



Raymond Zoning Board of Appeals
 423 Webbs Mills Road
 Raymond Broadcast Studio
Minutes
Tuesday, July 26, 2022
VIA ZOOM
7:00 pm

Call to order: David Murch called the meeting to order at 7:00 pm and a quorum was Declared; **Roll was Called**

Present: David Murch, Chair; Greg Dean, Vice Chair, Tom Hennessey, Fred Miller and Pete Lockwood

Staff: Alex Sirois, CEO and Sandy Fredricks, Administrative Assistant PB & ZBA

Attorneys Present: Stephen Wagner for ZBA; Eric Wycoff for CEO, Leah Rachin for Management Controls LLC & Q-Team; Gregory Braun for Durant Excavating LLC and Big Lake Marine LLC

Murch read the Opening Statement into the Record as well as the Agenda.

Murch advised the first item on the Agenda is election of a Chair and Vice Chair for the fiscal year 2023.

Dean nominated Murch as Chair. Hennessey seconded the nomination.

Dean moved that Murch continue to serve as Chair.

Hennessey seconded.

All in favor? 5 yes-0 no-0 abstain

Miller nominated Dean as Vice Chair.

Miller moved that Dean continue to serve as Vice Chair.

Murch seconded.

All in favor? 5 yes – 0 no – 0 abstain

Acceptance of June 28, 2022 Minutes. Murch stated that on Page 3, Hollister application, Item 3 should be “The Board unanimously agreed this criterion was met;”

Dean moved to approve the Minutes with the correction.

Hennessey seconded.

All in favor? 5 yes – 0 no – 0 abstain

Murch advised that the Board, at its discretion, can take Agenda items out of order. After discussions among the attorneys the Board has agreed to take all items relating to 18 Fernwood Road first, followed by all matters relating to 28 Whitetail Lane.

Dean moved to remove Administrative Appeal by Leah Rachin, Esq. on behalf of Management Controls LLC regarding 18 Fernwood Road from the table.

Hennessey seconded.

All in favor? 5 yes – 0 no – 0 abstain

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Murch asked Lockwood to state what he had done to prepare to participate in these matters as a new Board Member. Lockwood stated for the record how he brought himself up to speed on these appeals.

Wagner explained that he would advise that Lockwood not participate in the vote on the Findings of Fact for the Management Controls LLC matter for 18 Fernwood but could participate in discussions.

Murch explained that the Board would conduct the hearings as de novo hearings. Lockwood stated he understood and agreed.

Wagner and the Board discussed the Findings of Fact for the Management Controls LLC matter heard on March 29, 2022.

Dean moved to grant decision as drafted.

Murch seconded.

All in favor? 4 yes (Murch/Dean/Hennessey/Miller) – 0 no – 1 abstain (Lockwood)

Wagner will forward completed Findings of Fact to the Town Office for signature by the Board members.

Dean moved to remove all Administrative Appeals from the table.

Hennessey seconded.

All in favor? 5 yes-0 no-0 abstain

A quorum was established by Roll Call. Murch asked if there were any conflicts of interest in these matters. Miller restated that he had done work in the 18 Fernwood Road house years ago for a previous owner. After discussion, the Board determined that Miller has no conflict of interest. Attorneys Rachin and Wycoff stated they had no objection to Miller participating in these matters.

Administrative Appeal Re NOV issued 01/04/2022

APPLICANT	Leah B. Rachin, Esq. on behalf of Q-Team, Inc.
LOCATION	18 Fernwood Road; 001/022/000; Zone LRR2
DESCRIPTION	Administrative Appeal from Notice of Violation

The Board determined it had jurisdiction pursuant to Section 16 of the Ordinance.

Rachin requested that the letter from Aaron Gosselin of Q-Team be admitted to the record. Wycoff stated the Town had no objection.

Dean moved that the letter dated July 26, 2022 from Q-Team be admitted to the record.

Miller seconded.

All in favor? 5 yes-0 no-0 abstain

Wycoff stated that in light of the aforementioned letter, the Town withdraws Violations #1 and #2 relative to Q-Team on the Fernwood property.

Rachin begins her presentation on behalf of Q-Team. She restated that all prior record evidence submitted in connection with the first appeal will be part of each subsequent appeal; FOR DETAILS, PLEASE SEE VIDEO, THE OFFICIAL RECORD OF THE MEETING

the documents, the record and testimony and she will not belabor prior information.

She continued by renewing statement that many violations are duplicative; Violations #3, #4 & #5 are identical and verbatim of Violations #13, #14 & #15 in Management Controls LLC NOV. She further stated that the Ordinance provided that Shoreland Stabilization needed Planning Board approval and had they done that, all these violations would have been part of that application. Dean asked for clarification of the duplicities. Wagner stated that Rachin was still relying on Q-Team's reliance on Big Lake Marine LLC. Rachin stated that with violations #1 & #2 being withdrawn, they didn't conduct those activities. Wycoff stated that Q-Team relied on Big Lake Marine's agreement with Management Controls and the Town was not a party to that agreement; that is not relevant to this appeal.

Wycoff continued that in regard to #3, #4 & #5 being duplicative, they are not. #3 was for removal of trees pursuant to §15 Q (2) of the Shoreland Zoning Ordinance; #4 is for removal of vegetation pursuant to §15 Q (2) (b) and #5 is for violation of removal of vegetation, specifically trees, without a permit from the Code Enforcement Officer pursuant to §14, Shoreland Zoning Ordinance Table, Line 5.

Sirois showed the slides for violations by Q-Team. He stated the violations were brought to him by DEP on October 14, 2021 and a site inspection was done with CEO, Portland Water District, Rob Durant and Department of Environmental Protection on October 26, 2021. The trees in front of the house were removed and created a canopy opening in excess of 250 square feet; and removal of vegetation in excess of that permitted by the point system. He explained how the point system works for the Board.

Wycoff stated that Q-Team acknowledged removal of trees #1-4 and #15 & #16. Pursuant to §14 Shoreland Zoning Ordinance, vegetation removal requires a permit. He continued that each violation, #3, #4 & #5 each relies on separate provisions of the Shoreland Zoning Ordinance.

Rachin had questions for Sirois; was he an arborist; he stated he was not. There were discussions regarding hazardous trees. Sirois informed Rachin he had, in a previous position, suggested to Q-Team that they have another arborist do assessments for them and vice versa. He further stated that we have to enforce the Ordinances as written. Rachin asked Sirois if he ever or knew of any CEO who had denied a permit to Q-Team. She continued that Gosselin stated he had never had a CEO disagree with his determination. Sirois stated that in all his dealings with Q-Team, he never had them rely on someone else obtaining permits.

Wycoff asked Sirois if he was consulted about removed any hazardous trees. Sirois stated no. Wycoff asked Sirois if he had been consulted, what would have been done. Sirois stated he would have gone to look at the trees, determined if they were dead or dying or hazardous and then issue permit. Wycoff asked Sirois about stumps; Sirois stated that within 100' of the water, they cannot be removed. Wycoff asked what happened in this case. Sirois stated it is unclear on that but believes that stumps were removed and explained how he came to that belief. Dean asked if a hazard tree counts against square footage of canopy. Sirois stated if it is a hazard, it can be removed, but replanting may be required.

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Murch opened the Public Hearing at 8:15. Being no one wishing to be heard, the Public Hearing was closed at 8:16.

Dean moved to close the Public Hearing and the record.

Hennessey seconded.

All in favor? 5 yes – 0 no – 0 abstain

Wagner asked that referencing the arguments that Management Controls LLC made, is the Board still of the same opinion on those arguments. Murch stated that each contractor should have ensured permits were received before moving forward with the work; because they did not, they did perform work without a permit.

Murch moved that Q-Team is responsible for violations in the shoreland and violation should not be vacated.

Miller seconded.

All in favor? 5 yes – 0 no – 0 abstain

Dean moved to uphold Violations #3 & #4 having found evidence to confirm violations occurred.

Hennessey seconded.

All in favor? 5 yes – 0 no – 0 abstain

Rachin stated that #5 should be consolidated with #3 & #4. Murch stated they are considering it separately.

Hennessey moved to uphold Violation #5 of the NOV.

Murch seconded.

All in favor? 4 yes (Hennessey/Murch/Miller/Lockwood) – 1 no (Dean) – 0 abstain

The Board made a tentative decision to deny the Appeal and directed and authorized Wagner to draft the Findings of Fact and decision for action at the August 30 meeting.

The Board took a break from 9:00 – 9:05

Roll was called and quorum established at 9:05.

Administrative Appeal Re NOV issued 12/21/2021

APPLICANT	Durant Excavating
LOCATION	18 Fernwood Road; 001/022/000; Zone LRR2
DESCRIPTION	Administrative Appeal from Notice of Violation

Braun stated he moved that these matters be tabled as the parties are meeting to find a compromise and believe they are close to it and continuing these hearings is not accomplishing a goal of finality.

Wycoff stated the Town prepared for and notified all parties they were ready to proceed tonight and are opposed to the motion by Mr. Braun. Rachin stated she had no objection to

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the motion particularly if it applies to all remaining matters. Wagner stated he was of the opinion that the timeline generally is to have items move forward. The Board asked Sirois for his view. Sirois stated he relied upon Wycoff. Braun further stated the reasons why Durant's appeal was not filed until March and expounded upon reasons why these matters should be tabled. Braun also stated that the parties to these appeals recently employed a new professional and they are working to get a plan in place.

Dean moved to deny the motion by Attorney Braun to table the applications.
Hennessey seconded.

All in favor? 5 yes – 0 no – 0 abstain

The Board discussed if this appeal was received within the allowed 30-days. The appeal was received on March 3, 2022. Attorney Braun stated he represents Rob Durant, Durant Excavating and Big Lake Marine LLC. He stated that the date of the NOV in shown as 12/28/21 but in fact is dated 12/21/21. It was so noted in the record and the Town agreed that the date was 12/21/21 for 18 Fernwood.

Wagner explained the date and good cause to allow filing after 30 days as it could be a miscarriage of justice. Braun continued that Durant was self-representing; he never had a NOV against himself or any of his companies. Wycoff stated Sirois had advised Durant to get an attorney and he didn't. The Board discussed the timing of the filing.

Dean moved to continue this appeal to the next meeting and instruct Wagner to provide more information on case law.

Murch seconded.

All in favor? 5 yes – 0 no – 0 abstain

Dean moved to table the remaining appeals to the August meeting.

Murch seconded.

All in favor? 5 yes – 0 no – 0 abstain

Everyone discussed how to move forward to expedite these matters with no consensus.

Dean moved to adjourn.

Murch seconded.

All in favor? 5 yes – 0 no – 0 abstain

ADJOURNED 10:00 P.M.