

Minutes Meeting of July 14, 2005 – Blouin

Members Present: Stuart Schulman, Cindy Maxwell, Bob Cadle, Mark Mulligan, Chase Duffy

The BI was present at the request of the Board and the Conservation Trust.

The Chairman reconvened the hearing.

The Conservation Trust submitted several documents into the record.

The Chairman spoke to Tom McCuin on the phone and expressed some concern that it is difficult to speak to him when no one else can hear the conversation.

Mr. Blouin felt that he should have sent an email or letter prior to the hearing.

The Chairman said that Mr. McCuin said that from December 1996 to late in 1999 no one lived at or used the residence.

Mr. Blouin said that he was only there seasonally.

The Chairman said that taxes and none payment are the current issue.

Mr. Blouin noted that he is asking for a site walk after he has rebuilt the steps. He said that he is not finished and will need about three weeks to complete the job.

Atty. Vander Linden noted that he has submitted three things: one is a one page waiver for Mr. Blouin to sign that he is no longer asking for a variance. He said that after the court remand, Mr. Blouin has said that he is not proceeding with the variance and the Trust wants everything in order so that if they go back before the judge, everything is clear. He noted that the second document is a brief legal description of the non use for two years or more years issue. He said that there can be non use with the prior owner. He said that the second issue for the Board is how to handle some intermittent use and Mr. Blouin wants to bolster his case that there has been some seasonal use. He then referred to the Bartlett case and stressed that residential use is more than intermittent camping from time to time. He said that there has to be something that meets a code of at least minimum standards of habitability and noted that the Building Inspector found no electricity, no septic, etc., nor any other minimum standard of use/habitability. He then went over exhibits, ie no electricity for one decade, etc.

Discussion ensued regarding what taking of tax title means. Atty. Vander Linden said that Mr. Blouin has the right of first redemption and can pay taxes and get the title back.

Atty. Vander Linden noted that items 8 through 12 are relevant because Mr. Blouin has submitted a

letter from Gloria Fucillo stating that Mr. Parmenter used the property and the store on a regular basis. He said that tax records show that 1992 was the last year that Kitty's variety store had any taxable property and after that, the store was not in existence. He said that the tax records reference other businesses after 1992 but not Kitty's variety store. He said that the two year gap is the central issue and why the Board can't grant a special permit.

Mr. Blouin said that they were in store with Mr. Parmenter and Gloria when deed was signed over to him. He said that he didn't use road by the Montgomery's because he wanted to respect the Trust and doesn't understand how the road was sold out from under him when taxes have been paid since 1938. He then showed the septic and well use.

The Building Inspector noted that Mr. Blouin hooked up an old metal tank after the fact to serve as his septic system and his well isn't even on his property.

Mr. Blouin said that the septic system dates back to the 1960's and the well has been there since he was a child. He said that someone would have to dig up the ground to know what is underneath.

The Building Inspector said that the septic system has nothing to do with none use. He stressed that the property can be abandoned and have a septic system there.

Discussion ensued regarding what findings the Board made at the last hearing when the special permit was denied.

Mr. Blouin said that he doesn't agree with that.

Mrs. Duffy said that she doesn't think that occasional camping is residential use.

Discussion ensued regarding what was said related to the non use issue.

Mr. Blouin said that he has seven affidavits to prove some use. He asked how many days constitute a seasonal use.

Discussion ensued regarding whether Mr. Blouin paid taxes and how a tax taking works.

Atty. Vander Linden said that the whole conversion of seasonal use is contingent on continued use.

Mr. Mulligan said that the two year gap is not specific but more of a general feeling of non use.

Mrs. Duffy felt that there needs to be some evidence of a more constant use.

Ms. Montgomery said that she would have smelled bon fires and food cooking if someone was there, and would hear voices if someone was there. She said that the property was not used until

1995 and stressed that even if she can't see the house, she can hear and smell.

Kathy Raymond noted that there was no evidence of use before 1995. She said that Mr. Keene, neighbor, walked his dogs twice a day and saw no evidence of use for many years.

The Chairman felt that the standard of occupancy for a seasonal dwelling may be different than for year round use and noted that he is not totally sure of what is the standard for seasonal use. He suggested that it must be lower.

Mr. Blouin said that he is not claiming that as a residence and stressed that it was used as a seasonal dwelling. He said that he camped in dwelling and not in the yard, and that taxes have paid since 1938.

The Chairman suggested that he don't keep saying that taxes have paid because the record shows that they haven't been paid. He said that the Board gave the applicant permission to live there and he is not paying taxes.

Mr. Blouin said that he has been in court since then and that now he has an issue with a simple conversion.

The Chairman reminded him that the Board denied that conversion two years ago.

Atty. Vander Linden said that frequency of use denotes a different standard and noted that there is conflicting testimony of use. He said that the ZBA usually does not have to make credibility checks but to some degree they do need to do that now. He said that Mr. Blouin needs to prove that there was continued use in order for a special permit to be granted.

Mr. Blouin objected and Atty. Vander Linden asked him to stop interrupting.

Mr. Blouin said that he doesn't care what anyone thinks and that the Board should just deny so he can appeal and sue.

Atty. Vander Linden said that the Building Inspector had to file a criminal complaint because he couldn't get Mr. Blouin to play by the rules. He stressed that credibility is at issue here and most citizens wouldn't be so willing to ignore the rules and plow ahead.

The Chairman asked for clarification regarding the criminal complaint.

The BI said that the case was thrown out because Mr. Blouin went to the ZBA. He stressed that he would have continued the criminal complaint if Mr. Blouin didn't go before the Board and that he went out there because of a complaint. He said that the shack was lying at an angle to the ground. He noted that the applicant had issues regarding what boards to go to and felt that the metal septic

tank dumped on the site was stroke of luck for Mr. Blouin. He said that there were no bathrooms at all in place, per his observation and the Assessor's records. He said that he doesn't know why the septic tank was there, but reiterated that it was a stroke of luck. He said that Mr. Blouin hooked up after the fact and this clouded up the whole process. He noted that he doesn't understand why the BOH gave any approvals because this, too, has clouded the process. He stressed that there is no doubt in his mind that the shack was abandoned and that there was no electricity, etc for more than ten years. He said that at the time of initial inspection there was a six to eight foot wide path. He said that then Mr. Blouin wanted electrical service and although he asked GELD to not give service because it was an illegal lot, he got service and further confused the situation.

Mr. Blouin said that the wooden piers were rotted and the house was sinking. He noted that there was a toilet that was kicked off the floor but there was plumbing, but no electricity. He said that the Board can't believe the property card.

Mr. Mulligan asked what the Trust and abutters want for the property.

Ms. Montgomery said that there is still a derelict shack that she now can see because of all the trees cleared and noted that there is a lot of trash kept on lot.

Ms. Raynard said that he bulldozed all the trees by path. She noted that there is a lot of garbage on the property and some animals have been poisoned. She said that it is a difficult spot to access and a bad location for a disabled child and wife.

Mr. Blouin said that it was not his wife but his daughter and son who lived there.

Ms. Raynard noted that it would be better for the two disabled people who live there to live elsewhere and said that she wants the lot to go back to nature.

Atty. Vander Linden said that the Trust didn't pick this dispute but it is a one in 1000 case where the owner continues to move in a bull headed manner without the zoning issues resolved. He noted that the Trust has done a lot to try to make the Lake a better place and less developed. He said that the Trust does not want more intensive development because of the risk to the Lake and took an interest here as a landowner. He noted that the Trust has purchased derelict shacks and razed them so the lot goes back to nature.

Mrs. Duffy asked how close to the lake the property is.

Mr. Blouin said that the Lake is about ¼ mile away and noted that there was trash on Ms. Raynard's property and has the police report to prove it. He said that he is not trashing any Trust land but noted that Ms. Montgomery puts trash over onto Trust land.

Ms. Montgomery said that she dumps leaves onto Mr. Collins property with his permission.

The Chairman said that the Board is legally not allowed to give a permit if taxes are owed.

Mr. Blouin asked for a site walk.

The Chairman wanted to know what that will prove.

Mr. Blouin said that this was so that the Trust can voice concerns to be addressed in court.

The Chairman noted that site walks are not used to address those issues.

Atty. Vander Linden said that the site walk will not show or prove the two year gap.

Mrs. Duffy suggested asking for a determination regarding occupation of the shack, noting that she thinks it would be fairly easy to prove use with trash, etc.

Atty. Vander Linden said that no court cases are regarding seasonal use.

The Chairman said that he wants to ask Town Counsel about seasonal use and how to prove usage.

Chase gave example of hut that abutter said that abandoned. Was abandoned but baby so cute that let a conditional occupation for a time certain.

Mike- definition of seasonal residence give evidence of how to document. Electrical, po box, etc. mike has sworn affidavits that under penalty of law property is abandoned.

Discussion ensued regarding affidavits, etc.

Bob thinks burden of proof of non use is on trust.

Atty. Vander Linden said that the person living there should have the better ability to prove and thus the burden is with the applicant.

Mike said that there was no plumbing or pipes in the building. Whatever there was dumped and not functional.

Mr. Blouin noted that he used a hand pump for the sink and to flush the toilet.

Mrs. Duffy said that that doesn't mean the place is habitable.

The Chairman asked where the Board goes from here.

Mr. Cadle said that the Board needs to resolve the use issue because it is a potential show stopper.

Mr. Blouin said that he has affidavits but he didn't bring them because he thought the hearing would be continued.

Mr. Mulligan noted that he thinks that lack of payment of taxes doesn't necessarily constitute a non use.

Discussion ensued regarding how to interpret non payment of taxes.

For the record, Mr. Blouin didn't live in Groton full time until 2000 when his house in Ayer burned down.

Mr. Cadle asked whether Mr. Parmenter ever used the premises full time.

Mr. Blouin said that the brother of Mr. Parmenter lived there until he died, when the applicant was a kid, and then Mr. Parmenter used the residence for about three months a year.

Questions for Town Counsel: What is consistent seasonal use versus what use or lack thereof constitutes non-use and what are the minimum requirements. Does the BOH need to reinspect for Title V approval. Lawful use of seasonal residences should be submitted, and what the Building Inspector determined.

Mr. Blouin said that he asked Town Counsel whether the BOH needs to reinspect and Town Counsel said that the Board didn't have to.

Mrs. Duffy asked whether there is plumbing that is usable now.

Mr. Blouin said that there is and there are reports from Ross Assoc. verifying this. He noted that he has a Title V approval from 2002.

Atty. Vander Linden said that he wants to put the variance issue to rest by having Mr. Blouin sign a waiver.

The Chairman said that Mr. Blouin can't be forced to sign anything.

Mr. Blouin said that he would sign the document.

The hearing was continued to 8/3/05 at 8:30 pm.

Atty. Vander Linden said that the judge wants specific findings and suggested that the Zoning Enforcement Officer's observations can feed into this and it could be good for him to be here.

Mr. Cadle asked the applicant about the affidavits he claimed to have.

Mr. Blouin said that he needs to get them notarized.

Mr. Cadle asked for them in advance of the next hearing.

The meeting adjourned at 9:30 pm.