

TOWN OF BROOKFIELD, NEW HAMPSHIRE
Office of the Zoning Board
PO Box 800, Sanbornville, NH 03872
July 23, 2009

MINUTES OF PUBLIC HEARING

Attendance: Jay Badger, Dick Peckham, Tom Lavender. Alternates: Dulcie Lavender and Bill Nelson. Selectmen Representative Ernie Brown.

Absent: Paul Tremblay, Richard Mauser and David Dansereau

ZBA Attorney: Susan Slack

Reporter: Heather Terragni

Members of the Public: 32

Call to Order: Tom called the meeting to order at 7:00 PM. He led us in the pledge of allegiance. Alternates were assigned to replace absent board members; Dulcie Lavender will sit in for Paul Tremblay and Bill Nelson will sit in for Richard Mauser.

Tom read case #09-1, Appeal from an Administrative Decision filed by Craig Evans. He is appealing the Planning Board's refusal at 06/08/09 meeting to require site plan review of Mr. Bourdeau and/or Moose Mountain Recreation, LLC regarding the planned improvement and activity at Map 30 Lot 2.

Laura Spector, Attorney for the Planning Board introduced herself and asked the ZBA to reschedule. The Planning Board is not ready to discuss at this time explaining the Planning Board was not notified and should have as they are a party of interest. She also reported the Planning Board chair was unable to obtain a copy of the appeal allowed by due process. Without knowing the context of appeal the Planning Board is not prepared to discuss at this time.

Craig Evans introduced Attorney Callen who will be speaking on his behalf. Attorney Callen explained that State Statute and the ZBA instructions to applicant do not require notice be given to the Planning Board. This requirement only appears in one place and this is the Rules of Procedure document for the ZBA; under Appeals to Administrative Decision it notes notice shall also be given to the Planning Board, Town Clerk and other parties of special interest. Callen cited numerous cases in which the court has held up repeatedly that non-direct notice is enough to claim actual notice even though legal notice was not given. Attorney Callen referenced 7/14/09 Selectmen's Minutes where Janet Murfey, Planning Board chair indicated she was aware of the appeal he also referenced a section in the same minutes where Clifton read a letter submitted by Craig regarding the appeal. Callen also reported the Town of Brookfield was sent certified notice because they are an abutter; the certified notice was signed for by the Town Clerk. Lastly he referenced 7/16/09 article in the Granite State News that includes Janet's comments regarding appeal of Planning Board decision. It is his opinion that actual notice has been achieved. Regarding the issue of obtaining a copy of the appeal he finds it astounding that the Planning Board has not been able to obtain a copy. The appeal was submitted on 6/26/09, he feels very little effort must have been given to obtain a copy. Regarding point that the Planning Board does not know the context of the appeal he explained it is a simple matter and feels the public notice is detailed enough to provide context of the hearing. He asked the ZBA to continue with the public hearing as scheduled.

Laura Spector agreed that actual notice has been achieved but feels we are obligated to follow rules of procedure.

Jim Sessler, Attorney representing Moose Mountain Recreation LLC spoke. He is ready and prepared to continue with the hearing this evening but is interested in a full and honest hearing and would like everyone to be prepared. The Planning Board is the main party involved. He would hate this issue to be overturned on a procedural issue. He urged the ZBA to air on the side of caution.

MOTION: Dick for the purpose of discussion made a motion to continue the hearing till August 6th, seconded by Bill for discussion. *The board discussed. Dick agrees notice was given and feels the ZBA acted in good faith. He is not in favor of continuing but to have transparency he feels we should continue. He asked Attorney Slack if continued is no further notice required, Attorney Slack agreed. Tom commented that he did not send certified notice to the Planning Board, he saw Janet's comments in The Granite State News article and thought the Planning Board did not need further notification. Bill asked if all Attorney's agree that no further notice would be required if meeting is continued; they all agreed. Attorney Callen explained he was unavailable on the 6th and asked another date be selected. After brief discussions all agreed to date of August 13th. Dick amends the motion to read August 13th, seconded by Bill. A vote was taken, all in favor.
MOTION CARRIES.*

Public Hearing continued to August 13th at 7:00 PM. (Meeting continued at 7:40 PM)

Respectfully Submitted,

Jennifer Sonricker
ZBA Secretary