

**BOARD OF SELECTMEN**

**DECEMBER 28, 2011**

**MEMORIAL BUILDING**

**7:00 P.M.**

*The following are to be considered draft minutes only until approved by the Board at their next meeting.*

Selectmen present: Chairman, John Chiarella; Don Hill, and Leigh Callaway.

Also present: Robert Heath, Mike Lawlor, Bryan O'Day, George McCusker, Pete Abair, John Trachy, and Justin Hastings.

Minutes of December 14, 2011: Motion (John), second (Don) approve as written. Motion unanimously approved.

Unfinished business: Lassen driveway update: Don reported the Planning Board did not discuss this. Further discussion tabled.

Zoning issue: Dag Lidbeck, agent for the Moffitt property (Map 23, Lot 549-292) was present. Mr. Lidbeck submitted a letter from Robert Stewart of RCS Designs, the engineer who had been involved in the variance application process for the subject property. In response to the Selectman's letter dated December 15, 2011, Mr. Stewart's letter indicated he did not find any violations not consistent with the approved variances. The letter states the plans submitted to the ZBA, and for which variances were granted, show the proposed home 7+/- feet from the property line. However, he felt the 40' x 120' easement granted by the Heaths brings the proposed home and septic more in compliance with zoning. Mr. Stewart stated it was his feeling the issue with the house being closer to the property line should be discussed between the two owners and has no bearing on zoning. Mr. Lidbeck stated it is their feeling, that with the easement, the foundation is in compliance with the variances granted. John stated the situation came to the Selectman's attention when the abutter raised concern that the house was too close to the property line and had the survey done. John noted the easement came into play as a safety zone for construction of the house and septic. The required property line setback is 35' and a variance had been granted for 28' so the house must be 7' from the property line. The easement allowed area for disturbance and building, not an adjustment of the property line setback. The Selectmen are responsible for enforcing the setback from the property line not the easement. Mr. Lidbeck stated that is not how he and Mr. Stewart are reading the zoning decision. Mr. Heath stated the Town does not have anything to do with the easement. Don Hill stated he was present during the zoning process. The easement was for protection of the side lot line only. The house was to be setback 7' from the property line and it is not. At the zoning site walk, there was a lot of discussion about these issues. In addition, a great deal of concern was raised as to the flow of water off the roof etc., as many of the variances dealt with setbacks from wetlands buffer. Moving the location of the house may create other violations of the variance granted not in keeping with the approved plan. Every one of the 13 variances granted stands alone on its own merits, but each is contingent on how the whole plan was set up. John Chiarella stated the owner can contest the abutter's survey if they can come up with other evidence to challenge the findings of the survey that was done. Variances were granted for property line setbacks and setbacks

from the wetlands buffer. The violation brought to the Board's attention, needs to be corrected. John stated the Selectmen have not issued a formal cease and desist order as they have more research to do regarding the violation(s). The letter from the Selectmen was to bring the finding to the owner's attention so as to notify them there could be some repercussions with the foundation being built so close to the property line. Don stated the notice was meant to bring the violation to the owner's attention, and not allow them to move forward with construction until a remedy was found. One remedy would be for them to move the foundation, at the owner's cost. Don noted the setback on the other side of the house all deals with wetlands setbacks, not property line setbacks. This setback was very specific. Don noted it looks like the house has been twisted from what was approved. Mr. Lidbeck stated they are reading the setback as being from the easement, so they didn't think twisting the house was an issue. Don stated that prior to purchasing the property; Ms. Moffitt came before the board asking to move the foundation. She was told at that time, that the variances granted were so precise that nothing could be changed on that lot without going back to the ZBA. Warning was given at that time, in a public meeting, that the variance was extremely tight and there was no room for variation. John stated the easement allows area to work. Variances are from lot lines, not easement lines. Possible remedies included contesting the survey though Selectmen noted it is likely a different survey would not remedy the situation, removing the foundation, or make an appeal to the zoning board due to Mr. Lidbeck's interpretation that the setback is from the easement not from the property line as is being enforced by the Selectmen.

Mr. Lidbeck requested permission to be allowed to cap the foundation before winter sets in. Selectmen were in agreement the foundation could be capped, but advised Mr. Lidbeck not to do further construction of the house or spend a great deal of money going forward as it is possible the foundation does not meet the terms of the variance granted. If this is the case, removing the foundation may be a requirement and it was stressed this would be at the owner's expense. John noted the foundation doesn't meet setbacks from the property line, and now that the location has been twisted there is a possibility that there may be other violations on the other side of the house that the Selectmen haven't even addressed. The Selectmen informed Mr. Lidbeck that they recently have had to enforce zoning violations whereby someone had to tear up a concrete foundation for a garage, and another person had to move a building found not to be in compliance. The Selectmen stated they need more time to investigate this issue.

Robbie Heath noted the septic plans show the septic line proposed between the house and the property line. As the house moves closer to the property line, where does the septic line go based on the plan that was submitted. Robbie also noted that after they began working on the property, and the lot had been cleared, he spoke with the builder and asked where the house was going. The builder pointed to a spot on the Heath property. Robbie showed the builder the pins and offered to assist him with pulling a string from pin to pin but the builder was not interested. Robbie stated he went there many times and thought things didn't look right. In order to be sure, a survey was done. Robbie questioned if the plan was acceptable since it had not been recorded. John Chiarella noted it appears there have been things done on the lot that shouldn't have been. The plan approved by the ZBA is part of the permanent file. The Zoning Decision references the plan that was approved by the ZBA.

Public Comments: John Trachy indicated that the DES put quite a few restrictions on this property and wondered if those conditions were being followed. Mr. Trachy questioned if it would be wise for the town to engage their own engineer to oversee this. John Chiarella noted the Board's immediate concern is to focus on the sideline violation. The Selectmen will be reviewing the property and making further determinations.

Unfinished business: Leigh reported the fire department needs some testing and updates to SCBA equipment testing that hadn't been done yet. Dallas has completed a purchase order for this with an estimated cost of \$1550. The Board also discussed the purchase order that was approved in October for Mason for \$725.00 to fix the meeting room boiler valve, and \$356.00 to replace the toilet in the bathroom. Leigh noted also Pete had an invoice of \$1400 for replacement of a hydraulic line on the grader. The Selectmen agreed to encumber 2011 funds for as this is money that was intended for these purposes. Motion (John) to encumber up to \$4100 from the 2011 operating budget for the purposes of plumbing and heating work on the Memorial Building, replacement of a hydraulic line on the grader, and work on 10 SCBA units for the Fire Department. Motion seconded by Leigh and unanimously passed.

Highway update: Pete reported the roller needs repair. He will have Henry look at it.

Election coverage: Don noted he will not be available at the January 9<sup>th</sup> Selectman's meeting. He has no problem with the other two proceeding with the meeting as scheduled.

Selectman Primary Election Coverage: Primary election to be held on Tuesday, January 10, 2012 at the Fire Station from 8 am to 7 pm. John will cover from 7:30 a.m. to noon; Leigh will cover from noon until Don gets back to town; Don will cover through counting votes. John will be at Budget Committee meeting January 10<sup>th</sup> at 7:00 p.m.

Correspondence:

LSPA requesting letters of support for their endeavors regarding Shoreline Protection Standards to DES. John Chiarella thought that part of the message they are conveying is not well thought out. He supports the concept but has reservations relative to stabilization efforts, etc. Board agreed John would draft a letter for them to review before it is sent.

Leigh reported Asplundh has been removing trees on Stoney Brook Road. He has spoken to Jason Obey at DES regarding removal of trees near the water. No permitting is required for trees that are a hazard to roads or power lines.

Request for abatement of taxes by Camp Coniston. Map 15, Lot 697-002 was purchased by the camp in June. First bill 2011 taxes have been paid, second bill taxes have not. They are asking the Selectmen to forgive the \$1531.00 second bill. Selectmen discussed Mr. Hildum's review and recommendation. The property was 100% taxable as of April 1, 2011. It was not purchased by the camp until June. Motion (Leigh) to follow George Hildum's recommendation to deny the abatement; Second (John); Don noted the law clearly defines the exemption process. Motion passed unanimously. The owner may request an exemption for 2012 tax year.

Leigh reported the Kearsarge Regional School District deliberative budget session is Saturday, ~~January 12, 2012~~ January 7, 2012 at the high school. Leigh noted that only 5 people from town attended the session last year.

Meeting adjourned at 7:55 p.m.

Respectfully Submitted,

Janet Roberts

DRAFT