

LITCHFIELD ZONING BOARD
TOWN OF LITCHFIELD, NEW HAMPSHIRE
MAY 13, 2009

ZBA Members Attending (Indent if Absent):

Richard Riley, Chairman

Laura Gandia, Vice Chairman

 John Regan

 Albert Guilbeault – present but excused himself from board

Tom Cooney, Clerk

Gregory Lepine (alternate)

John Devereaux (alternate)

 Eric Cushing (alternate)

 John Brunelle (alternate)

I. Call to Order

- Richard Riley calls the meeting to order at 7:05 pm. Meeting was published at Town Hall.
- Tom Clooney takes attendance.
- Richard Riley appoints Greg Lepine and John Devereaux to the Board.

II. New Applications

There are no new applications.

III. Case Review

Case#2009-01

Applicant's name: Attorney Morgan Hollis on behalf of MDP Mgmt., Inc.

Location of Property: 27 Cutler Road, Tax Map 2, Lot 128.

This was a continuance of Case which the board heard in March 2009. A Decision was deferred in order for ZBA to conduct a site walk of the property.

Mr. Riley points out to the applicant that the ZBA board assembled is not the original five members who heard the case in March and asks if applicant would like to proceed with the current board members present.

Attorney Morgan Hollis responded that the applicant would like the board to proceed provided the substitute ZBA members are knowledgeable of the case in question and have reviewed the previous minutes. If the ZBA substitute feel they can vote based on that knowledge then the applicant has no problem with the continuance of the hearing.

Mr. Riley checks with Tom Cooney and John Devereaux. Each ZBA member is familiar with the case in question and had attended the site walk of the property. Both board members felt comfortable hearing the case.

Mr. Riley asks applicant at this time if they have any additional information they would like to present.

Morgan Hollis, attorney for the applicant, replies that they have presented all the evidence they feel is necessary and that their case is complete. Mr. Hollis would like to reserve the right to respond if any new evidence is presented at the hearing by any of the abutters or other interested parties. Mr. Hollis noted that his expert did not arrive at the April site walk until the conclusion so if there was any unanswered questions of the ZBA regarding this matter; the applicant's expert is in attendance this evening for that purpose.

Mr. Riley brought up the point that when the site walk was proposed, two dates were suggested by the Conservation Committee. When the ZBA met on April 8 a decision was made to select April 16 for the site walk. He stated that at the same time it was decided the ZBA would like their own consultant to review the evidence at the expense of the applicant. Mr. Riley stated for the record that an initial letter had been sent to Mr. Hollis informing him of the ZBA plans to hire a consultant. Mr. Riley also confirmed that he received a response from Mr. Hollis challenging the ZBA's authority to hire a consultant. Mr. Riley then confirmed that a second letter was sent to the applicant that contained a resume and a cost quote from the proposed expert and that since the ZBA did not get a response to the second letter sent, Mr. Riley would like a response at this time.

Morgan Hollis stated that his client has chosen not to pay for the ZBA's expert and did not respond to the letter by the suggested deadline date. The applicant feels it is not his responsibility to fund an expert hired by the ZBA and Mr. Hollis feels this request would be outside the ZBA's authority.

Mr. Riley asks the board if there are any other questions for Mr. Hollis. No questions at this time. Mr. Riley asks for additional public input at this time.

Laura Gandia asks if the board wants to continue the hearing without the second expert opinion proposed by the board. She also questions whether the board can make a condition of the applicant that if another expert finds conflicting evidence of the lot in question, will the applicant then pay for said expert. She does not feel comfortable moving forward without another expert opinion.

Mr. Riley comments that the purpose of the additional expert was to assemble more information. He noted that the Conservation Committee was in attendance and he feels that the board should continue with the hearing to see what additional information might be provided tonight. After public input the Board could still consider Laura's question. The board agrees to continue.

Public Input:

Mr. Riley acknowledges the attendance of the Conservation Committee and offers Joan McKibben, Chairperson the opportunity to speak first. Joan presents the board with a letter from the Conservation Committee and attachments dated May 13, 2009. Laura Gandia reads this out loud to the board members. The letter outlines the Conservation Committee's concerns regarding the lot and specifies the complication of edge effects with the implementation of a driveway.

Mr. Riley asks Joan to point out specific problem areas on the site map. Joan points out four wetland areas which would be affected by the proposed driveway. She also points out several areas on the adjacent properties which have been found to have vernal pools or high potential for vernal pool activity. The Conservation Committee feels the wetlands on the property can be classified as a vernal pool and feels that the interconnectivity of the pools would be seriously degraded with the implementation of a driveway. (Vernal Pool study attached). She also feels that a broader survey of the wetlands to include the areas of water that continue from the applicants property onto the abutters property should be performed by a certified wetlands specialist. She could try to bring one in if necessary.

The Conservation Committee also presented the board with a CD recording of the wildlife sounds on the lot in question. Joan points out to the board the areas where said recordings were taken. Joan volunteers to do a further study of the area herself but does state she is not a certified wetlands specialist. She is currently the Conservation Committee Chairperson and has worked as a volunteer on the Conservation Committee for 30 years. Joan has walked the site with Kevin Lynch who is the code enforcement officer of Litchfield.

Greg Lepine asks applicant's expert if they ventured on any of the surrounding properties during their assessment. Tony Marcotte states that they did not.

Mr. Riley asks Tony why additional testing was not done on surrounding areas. Mr. Marcotte answers that they did not feel it was necessary.

Joan feels that further studies need to be done as vernal pool activity constantly changes. Previous studies presented to the board are from 2005. Tony Marcotte reiterates that all the areas on the lot were tested and only two egg masses were found. Luke Hurley from Golden Environmental (?) found no evidence of egg masses.

Joan feels that the driveway impact to the buffer would create the edge effect and she goes on to explain what that means. She also states that wetland area 4 has a very high probability of vernal pool habitat. She states some of the vernal pools are off the subject property but would still be affected.

Attorney Hollis comments that while he understands Conservation Committee has a renewed interest in the lot, the applicant was not required to do studies off the actual site.

Mr. Riley states that the previous studies were done four years prior and since then there has been some development in the area, namely an elderly housing development. He questions whether that project could have had an impact on the species using the wetlands in the area, pushing them to different bodies of water than what they might have been using back when their studies were done. Mr. Riley feels the results of the previous study could be outdated

which is why the board wanted a more updated status of the wetlands on the property and to include the surrounding area within a reasonable distance.

Luke Hurley states that all species live in the uplands. They only breed in the vernal pools. The species in question live in the leaf litter. Luke states that as an affect of the development in the area some of the critters studied in 2004 may have left the area entirely and may have gone north to the upland.

Joan states that the species would still return to the vernal pools to breed.

Mr. Riley is concerned that the studies in 2004 show one thing and the recent evidence shows more activity in the wetland areas on the property. He is concerned about the effects of the buffer. The ZBA was very careful to walk the center line of the driveway to make a determination of any adverse effects. Mr. Riley logs CD presented by Conservation Committee into evidence. He states that while the CD may reflect a soundtrack of the wildlife and species in the area, it does not necessarily reflect a vernal pool activity in the wetlands on the applicant's property.

Kathy Messier
MAP 2 Lot 80:

Presents board with pictures of wood frogs located in one of the wetland areas on the property. Kathy also wanted to point out that her property is located on a flood plane according to Map 2 Lot 80. She presented the board with a survey showing flood factors associated with her lot. Kathy stated that she has seen an eastern hog nose snake in the area which she knows is on the endangered species list and questioned why the experts were saying there were no known endangered species in the area. Joan McKibben asked if she had reported the sighting and Kathy said she did report it to the NH Fish & Game. Kathy also indicated she met with Kevin Lynch, code enforcement officer, last month and Kevin stated that the way the plan exists now he is concerned with water run off which could affect Lots 79, 80 and 81 as a result of the project. He was especially concerned about the impact to Lot 80 with regard to the implementation of the driveway.

Mr. Riley asked if there were any witnesses to Kevin's findings. Al and Michelle Guilbeault, as well as, John Pierog were witnesses to Mr. Lynch's comments.

Albert Guilbeault
23 Cutler Road

Al wanted to say that the driveway stakes are not entirely accurate. The proposed driveway is approximately 30 feet from his home with a 2 to 1 slope. He is very concerned about this issue.

He also presented the board with another site map for the record showing where the vernal pools are located and the vernal pool easements.

Michelle Guilbeault
23 Cutler Road

Michelle presents board with with a photo showing excess water on her property. She also wanted to make a statement that the staking of the driveway was done by Bedford Design when Tony Marcotte was an employee. She feels this is a conflict of interest.

Mr. Marcotte replied that the driveway was staked by the company, Bedford Design, and not by him.

Mr. Riley duly noted this objection.

Joan McKibben reported seeing spotted turtles in the area and reported this to the Fish & Game Department.

Mr. Riley asks if there are any more concerns. Everyone is all set.

John Devereaux mentions to the board at this time that he would like to revisit the criteria after the applicant has had a chance to speak. Mr. Riley is in agreement with this and turns the floor over to the applicant for rebuttal.

Rebuttal:

Morgan Hollis speaks and turns meeting over to Luke Hurley, a certified wetlands specialist, to address concerns expressed by the Conservation Commission. Luke Hurley explains that they are not impacting any wetlands directly by the construction of the proposed driveway. He explains that a proposed culvert is on the plan to protect the critters on the isolated corner of Lot 281. This area gets lots of sun and is relatively home to insects. He states there is not much activity in that particular wetland. He also mentions that none of the wetland areas are connected, meaning there are no streams connecting that would dam up as a result of the driveway.

Mr. Riley states that even though Luke has not seen much activity in these wetlands the board has been presented with evidence to the contrary. The board has obtained several recent photos and other evidence to show continuous activity on the lot. Again, Mr. Riley expressed concerns with the buffer which would affect the vernal pools.

Luke does not feel the driveway would impact the wildlife. He states a small portion of the wetland would be affected by the removal of the trees, thus bringing in more sunlight. He states that the EPA itself considers 20 egg masses or more to be labeled a vernal pool. Luke also mentions that the use of a driveway would have less impact than if a road was constructed.

Mr. Riley asks Luke about a particular photo taken April 22nd, 2009, which shows the center line of the driveway and there is significant water in the area. He is questioning the connectivity of the wetlands at different times of the year when the water is more prevalent.

Luke first mentions that just because an area is wet, does not constitute it being called a wetland and also states that a culvert has been proposed for the area in question which would be a

solution to excess water. He does mention that when any road is constructed in an area like this there will be some edge effect but should not adversely impact the wildlife.

Joan McKibben indicates that another concern is that once moved in the homeowners can do whatever they want. The wildlife species need to be protected and suggests that some homeowner restrictions should be enforced.

Tony Marcotte states that the way the driveway is laid out it will not go across the property line. If they find that during construction of the driveway there are some low spots, they can bring in concrete blocks to act as a sort of retaining wall.

Al Guilbeault presents the board with more pictures of wildlife in the area. These photos show deer, raccoons, fisher cats and coyotes.

Mario Plante, applicant, spoke to board. He feels that he has followed all protocol and that the driveway area is relatively dry at all times. He does not think anything or anybody would be harmed in any way by the implementation of the proposed driveway and home. He has been working to meet the specifications and has even changed his original plan from building a duplex to just a single family home.

Mr. Riley asks Mr. Plante what the personal loss would be if the special exception was not granted with regard to what he paid for the said lot.

Mr. Plante stated that he paid \$110,000.00 for the seven acres.

Greg Lepine proposes a motion to close public input.

Laura Gandia seconds motion.

*The Board votes in **favor** of motion 5-0-0.*

Mr. Riley asks the board if they feel they have enough information to make a decision on this case lacking the additional expert opinion proposed by the board. Greg Lepine feels he has enough information and Mr. Riley agrees however he would feel more comfortable with more evidence, namely more current evidence, but he has also heard a lot of testimony during the course of this case and he is prepared to move forward with deliberations.

Laura Gandia is concerned that more information needs to be obtained. She feels that one expert opinion is not sufficient. Laura states they have current evidence presented by the Conservation Commission but that Joan McKibben clearly stated that she is not an expert.

Mr. Riley brings up the fact that Joan McKibben stated earlier that she could bring in an expert but was not sure of obtaining any funding for said expert. Mr. Riley asks Joan about the hiring of an additional expert.

Joan states that she knows of two different experts off hand. She was wondering if she spoke to the board of selectmen for the town if funds would be available.

Mr. Riley questions the timing as the new study would need to be performed before June. He also mentions that the ZBA has a current quote of \$975.00 from another expert.

Laura Gandia makes a motion to postpone Case 2009-01 until June 10, 2009, to allow the Conservation Committee to explore the possibility of obtaining funding for the hiring of a certified wetlands expert. John Devereaux seconds for discussion.

John Devereaux states he personally feels you cannot put anything on this property without impacting something. Believes only an expert can make this kind of decision.

Mr. Riley agrees with John and believes that the hiring of an additional expert should be at the expense of the applicant. He feels this is a legitimate request and is clearly stated in the ZBA bylaws. Mr. Riley states they will go to the town first to see if the funds are available and regardless of that outcome the ZBA will have to revisit the question of whether we have enough information to make a decision at the June meeting.

Laura Gandia makes a point that it is still a possibility that the cost of said expert could be the applicant's responsibility.

Board votes in favor of the motion 4-1-0.

IV. Miscellaneous Business

- Update of ZBA appointments.

Tom Clooney confirms that he was sworn in by the town clerk.

Albert Guilbeault joins meeting at this time.

Nominations for Chair, Vice Chair, and Clerk for 2009-2010 term.

Mr. Riley asks for nominations for clerk position.

Laura Gandia makes a motion to keep current Chair, Vice-Chair, and Clerk in place for the 2009-2010 term.

Albert Guilbeault seconds.

Board votes in favor of keeping current board for 2009-2010 term. 4-0-1

Board members will remain as:

Richard Riley, Chairman
Laura Gandia, Vice Chairman
Tom Cooney, Clerk

Updating of Applications:

Mr. Riley would like applications to be more specific so that there are no issues or misunderstandings. He also proposes applicants present two separate checks with their application, one for the town and one for the post office for any abutter mailings. The board discusses the possibility of changing the fees for said applications. Mr. Riley will make any changes necessary to the current application.

V. Adjournment

Tom Clooney makes a motion to adjourn.

Albert Guilbeault seconds the motion.

*The board votes **in favor** of adjourning at 9:13pm, 5-0-0.*

*Respectfully submitted,
Karen McCloskey*