

ZONING BOARD OF APPEALS

Public Hearing

MINUTES

Monday, September 25, 2000

7:00 P.M., Jordan Small School Cafeteria

423 Webbs Mills Road, Raymond, Maine

ATTENDANCE: Peter Leavitt, Chairman; Robert Fey; Michael Higgins; Lawrence Murch; Aurel Gagne; Jim Stephenson; Jack Cooper, Code Enforcement Officer; and Geoffrey Hole, Esq. Town Attorney.

Call to order.

Peter Leavitt called the meeting to order at 7:01 p.m.

Consideration of previous minutes dated August 28, 2000.

DISCUSSION: Peter Leavitt noted that in Item #6, Other Business, regarding the status of Indian Point and the sentence that reads, "Mr. Cooper stated that he thought it could not be discussed outside of public hearing." Mr. Leavitt requested the Board vote on the inclusion of a sentence prior to that which reads, "The Board Members requested an update on the next steps with regard to Indian Point." Mr. Leavitt stated that it is important that in the minutes it is noted that the Chair made it clear that no consensus would be reached by this discussion and that it was for information only and that there was no consensus reached.

MOTION: Peter Leavitt motioned to amend the minutes to include as the first sentence under other business "The Board Members requested an update on the next steps with regard to Indian Point". Seconded by Robert Fey.

VOTE: Five in favor. One abstain (Aurel Gagne, Alternate Board Member, abstained throughout the meeting as there was a full Board in attendance).

Agenda Items.

DISCUSSION: Peter Leavitt addressed the issue of moving agenda items other than Indian Point, ahead of Indian Point as has been done at the last three meetings. Mr. Leavitt indicated that he would not be making a motion to move these agenda items tonight but invited other members of the Board to do so. No motion was made in this regard. Mr. Leavitt announced that the Board would proceed with the Agenda as it stands.

4. Suzanne M. McCrillis Map 52 Lot 64 Indian Point Campground

DISCUSSION: Robert McCrillis was present and requested the Board note that in the Minutes of 7/31/00 it should have been noted that Mr. Lemoine, Esq. questioned Richard Baker's going into the executive session which didn't allow the applicant's attorney to rebut anything Mr. Baker may have said at that meeting...inaudible due to noise. Mr. Leavitt stated that it would be inserted in these minutes that Mr. McCrillis has registered that observation. A discussion followed regarding the possibility of a universal appeal.

INAUDIBLE.

THE MEETING WAS MOVED FROM THE MUSIC ROOM INTO THE CAFETERIA.

A discussion continued regarding a universal appeal.

MOTION: Peter Leavitt motioned to poll the Board on their feelings of the discussion at the 7/31/00 meeting where Mr. Lemoine, Esq. proposed a legal premise for a universal description of this issue and to open this subject for discussion by the Board.

DISCUSSION: Mr. Higgins reviewed the chronology of the Indian Point process.

MOTION: Mr. Higgins motioned to indefinitely postpone the applications until there is concrete guidance from someone else in town government (i.e. Board of Selectmen, Town Manager and/or Town Attorney). Mr. Higgins announced that he would not decide on individual items that are on the Agenda based on the information he has and that he is waiting to hear that there is some kind of a consent agreement that can be worked out. If the matter cannot be worked out, and that message is made clear by the town, then as a member of the Zoning Board of Appeals, Mr. Higgins will be ready to go forward with each one of the cases on the docket.

Mr. Hole offered a status report to the Board regarding his recent contacts with Rich Baker at the DEP. Mr. Hole stated that Rich Baker had relayed to him that he had not yet been able to speak with the Attorney General's Office.

Mr. Leavitt continued to poll the Board regarding a universal decision. Mr. Fey indicated that he is ready to hear the individual cases and that he is against a universal decision. Mr. Gagne stated that he feels that everyone should be judged on an individual basis. Mr. Murch asked for an explanation of a universal premise. Mr. Leavitt then offered a summary of the term universal premise indicating that, simply put, it means that there would be one appeal covering everyone as opposed to each one individually. Mr. Murch stated that he supports the universal approach. Mr. Stevenson stated that if by accepting the universal approach the Board also accepts a 15' setback from the water then he would be opposed to a universal appeal. Mr. Leavitt responded that it would be a situation where the Board would be accepting, through the universal approach, the establishment of a date where grandfathering would be accepted and then apply grandfathering ordinances to those properties.

Mr. Leavitt offered his understanding of the two requirements for a consent agreement.

MOTION: Mr. Leavitt motioned to judge each Indian Point case individually based on its own merit. Seconded by Robert Fey.

DISCUSSION: Mr. Higgins stated that he would only proceed with a recommendation from the DEP and the Town Attorney.

Mr. Hole addressed the Board stating that the Board is sitting as judges of law, which is the ordinance, and that a consent agreement approach is for the Board of Selectmen to pursue and not the Appeals Board. Mr. Hole also addressed the issue of grandfathering.

Mr. Leavitt confirmed that grandfathering would require evidence as to what was in place and that the burden of proof is on the applicant to supply family photos and other evidence. Mr. Leavitt indicated that sworn affidavits do not carry as much weight as notarized or photographic material that demonstrate where the RV's were at some point in time.

Mr. Fey asked Mr. McCrillis if it was his sense that the group is willing to "sink or swim" on the universal appeal. Mr. McCrillis then polled the Indian Point applicants to determine who would be in favor of the Board taking the cases individually and found that only two persons were in favor of that approach.

Mr. McCrillis offered his understanding of the involvement of the DEP.

Mr. Leavitt offered the following points of information:

a.) The DEP must decide 14 days after the Appeals Board renders an opinion and review it and make their situation known; and

b.) In this process, after the Appeals Board renders an opinion, there is up to 30 days for the Board to reconsider its decision through additional evidence or additional testimony.

Mr. McCrillis pointed out that regarding grandfathering, you cannot take what was in place back then because it is a moving target and that the burden of proof would be hard to establish and that "in place" could be anywhere up to two years before there was anything on that lot as at times, the campground was empty. Mr. McCrillis spoke about the uniqueness of Indian Point in relation to a consent agreement.

Dan Bernard of Indian Point addressed the Board stating that he had spoken with Rich Baker who said that if there were something unique about Indian Point then he would have no problem with a consent agreement.

Mr. Fey asked Geoff Hole if the Board proceeds with Mr. McCrillis' case tonight and if the Board turns him down, is there anything that would prevent a consent decree from taking place in the future. Mr. Hole responded "no". Mr. Hole also indicated that the decision not to bring this to the Selectmen has been his decision because he didn't feel that until he knew how the DEP was going to look at it, that he could advise the Selectmen.

Mr. McCrillis discussed the burden of proof.

VOTE: Three in favor. Two opposed (Michael Higgins and Larry Murch). One abstain (Aurel Gagne).

The motion carried and therefore the Indian Point cases will be heard individually.

Mr. Laughlin of the audience asked how late the Board would stay tonight. Mr. Leavitt responded that the Board has reached the point with the Indian Point issue where now other individuals in the town are not getting access to timely decisions. Mr. Leavitt also observed that Indian Point has been here for three meetings in a row and this is number four and it is at the point where we should take Indian Point as the priority.

MOTION: Robert Fey motioned to table items 23, 24, and 25 until the next meeting. Seconded by Michael Higgins.

VOTE: Four in favor. Two abstain (Larry Murch and Aurel Gagne).

Peter Leavitt clarified that the McCrillis request is for an administrative appeal from a judgment from the Code Enforcement Officer for relief from his citation involving the setback from the high water mark and exceeding the 30% rule. Mr. McCrillis responded that it is his understanding that Jack could apply the grandfathering rule by doing some detective work on the lots but Jack deferred to the Board for this because Jack thought the grandfathering dates were different. Mr. McCrillis stated that he believes Jack Cooper is accepting that the trailer was moved back from the water by the amount of the deck, which would then render it not in violation of extending toward the water. Regarding the 30% rule, Mr. McCrillis contended that the unit has been there with the more than 30% expansion since before January 1, 1989 which makes it acceptable because the 30% rule was not in effect then and what was there was grandfathered. Mr. McCrillis continued to explain that the deck was of equal size of what was

put on, therefore, if Mr. Cooper was to look at that today, under that light, he would not have provided a violation. Mr. Cooper confirmed that what Mr. McCrillis had said basically was true and that in his discussions with Rich Baker of the DEP, Mr. Baker had indicated that he would be satisfied if whatever was there was moved back from the water so that the front of the Florida room/screen room is where the front of the trailer was then all he would have to do is be within the 30% rule. Mr. Cooper stated that all he has to go by is what was there when he went down and saw the violation. Mr. Cooper further indicated that some of the lot owners have replaced trailers, moved trailers, and he nor anyone else has any way of telling whether a new trailer is 4' further from the water or 4' closer to the water because they are moveable.

Mr. Leavitt asked Mr. Cooper if he was of a mind to withdraw the violation. Mr. Cooper responded that if the trailer or whatever is moved back so that the addition to it is no closer to the water than the trailer was and it does not exceed 30% then there is no violation.

Peter Leavitt clarified that, if we were dealing with more permanent structures where moving them is not an option because you have a full foundation and a 30' x 40' two story cape, then in fact, that renders Indian Point rather unique as far as how it can comply with some of the DEP concerns. Mr. Leavitt indicated that he was pointing this out to address a comment made earlier about searching for some uniqueness involved in these structures.

Joy Giroux asked how Jack Cooper could he issue a citation if he couldn't tell if something had been moved.

Mr. Cooper responded that the only thing he could do was to make a presumption that the RV, trailer, or whatever, is where the original one was and that this addition was put on the way it was heeding the 30% rule. Mr. Cooper continued to explain that it would be difficult for someone to prove that they put an addition no closer than where the original trailer was because most of the ones in violation could not be moved back as they would be beyond the lot anyway.

Mr. Leavitt stated that when he sees a fully enclosed Florida room that extends 15' out and looks to be a structure that can be no more than a couple of years old, he can well understand why the Code Enforcement Officer would say that this obviously is something that has been a 30% expansion or better or is extended further toward the water simply based on what appears. Mr. Higgins stated that he believed Mr. Cooper offered the citations in good faith and that he doesn't feel there is any ill intent here at all.

Joy Giroux indicated that the citations were 12 years late. Mr. Leavitt responded that that ground had been covered before as far as the trigger for Jack to go and look at anything is a building permit, which is abundantly missing in all of these cases, and that that is the screening mechanism.

Richard Mullden addressed the Board and suggested that Mr. Cooper review all of the violations at Indian Point to see if any can be withdrawn.

Mr. Fey suggested the Indian Point residents submit to the Town a sketch of what is on their lots right now.

Peter Leavitt asked Jack Cooper if there was some way at this point in time that the Board could make a ruling on this, place a condition and make a decision based on the Code Enforcement Officer being convinced that the two points had been met. Mr. Hole responded that, if the two things take place that would allow him to withdraw then, that is how it would end and further enforcement action would not be necessary based on the Board upholding the ruling or the Board could table this application and allow them to examine the two points. Mr.

Leavitt stated that placing a motion on an administrative appeal doesn't sound right because all the Board is to do is to decide whether or not they support the Code Enforcement Officer.

A discussion followed regarding the required notification to the DEP on Appeals Board decisions.

Peter Leavitt stated that the option for an administrative appeal was offered at the first meeting and that personally, from the cases he has reviewed, he would not be able to vote favorably on a couple of the points of hardship which means they would automatically be denied a variance request.

Dan Bernard of Indian Point compared the applications before the Board to the modifications at Raymond Beach and asked why the State can put down pavement next to the lake and they can't put their structures next to the lake.

Mr. Hole stated that he has two concerns: 1.) the DEP is having trouble getting to address the issues; and 2.) the decision on these cases could have statewide implications.

Lori Clark, representing Kay Putman, asked how it could be established where a trailer was if it was a vacant lot when you bought it. Ms. Clark also pointed out that the septic system was designed for where the trailers are now. Mr. Fey further questioned that if the lot was vacant when purchased how can it be grandfathered? Mr. Hole responded that they would need a building permit. A discussion followed regarding lots vacant at purchase and building permits.

Mr. Cooper suggested the Board decide on a grandfathered date.

Robert Rickett, Indian Point, informed the Board that he has an oil pipeline running through his lot and that his trailer is back as far as it can go. Peter Leavitt responded that Rich Baker had stated at a previous meeting that the ordinance required structures be placed at the greatest practical distance from the water and that this could be applied to his individual case. Mr. Cooper pointed out that Mr. Rickett's case only involved a 30% expansion violation and that setback issue did not apply to his case.

Mr. McCrillis asked Jack Cooper if he could withdraw his violation. Mr. Cooper responded "yes". Geoff Hole indicated that the Board could either allow Jack Cooper to set conditions or table the matter.

Ron Giroux reminded the Board that people are leaving for the winter and can't get here next month.

Mr. Higgins indicated that it appears that there is a physical solution to the setback and possibly a physical solution to the 30% expansion.

MOTION: Michael Higgins motioned to table the application to give Jack Cooper and Bob McCrillis an opportunity to work out the details of positioning the structure and to establish a record of the final placement of the structures on the property to be accomplished within a set time and once he accomplishes this, it can be dismissed. Mr. McCrillis must also solve the 30% expansion problem.

A discussion followed regarding the closing date of Indian Point, which is 10/31/00, after which there can be no overnight stays. After 10/31/00 the Indian Point residents can still enter the property to work with Jack Cooper to resolve their individual violations.

Mr. Fey objected to the motion because he feels that it would imply that the Board is accepting a grandfathered date. Mr. Fey further explained that the Board must agree on a level of proof as to what was on the lot previously and set a level of evidence.

Mr. Cooper indicated that he would go to Indian Point tomorrow (9/26/00) to document what is there and then see what they could do, if requested.

PETER LEAVITT CALLED A RECESS TO INVESTIGATE FURNACE FUMES IN THE ROOM
AT 9:40 P.M.

Mr. Leavitt called the meeting back to order at 9:47 p.m.

Mr. Fey asked Mr. Cooper if McCrillis is in violation at this time. Mr. Cooper responded that he would need to confirm the current setback and that McCrillis may still be in violation of the 30% rule. Mr. Cooper explained that McCrillis must prove the trailer has been moved back as well as prove that the sunroom does not exceed the 30% expansion rule.

Mr. Leavitt stated that he couldn't vote in favor of extending this any further. Mr. Leavitt further explained that the issues are very clear to him, these are Shoreland Zoning Ordinance violations and the Code Enforcement Officer was justified in issuing the citations and that the ability to rescind the citations lies with the Code Enforcement Officer. Mr. Leavitt indicated that the Appeals Board could look at each case individually and to refer to Jack for reevaluation based on any new evidence that comes to his attention. Mr. Leavitt stated that he is in support of the Code Enforcement Officer unless it is absolutely clear that Mr. Cooper overstepped his authority or absolutely had a misinterpretation of the code.

AMENDED MOTION: Mr. Higgins amended his motion to include the following:

a.) the set time limit will be 60 days for Mr. McCrillis to work out the details with Jack Cooper, including the 30% expansion violation and submit a record of final placement. Mr. Higgins indicated that if substantial progress was being made or if there were a legitimate reason for a delay, the 60 day deadline could be extended;

b.) The record of final placement must be notarized;

c.) Jack Cooper's decision in this matter is to be made in consultation with the Town Attorney.

VOTE: Three in favor. Two opposed (Peter Leavitt and Robert Fey). One abstain (Aurel Gagne). Motion carried.

Mr. Leavitt clarified that the Board will continue to review all applications individually and Jack Cooper will review the McCrillis citation as well as all other citations. Mr. Leavitt stated that if the applicants are not available next month they could send a letter, addressed to Jack Cooper, requesting their application be further continued with a reasonable explanation for the request as well as an approximate date of when they would be available.

Dan Bernard requested a specific grandfathering date be set. Jack Cooper responded that, if the Board were comfortable with it, he would use a date of 1/1/89 for grandfathering

purposes. Mr. Fey indicated that you couldn't look to the Board for that. Mr. Stephenson stated that he thought Jack Cooper has to use his own discretion. Mr. Fey agreed with Mr. Stephenson. Mr. Cooper indicated that he didn't want someone to complain that the Board hadn't voted on it. Mr. Fey stated that it could be assumed that the Board has had their opportunity to weigh in on that issue and they have sent it back to Jack Cooper. Mr. Leavitt pointed out that this issue was basically demonstrated in the last motion.

MOTION: Peter Leavitt motioned to table the remaining agenda items. The applicants must send a letter to Jack Cooper, at the Town Hall, explaining why they cannot appear on the Agenda otherwise the Board will continue to place individuals on the Agenda for review. Seconded by Robert Fey.

VOTE: Four in favor. One opposed (Michael Higgins). One abstain (Aurel Gagne).

Adjournment.

MOTION: Peter Leavitt motioned to adjourn the meeting. Seconded by Robert Fey.

VOTE: Five in favor. One abstain (Aurel Gagne).

ADJOURNMENT: Peter Leavitt adjourned the meeting at 10:20 p.m.

Respectfully submitted,

Elisa A. Trepanier

Recording Secretary