



Raymond Zoning Board of Appeals
 423 Webbs Mills Road
 Raymond Broadcast Studio
Minutes
Tuesday, August 30, 2022
VIA ZOOM
6:00 pm

Call to order: David Murch called the meeting to order at 6:00 pm

Roll was called and a quorum was declared

Present: David Murch, Chair, Fred Miller and Pete Lockwood

Absent: Greg Dean, Vice Chair and Tom Hennessey

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.

Acceptance of July 26, 2022 Minutes.

Miller moved to approve the Minutes as written.

Murch seconded.

All in favor? 3 yes – 0 no – 0 abstain

Miller moved to remove Q-Team Appeal from the table and address the Findings of Fact.

Murch seconded.

All in favor? 3 yes – 0 no – 0 abstain

Wagner and the Board discussed the Findings of Fact for the Q-Team matter heard on July 26, 2022.

Murch moved to accept the Decision regarding Q-Team based on the findings and conclusion reached at the July 26, 2022 Hearing and adopt the written Decision as presented with the modification discussed.

Miller seconded.

All in favor? 3 yes (Murch/Miller/Lockwood) – 0 no – 0 abstain

Miller moved to remove all Administrative Appeals from the table.

Murch seconded.

All in favor? 3 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 had no conflict of interest.

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The Board discussed the explanation of “Good Cause” to permit late filing of an Administrative Appeal at length. The Board turns the matter over to Braun to present his case.

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

Administrative Appeal Re NOV issued 01/28/2022

APPLICANT	Durant Excavating
LOCATION	28 Whitetail Lane; 001/020/000; Zone LRR2
DESCRIPTION	Administrative Appeal from Notice of Violation

Braun again requested that these matters be tabled to allow time for the Restoration Plan to be agreed upon and argued that by continuing to go forward we are incurring additional costs.

Wycoff stated the Town has received a Restoration Plan from the new consultant on behalf of Management Controls LLC. The Town is currently working on a reply to proposed Consent Agreement. Wycoff further stated the Town opposed a continuance.

Rachin echoed Braun’s concerns about incurring additional costs. Question was raised if the vote to pass a motion is majority of those present or a majority of the entire Board. Everyone was advised, per the By-Laws, it is a majority of those present.

Murch moved to deny request for continuance.

Miller seconded.

All in favor? 3 yes – 0 no – 0 abstain

Wycoff presented a Power Point relating to the properties at 18 Fernwood and 28 Whitetail. NOV was dated December 21, 2021 and the appeal filed by Durant was received on March 3, 2022; 42 days after the 30 days permitted. The Town requested dismissal as being untimely.

Wycoff stated that the 28 Whitetail NOV was issued January 28, 2022. The appeal filed by Durant was dated February 24, 2022 and received by the Town on March 3, 2022 two days after the date for filing an Appeal.

Braun presented his argument to the Board regarding the filing of the appeals by Durant. All attorneys and Board members discussed the status of the appeals at length.

After much discussion among the Board, attorney Braun and attorneys Wagner and Wycoff, the Board determined to take a vote on timeliness of the appeal.

Murch moved to deny the Administrative Appeal for 18 Fernwood based upon it being submitted beyond the acceptable 30-day submission time and the Board also finds no evidence to support a finding of good cause to waive that appeal deadline.

Miller seconded.

All in favor? 3 yes – 0 no – 0 abstain

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The Board next addressed the 28 Whitetail Appeal and began discussions on timeliness. Wycoff asked CEO Sirois to give testimony on the events that took place regarding the Durant Excavating appeal. Sirois gave testimony as to the sequence of events and his advice to Mr. Durant at various times.

Murch moved to deny the Administrative Appeal for 28 Whitetail based upon the findings and consensus of the Board as being untimely and having seen no evidence to support a finding of good cause to waive that appeal deadline.

Miller seconded.

All in favor? 3 yes – 0 no – 0 abstain

Administrative Appeal Re NOV issued 03/10/2022

APPLICANT	Gregory P. Braun, Esq on behalf of Big Lake Marine LLC/Robert Durant, Member & Manager
LOCATION	18 Fernwood Road; 001/022/000; Zone LRR2
DESCRIPTION	Administrative Appeal from Notice of Violation

The Board addressed the above application for timeliness noting the NOV was issued March 10, 2022 and the Appeal was received April 8, 2022. Therefore, it was filed within the 30 days.

Murch moved that the application was submitted in a timely manner.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

The Board discussed the issues of completeness and jurisdiction coming to a consensus that it was complete and there is jurisdiction for them to hear the Appeal.

Wycoff stated the Big Lake Marine Appeal should be dismissed, in part, for failing to comply with the Shoreland Zoning Ordinance that Appeals are made by filing “a concise written statement indicating what relief is requested and why it should be granted”. He continued to explain why it should be dismissed citing case law in a similar case. He stated for the Board that the Town requested numbers 1, 3, 5, 6, 9 & 10 be dismissed for failure to comply with the Shoreland Zoning Ordinance requirements.

Murch asked Braun if he wished to respond. Braun gave a response as to why the NOV against Big Lake Marine should be dismissed. The Board and Braun discussed the issue at length.

Murch moved to deny the Town’s request to dismiss violations 1, 3, 5, 6, 9 & 10 on the grounds that they do not comply with §16(G)(3)(a)(2)(i)

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Braun made an argument to the Board questioning their decision based upon two (2) Board Members did not have the documentation. The Board advised that all Members had received and reviewed the information; they just hadn’t pulled it up on their computers at the moment.

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This discussion went on for some time. Braun reiterated his objection to the process and hearing of these violations as being a due process violation against Big Lake Marine LLC. Braun and the Board continued to discuss, at length, the procedures and evidence already in the record and Braun's objections that Big Lake Marine LLC was not a part of those proceedings.

Murch moved to overrule the objections of attorney Braun.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved the Board ratify all of its prior findings on standing, jurisdiction and timeliness.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

The Board took a 5-minute recess at 8:13 p.m.

Meeting resumed at 8:18 p.m.

Murch called the meeting back to order and asked Wagner to assist directing the Board through the next stage. Wagner stated that unless there are any further procedural objections or issues from the parties, the Board would allow Braun to present his case without interruption, then questions from the Board to Braun, then questions from the Town to any of the witnesses Braun presented.

Murch asked Braun to present his case. Braun stated he was representing Big Lake Marine LLC, manager and sole member Rob Durant on the NOV dated March 10, 2022 relative to 18 Fernwood Road. His arguments were, in part, that the NOV was almost identical to that sent to Management Controls LLC on January 28, 2022 and that sent to Q-Team relative to the same property. He further contended that the only work Big Lake Marine did was restoration and maintenance. Wycoff presented his arguments on behalf of the Town and had Sirois go through the slide presentation of the property after which Wycoff presented the Town's arguments and quoted the Ordinance. Braun objected to Wycoff's use of "as previously found" and stated he wanted to reserve their right to appeal. There was additional review by Wycoff and Sirois of each violation. Braun presented his rebuttal to the Town's positions on each violation.

The Board had questions for Sirois and Wycoff which were answered. The Board then asked Rachin if she had any comment. Rachin stated her comment was in respect to Q-Team; they only removed trees and saplings as defined in the Ordinance. Murch then opened the matter for Public Hearing at 9:22. No one from the public wished to speak; Murch closed the Public Hearing at 9:25.

Murch moved to deny the appeal based on grounds that there was a violation of Big Lake Marine's due process rights by treating each of the Notices of Violation separately.

Lockwood seconded.

All in favor? 3 yes – 0 no – 0 abstain

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Murch moved that Violation #1 in the NOV, Big Lake Marine conducted filling or earthmoving in violation of Shoreland Zoning Ordinance §15 e.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved that based on these factual findings to oppose the violation, the Board concludes the conduct of doing earth moving without a permit is a violation of §14.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved that Violation #2 be upheld as a permit is required from the CEO and none was obtained.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved that Violation #2 should not be dismissed as duplicative.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved to uphold Violation #3 based on the consensus and the factual findings and conclusion that Big Lake took out the stairway to access the shoreline without a permit in violation of the Shoreland Zoning Ordinance §15 B 8.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved to vacate Violation #4 based on the Town's withdrawal of said Violation.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved to uphold Violation #5 based on findings that Big Lake Marine expanded the shoreline in violation of the Shoreland Zoning Ordinance.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved to uphold Violation #6 based on findings that Big Lake Marine constructed a beach without a permit from the DEP in violation of §13 o.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Miller moved that Violation #7 be upheld based on findings of fact that Big Lake Marine cleared vegetation less than three (3') feet in height within one hundred (100') feet of the normal high water line in violation of §15 of the Shoreland Zoning Ordinance.

Lockwood seconded

All in favor? 2 yes (Miller/Lockwood) – 1 no (Murch) – 0 abstain

Miller moved that Violation #8 be upheld based on findings because Big Lake Marine clearly was responsible for obtaining the permits.

Lockwood seconded

All in favor? 2 yes (Miller/Lockwood) – 1 no (Murch) – 0 abstain

Murch moved that Violation #9 be upheld based on factual findings.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved that Violation #10 should be upheld based on findings of fact it was feasible to do the work from a barge.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved to vacate Violation #11 based on the Town's withdrawal.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved that based on the DEP Violation, this does not qualify for Permit By Rule.

Miller seconded

All in favor? 3 yes – 0 no - 0 abstain

Murch moved to deny the Appeal of Big Lake Marine for 18 Fernwood Road based on the grounds that it would have qualified for a Permit By Rule if they had complied with the Shoreland Zoning Ordinance provisions.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch moved that the Board instruct Wagner to prepare draft Decisions and continue these deliberations to the next scheduled meeting.

Miller seconded

All in favor? 3 yes – 0 no – 0 abstain

Miller moved to table the remaining appeals of Greg Braun on behalf of Big Lake Marine and Leah Rachin on behalf of Management Controls LLC.

Lockwood seconded

All in favor? 3 yes – 0 no – 0 abstain

Murch explained to Attorney Wilson the Board's By-Laws do not allow taking up any new matters after 10:00 p.m. and therefore, the appeal of Adam Nappi/Highwire Hydroponics will remain on the table until the next meeting.

Miller moved to adjourn.

Lockwood seconded

All in favor? 3 yes – 0 no – 0 abstain

Adjourned at 10:40 p.m.

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