

TOWN OF BROOKFIELD, NEW HAMPSHIRE  
Office of the Zoning Board  
PO Box 800, Sanbornville, NH 03872  
August 27, 2009

**MINUTES OF PUBLIC HEARING**

**Attendance:** Jay Badger, Dick Peckham, Tom Lavender (Chairman) and Richard Mauser.

Alternates: Dulcie Lavender and Bill Nelson.

**Absent:** Paul Tremblay, Ernie Brown, Selectmen's Representative

**ZBA Attorney:** Susan Slack

**Reporter:** Heather Terragni

**Members of the Public:** 21

**Call to Order:** Tom called the meeting to order at 7:00 PM. Roll was called, absent Paul Tremblay. Dulcie led us in the pledge of allegiance. Bill Nelson will sit in for Paul Tremblay.

Public Hearing open for deliberations; there will be no public comments.

Tom read Summary of Evans appeal of Administrative Decision drafted by ZBA Attorney Susan Slack, the document summarizes the Planning Board, Mr. Evans' and Mr. Bourdeau's beliefs regarding the appeal.

Details regarding legality of motions reviewed. Motions need to end with a yes majority; if a motion fails a new motion needs to be made with the wording changed as such to result in the motion passing (opposite language to failing motion). It was also suggested that words "affirm" and "reverse" be used in the motion language.

Tom explained the board would address the seven items presented by Attorney Slack individually and take a vote on each one before addressing the appeal.

*Point 1: The Planning Board (PB) believes the ZBA does not have jurisdiction to hear Mr. Evans' appeal because he did not appeal the Planning Board decision in a timely manner, that its original decision not to require site plan review occurred on April 27, 2009, and that Mr. Evans was required to appeal that decision within 21 days, which he did not. The Planning Board believes the second vote on June 8, 2009 was invalid.*

The board discussed point 1. In order for a second motion to occur on a similar matter a substantive change needs to occur; the board discussed this fact. Dick feels the motions are different; the first motion in April is a request for information in order to determine if Site Plan Review (SPR) is necessary, the second motion in June specifically requests Mr. Bourdeau be required to apply for SPR. Jay comments; he feels the April motion anticipates there will be SPR in the future.

**MOTION: Dick Peckham made a motion to consider appeal timely, seconded by Jay Badger.**

Motion discussed briefly; a statement was made that besides what has been written in the paper nothing has been received in writing regarding plans for Moose Mountain Recreation, LLC (MMR). Clarification on point 1 provided; ZBA is trying to determine if April 27<sup>th</sup> or June 8<sup>th</sup> is starting point for appeal. **A vote was taken, Yes- Tom, Jay, Dick and Richard, No- Bill. Motion carries.**

*Point 2: The Planning Board believes that even if Mr. Evans' appeal of the June 8, 2009 decision was timely, the ZBA does not have jurisdiction to hear the appeal because the Planning Board (PB) didn't discuss or interpret the Zoning Ordinance (ZO) when it voted not to require SPR.*

Brief discussion by the board, Tom and Dick both agree the motion on June 8<sup>th</sup> mentions the ZO.

**MOTION: Dick Peckham moves that the ZBA does have jurisdiction to hear the appeal because the Planning Board did in the motion by Bill Gaver consider the Zoning Ordinance, seconded by Bill Nelson for discussion. Brief discussion ensued. A vote was taken, all in favor. Motion carries.**

*Point 3: Even if the ZBA has jurisdiction to hear Mr. Evans' appeal, the Planning Board believes that the Site Plan Review Regulations do not require Moose Mountain Recreation, LLC to apply for site plan review because there are no new buildings or additions to buildings at the site or change in use of the site.*

The board discusses point 3. Bill comments regarding change of use of site; he has no issue regarding ski area but questions whether weddings and graduation parties would require a change of use. Susan Slack reminded the board that the job of the ZBA is to look at our zoning ordinance not site plan regulations. Change of use and intent of recreational zone discussed, including permitted and non-permitted uses. Susan Slack made another comment to the board reminding them that the issue before us is not so much permitted or not permitted uses but whether or not MMR requires SPR regardless of uses and further explained that SPR only deals with permitted uses. Jay expressed his concerns over who will regulate what occurs on the site if SPR is not required. Discussion then moved to the issue of abandonment and grandfathering. The board discussed at length whether or not the site is not grandfathered as Attorney Callen claims. The board decided to revisit point 3 after the remaining 4 points are addressed.

A 5 minutes recess was called.

After a brief recess Tom suggested going directly to the appeal of PB decision and include remaining points in the discussion. The board discussed the appeal of Craig Evans; is MMR required to apply for SPR. Many comments were made by the board as to whether SPR should be required for MMR. It was questioned whether the ZBA has authority to tell the PB to require SPR; page 7 of the ZO was referenced which concludes the ZBA can find the PB in error regarding their decision or we can agree with the PB decision.

**MOTION: Dick Peckham moves the ZBA find the Planning Board in error as regards to vote on June 8, 2009 in not requiring Moose Mountain Recreation, LLC to submit a Site Plan Review, seconded by Jay Badger. Brief discussion ensued. A vote was taken; Yes- Dick, Tom, Jay and Richard, No- Bill. Motion carries.**

The final point before the board is Mr. Evans request in the appeal asking the ZBA to find some of the activities proposed by Moose Mountain Recreation, LLC such as car shows, weddings and graduations, are not "active recreational uses" as required by the ZO, but are commercial uses requiring a variance. Several board members commented that they felt this is the responsibility of the PB and CEO, not the ZBA. Dick commented the PB currently has a sub-committee actively looking into this. The committee is in the process of putting together recommendations to be presented to the PB with a goal of having something ready for Town Meeting vote in March.

Dick commented he supports the efforts of MMR and would like to see the area developed; he just wants to see it is done the right way.

**MOTION: Dick Peckham moves not to consider point #7 because it is actively being looked into by the Planning Board and not under ZBA authorization, seconded by Richard Mauser. Brief discussion ensued. A vote was taken, Yes- Dick, Tom, Jay and Richard; No- Bill. Motion carries.**

The board will be scheduling a follow up meeting in a few weeks to address a few open items including approval of minutes, the meeting will be posted.

There being no other business before the board the meeting was adjourned at 8:35 PM.

Respectfully Submitted,

Jennifer Sonricker  
ZBA Secretary