



Town of Weare
Zoning Board of Adjustments
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Zoning Board
Jack Dearborn, Chairman
Forrest Esenwine, Vice Chair
Stu Richmond, Member
June Purington, Member
Malcolm Wright, Member
Neal Kurk, Alternate
Donald Rogers, Alternate
Marc Morette, Alternate

ZONING BOARD – FEBRUARY 4, 2014 FINAL MEETING MINUTES

Present: Chairman Jack Dearborn, Vice Chairman Forrest Esenwine, Member Stu Richmond, Member June Purington, Alternate Marc Morette, Alternate Don Rogers, Code Enforcement Officer Chip Meany, Recording Secretary Wendy Stevens.

Guests: Larry Damour, Travis Corcoran, Jennifer Sims, Attorney Olivier Sakellarios, Weare Town Administrator Naomi Bolton, Ginger Esenwine, Scott Wood, Robin Stevens, Jeremiah Leibrandt, George Lakkas, James Roberson, Bill Wynne, Laura Kobylis, Pat Provost and Alain Provost.

I. CALL TO ORDER

The meeting was called to order by Mr. Jack Dearborn at 7:31 pm.

II. PUBLIC HEARINGS

CASE #0813, (Continuation) Linnea Hargraves 176 Russell Road VARIANCE to article 28.9. Disturbing a wetland buffer.

Chairman Dearborn stated that this case has been requested to be continued, and he has a letter from Mike Pelletier to that effect so it is continued until the next meeting.

Case #0114 Alain Provost: 153 Thorndike Rd. RE. Administrative Appeal to Building Officials Interpretation of Article 3.2 to allow shooting at 161 Thorndike Road by Michael & Robin Stevens. Tax Map 404-114 in a Residential Zone.

Chairman Dearborn asked Marc Morrette to sit as a full member. There was a letter from Atty Sakellarios: Al Provost & Patricia Provost, of the affected owners, use of a garage as a home based business in violation of article 4.1. Chairman Dearborn stated he wants to make a point for this evening's purpose that we are only hearing what was on the Public Notice, the application for article 3.2 for use of the firing range. This is an appeal on an administrative decision. Chairman Dearborn stated there are two pages signed by the two applicants and there is also a letter to the Code Enforcement Officer from Sakellarios & Assoc., LLC, an abutters list, a map of the property, a drawing, a plot plan of tax lot 404-114, and a letter from Naomi Bolton, Town Administrator, containing the opinion of the Town of Weare.

Vice Chairman Esenwine moved to accept the application. Mrs. Purington seconded the motion. Chairman Dearborn stated the only thing we're hearing this evening is Article 3.2. All were in favor of accepting the application and the motion passed.

Atty Sakellarios asked why the board is saying they are only hearing one ordinance. Chairman Dearborn said from a technical perspective, it is the only one that was recognized. Atty Sakellarios asked why 4.1 is not being recognized. Mr. Meany stated Article 4.1 is being heard at Superior Court, and that we are in for mediation on Thursday. 4.1 has already been decided by the board and that decision is under appeal with the Superior Court. The only thing, as per the letter Mr. Meany sent, that

can be applied for is Article 3.2 Mr. Meany stated that 4.1 is irrelevant to this case. Atty Sakellarios stated that is fine with him, but there are nuances with 4.1 when we were here last time. Chairman Dearborn said that is something you need to take up with the Administrator. Atty Sakellarios stated he does not understand why the town can just say we're going to hear one, and not the other. Mr. Meany said we have already heard 4.1, and that is why it is going to superior court, so your questions regarding 4.1 have no effect on this request for 3.2. Mr. Meany continued stating that we are going to court and the date is set for June or July, as well as the mediation this week. So you're here on 3.2. Atty Sakellarios stated that he wanted it to be clear on the record, that he is not allowed to raise issues regarding Article 4.1 because they've been raised already. Chairman Dearborn said that the only Article posted on the Public Notice was 3.2. Mr. Meany stated at the time of the appeal, Atty Sakellarios was informed that the Zoning Board would only hear 3.2. Chairman Dearborn passed the notice to Atty Sakellarios and stated that legally the only action the Zoning Board can take this evening is the 3.2 because of the posting notice. Atty Sakellarios stated that is a conflict when the Code Enforcement Officer limits the scope of his appeal. Vice Chairman Esenwine asked if it was Atty Sakellarios' position that the Zoning Board has a duty to hear a case that they've already heard, which is now in superior court, hear it again, and actually make a different decision?

Chairman Dearborn asked Atty Sakellarios if he would like to proceed with 3.2, or would he not like to have 3.2 heard this evening? Chairman Dearborn stated that he is prepared to go ahead on 3.2. Atty Sakellarios stated he was attempting to preserve a record, and he thought he correctly applied and by all rights it should be addressed at this hearing. Chairman Dearborn stated to let the record show that the applicant is willing to proceed on Article 3.2.

Atty Sakellarios said Mr. Stevens is firing weapons on his property and it's creating a nuisance. It is loud and offensive, and violates Article 3.2. When a complaint was made to the town, the administrative decision that was issued refused to address it, saying that the complainant should pursue civil remedies, Atty Sakellarios is aware that Mr. Provost and whoever else, has a grievance' right to pursue civil remedies in court, however, there is an article in the zoning ordinance that deals with this. He stated that you can't tell a citizen that he has no recourse under the zoning articles simply because there is some other remedy. This is a valid complaint, there was an administrative decision, which for no reason at all, decided they would not investigate the matter. "I would ask that you direct the town to address it. As of right now, they are just deciding not to address it for what appears to be political reasons. That is the function of the Code Enforcement Officer, whether it is Mr. Meany or Mrs. Bolton who is acting in his stead, it needs to be addressed." It is his opinion that the board should direct the town to investigate and make a decision. Chairman Dearborn informed Atty Sakellarios that he will have another opportunity to speak after any approving or disapproving abutters are called forward.

Chairman Dearborn called the Town of Weare to speak. Mrs. Bolton, Town Administrator for the Town of Weare stated the issue in this case is whether the facts of the record support her letter of Nov. 21st. The letter came as a result of numerous letters from March 8th, April 10th, and April 25th, 2013, on a complaint regarding Articles 3.2 and 4.1. She clarified that Article 4.1 cannot be discussed tonight because it is in Superior Court. On the 29th of April, she informed the applicants representative that the letter received March 8th was after the hearing on March 5th, therefore could not be introduced as part of the original complaint. The intent of the 8th letter was not to be included as part of the application, but instead was a request to investigate a complaint and issue a decision. The request was made to the Town of Weare to Mrs. Bolton in place of Mr. Meany due to his stated conflict of interest. An administrative appeal to 3.2 and 4.1 was received somewhere around May 30th of 2013, and on June 11th, Mr. Meany returned the application with the fee indicating 4.1 was being heard at the superior court level. The police department attempted to contact the abutters as to their concern with regard to the noise created by the shooting. Some of them were called twice, some answered the phone the first time, and some have private numbers not listed. Only 4 could be reached. Out of the four, one had an issue, one didn't know it was there, two heard shots but didn't feel it was a nuisance, and the other one wasn't bothered by it either. Mrs. Bolton continued that on October 16th, a letter was received indicating that Mr. Provost was looking for a decision which brings us to the Nov 21st letter. In that letter, Mrs. Bolton stated she made a determination, page 2 last paragraph. It says that the amount of shooting

such as has been conducted since the business element has been curtailed, has not been of sufficient amount or duration to constitute the level of public nuisance that would justify a municipal enforcement action to enjoin. So 3.2 in the Zoning Ordinance says that the activities have to be obnoxious, offensive, or injurious to public health and safety or the comfort, peace and quiet enjoyment of community or neighborhood. As such, the Code Enforcement Officer must find that the offensive act affects the public and/or the entire community or neighborhood, thus this complaint is limited in its impact to just a single party or very narrow group. That is not to say that the activity may not be sufficient to support a private damage claim against the alleged violator to the persons claiming the impact. She continued, however, in order to justify a governmental enforcement action, the activity needs to be of a broader scope. The shooting while certainly observed or heard by most of the surrounding property was not sufficiently offensive to the number of people necessary to, in her capacity as acting Code Enforcement Officer, justify the commencement of an action to enforce the Zoning Ordinance.

Mrs. Bolton stated that she would like to take a step back and speak personally. She stated she is a resident and has been in town for a long time. More and more people bring more and more noise. There are vehicles, lawn mowers, weedwackers, chippers, snowblowers, chainsaws, loud motorcycles, traffic, etc. Some people move here to enjoy these types of activities because we have the space. She stated that as long as they are staying in their environment, she doesn't see anything wrong with shooting, and that is her personal opinion.

Chairman Dearborn asked the board if they had questions for Mrs. Bolton. There were none.

Chairman Dearborn stated we will go through approving abutters and disapproving abutters.

Chairman Dearborn called for approving abutters for this action who would like to speak.

Alain Provost, 113 Thorndike Rd. came forward.

Mr. Provost stated that we are here to address the issue of article 3.2 zoning ordinance. This is not a second amendment issue and he is a lifetime member of the NRA. Mr. Provost stated he supports and advocates all the safety requirements of owning and shooting a firearm, and the NRA is very clear about respecting the shooting area and any surroundings where and when you shoot. He stated that Mr. and Mrs. Stevens and their customers have been shooting at various times of day at great length. He presented the board with a list of times and dates as well as amounts of rounds shot on all of these infractions. Mr. Provost presented the board with photographs of the current site of Mr. Stevens' shooting range. Mr. Provost also provided a notarized copy of a letter from Abigail Chesney, his daughter in law, that gives an in-depth look at how the actions of the Stevens and their shooting business has affected her in a significant and emotional way, that this shooting should cease & desist as written in 3.2, which reads, as Mrs. Bolton stated, any use of land shall not be obnoxious, offensive or injurious to the public health, safety or the comfort, peace and quiet or cause disturbance or annoyance because of vibration, noise, smoke, dust, glare, odor, radiation, gas fumes, or other waste materials, or by reason of danger of fire or explosion, or result in a reduction in the property values in the neighborhood.

Chairman Dearborn interrupted asking about the pictures. He doesn't understand the significance. Mr. Provost stated the significance of the photos are directly related to Mrs. Bolton's original cease & desist order. Mrs. Bolton clearly stated that the business portion of this firing range was to cease and desist. Nobody was able to shoot on that range except for the owners of that property. Chairman Dearborn stated that he understood it to be for commercial purposes, and anybody invited to your house is different. Chairman Dearborn stated that sometime in the spring, the Stevens business was moved to some other place, and that all shooting associated with that commercial enterprise is supposed to cease & desist. Chairman Dearborn asked Mr. Provost if he was suggesting that either of those things are happening now, if so, what proof do you have? Mr. Provost said the vehicles in the driveway, customers, unfortunately he doesn't carry a camera at all times, but he carries pen and paper, and he sees people shooting in the backyard, and not just one. Chairman Dearborn stated those are civil issues. Chairman Dearborn stated he is not looking to tolerate personal attacks at this meeting, and

said "let's look at the facts so we can understand what is going on here". Chairman Dearborn asked if the board should ignore everything prior to August 1st in the write-ups as they might have been construed with the commercial activity? Chairman Dearborn added that these write-ups go back to 1977, and the Stenosos go back to 2012. Chairman Dearborn asked "is it appropriate to take this as private shooting in Mr. Stevens' own backyard, which everyone has a right to do?". Chairman Dearborn stated he just wants to be very clear because up to that point, it could have been a mixture of both. Chairman Dearborn doesn't know how to explain it as Mr. Stevens' business is not there. Mr. Provost stated this is where he agrees to disagree.

Chairman Dearborn asked if Mr. Provost had anything else to share. Mr. Provost said yes, he would like to further outline a description of the area such as roads, woods, etc.

Mr. Provost stated that this range could never meet the compulsory specifications for small arms shooting ranges. Chairman Dearborn stated he didn't want to get distracted on the backstop as that is an issue to be resolved by someone other than the Zoning Board. Atty Sakellarios stated that danger is part of the nuisance ordinance. Chairman Dearborn asked why haven't they been able to go to the police? Mr. Provost said that he has, and he is not satisfied with the police which is why we are here. Chairman Dearborn said we are here for the performance standards.

Mr. Provost read an email that he received from an abutter, Laura Kobylis, who resides at 156 Thorndike Rd. Chairman Dearborn asked Mr. Provost to read it into the record.

Mr. Provost stated the only thing left he has to say is to ask yourself, would you want this next to your house? He requested that the Zoning Board issue a cease & desist order immediately.

Chairman Dearborn asked for any other approving abutters.

Laura Kobylis came forward, 156 Thorndike Rd., she did confirm that she wrote the email that Mr. Provost had just read. She just wanted to reiterate that those are her feelings upon the issue.

Chairman Dearborn asked for any other approving abutters. There were none.

Chairman Dearborn asked for any abutters who disapprove of the administrative appeal.

Chairman Dearborn stated he had one note from Richard By at 169 Thorndike Rd., who resides on the other side of the Stevenses, dated January 17th, 2014. Chairman Dearborn read the note aloud: "To whom it may concern. I live at 169 Thorndike St. directly next to Mike & Robin Stevens and have lived at that address since 1997 and have known the Stevenses almost the entire time. Mike and Robin have proved to be good neighbors and I have no problem or issues with them using the private gun range that they have constructed on their property for occasional target practice."

Chairman Dearborn invited the public at large to speak. George Lakkas, 34 New Rd., stated he does not agree with the cease & desist. He cannot hear any noise from where he is, but you can hear a car door slam and if it was that noisy he would think he would hear it. Chairman Dearborn asked if he considered himself in the neighborhood. He said yes.

Scott Woods, 65 N. Stark Hwy. commented he is an abutter to the left side of the property. The pictures don't take into account, terrain and he is shooting at a downward angle, there is a wetland behind it so nobody is immediately walking. New Rd. is a non-passable class VI road and you would need an ATV to get through it. As far as annoyance, he stated that his daughter took up the violin this year, and it was an annoyance. Mr. Woods also stated that he grew up next to a gun club, and his parents didn't lose any money when they sold their house, and that he couldn't say any more than that.

Chairman Dearborn invited others to speak. There were none.

Chairman Dearborn invited other boards to speak. There were none.

Atty Sakellarios stated he thinks it is objectionable that Mrs. Bolton stated at the end of her presentation that she personally feels there is nothing wrong with shooting on your property. It certainly seems like a conflict of interest. The ordinance talks about the safety issues, and you have an ordinance that talks about safety to the citizens of this town – that is your charge to review the ordinance and to be concerned about the safety. You can't just pass that onto the police. He finished saying he thinks the Zoning Board has to consider these things and thanked the board.

Chairman Dearborn informed Atty Sakellarios that this is his last opportunity for rebuttal and asked if he was satisfied. Atty Sakellarios stated that he thinks he is clear – he wants to object to the refusal to admit Article 4.1.

Chairman Dearborn asked if any approving abutters wished to speak again. Mr. Provost stated that he took offense to Mr. Wood's claim that bullets seem to only go in a straight direction. A bullet can ricochet off of a rock or tree.

Chairman Dearborn asked if anyone would like to speak again.

Mrs. Bolton stated that she personally stepped back because she grew up around firearms. She made her personal statement because if people find out later, she wanted to disclose it now. She stated that Article 3.2 discusses public health, it discusses community and neighborhood. The comment about being slighted because she added her personal note is a little offensive, and there are a lot of things that go on that she has to take a step back on. She finished that god forbid if anybody finds out she likes to skeet shoot on Thanksgiving Day.

Travis Corchoran, 275 Quaker St., public at large, said he has only lived in town for four days, and one of the reasons that after six months of searching for the right place, he ended up in Weare is because of the personal freedom vs. the overwielding government in MA. He stated he would not want to live next to someone who was shooting 24/7, but reasonable shooting can be done on one's property.

Chairman Dearborn closed the public session at 8:46 pm for Case #0114.

Chairman Dearborn said he thinks we need to get our motion correct. He explained to the board if they wanted to overturn Mrs. Bolton's decision and support the Provost's position, to vote Yes. If the board wished to do the opposite, support Mrs. Bolton's position and not Mr. Provost, to vote No.

Chairman Dearborn asked for a motion in the affirmative. Mr. Richmond moved to support the Administrative Appeal for Case #0114 Provost vs. Stevens. Mr. Morette seconded. The motion was opened for discussion.

Mr. Richmond wondered if since this seems like a policing issue, to have the police department, now under new management, make an attempt to talk to more of the abutters.

Vice Chairman Esenwine said he was hearing different things – he knows that supposedly the commercial aspect of the property is no longer there. And that the shooting that went on in relation to that is no longer there. Unfortunately we haven't been given any factual evidence one way or the other in regards to that. We've heard from people who don't want to hear the shooting, and also some statements that it has been reduced. He doesn't think that we should be basing any decision for a select group. If they have a real issue, he would like to see some evidence in that. As far as the shooting in the area, with town land on both sides – that is all open to hunting. When you're hunting where is that shooting going? You have the backstop and you should be very conscious of that. Mr. Richmond said it was all swampy and so people are not walking there all the time. Vice Chairman Esenwine asked if we should get hunting stopped because it might upset some people in the area. That may be kind of broad but he can see the relevancy there. Mrs. Purington stated hunting is a restricted period of time, it doesn't go on all year long. Vice Chairman Esenwine stated a ricochet could happen during that month of hunting. Mr. Richmond said you have to look at the overall performance

standards of 3.2, what is the overall safety, is this a safety issue? For some people it definitely is, for others, it is not. We have complaints that their rights are being inhibited, and we have to take a look at that. Is this a police action or an action for the board to take? Police or Civil? Mr. Morrette said he agrees, he stated he is not sure if it is something they should be discussing or the police should be discussing. Vice Chairman Esenwine stated the fact of the matter is that state statute said you cannot discharge a firearm within 300 feet of an occupied building. So state law allows it to be done. At the other hearing when we were talking about the home based business law, the attorney was right, most of it did not fall within the criteria of our ordinances to have a home based business that way. And if they are firing along with that. However, if that has been taken out of the equation, and we're talking about the individual, it's a fine line.

Chairman Dearborn stated that he listened really closely to what Mrs. Bolton was saying – she stressed twice – this is an issue of public, community and neighborhood. What is the definition of that? Could two people be a neighborhood that doesn't like the one person? Or plus the three people that like him? This ordinance was designed from the standpoint of disturbance of a neighborhood, and we've got a mixture of people who don't mind it, and others who are vehemently opposed to it – do those people opposed constitute a community or a neighborhood? That is how it is written. Mr. Richmond said looking at the map, the whole thing is the neighborhood. Chairman Dearborn stated that both people, in their perspective, have valid points. Chairman Dearborn stated if you support the appeal, it overturns Mrs. Bolton. If you do not support the appeal, it substantiates Mrs. Bolton. Chairman Dearborn asked all those in favor? There were none in favor. Opposed? Chairman Dearborn, Mr. Richmond, Mr. Morrette and Vice Chairman Esenwine were opposed. Mrs. Purington abstained. The motion failed 0-4-1. Chairman Dearborn stated that the Zoning Board supports the town position.

III. OTHER BUSINESS

Chairman Dearborn reviewed the Dec. 3rd. Vice Chairman Esenwine moved to approve the second draft copy of Dec. 3rd approved. Mrs. Purington seconded. 5-0-0.

Chairman Dearborn reviewed the Jan 7th minutes. Mrs. Purington moved to accept the minutes of January 7th. Mr. Richmond seconded. 4-0-1. Vice Chairman Esenwine abstained.

IV. ADJOURNMENT

Ms. Purington made a motion to adjourn the meeting at 9:02pm. Mr. Morette seconded. The vote was unanimous.

A true record,

Wendy J. Stevens