearing according to statue. A vote was taken to deny the request for re-hearing 4 in favor, 1 opposed.

Tax Map R11, Lot 12-1, Lot

Ms. Ellen Faulconer raised a point of order recommending the hearing be post poned for thirty days. Ms. Faulconer stated the Planning Board had received information that the applicant was not going forward with the original plans, the applicant was given a 60 day time frame to meet conditions. Ms. Faulconer stated the applicant was not meeting the conditions and as of May 22, would be coming forward with a brand new plan, and would have to start the process all over again. Mr. Nicholas Golon from TF Moran stated what Ms. Faulconer said was accurate, they were going to come back with a modified plan. Mr. Golon stated they would be moving forward with the project, it would be slightly moved on

the property and suggested taking advantage of the opportunity tonight to hear the request for an appeal. Mr. Kevin Connor spoke of the confusion regarding this project. Ms. Alessio read a letter from the Rockingham Planning Commission. Mr. Connor stated they had been misled from day one on the project. Mr. Connor spoke of his dissatisfaction regarding the communication to the abutters and substation vs. switching station, and the expansion of a non-conforming use. Mr. Romano recommended a continuance. A discussion followed regarding the need for more information. Mr. Golon discussed the construction schedule and the hardship a continuance would have on the applicant. Mr. Golon stated the location would shift slightly, but it would still be a switching station that would look exactly the same, located on approximately the same place on this 20 acre lot. Ms. Alessio pointed out that the applicant's themselves had delayed the project for a few months. Mr. Connor asked about non-conforming use and height requirements. Ms. Alessio stated these were regulations. Mr. Romano stated these would have to be met at site plan review, at the planning board. A discussion followed regarding a final plan. Ms. Alessio stated the applicant could have gone to the PUC and have local ordinances waived. Ms. Alessio stated it was in the board's best interest to continue the hearing till next month when the applicant had submitted a final plan. Mr. Whittier agreed stating it wouldn't be appropriate to make decision until the board could see the picture clearly. Mr. Whittier made a motion to continue the hearing to June 12th at 7:05. Mr. Donald seconded. A discussion followed regarding the process. All in favor, none opposed.

Ms. Alessio adjourned the meeting at 8:25.

Respectfully submitted,

Tammy L. Bakie
Secretary
Zoning Board of Adjustment