



Zoning Board of Appeal Meeting Minutes

March 8, 2023, at 5:30 PM

Wescustogo Hall & Community Center

Call to Order (20:31 - 21:34) Board Chair Paul Napolitano called the meeting to order at 5:35pm followed by the Pledge of Allegiance.

Board Chair Paul Napolitano announced that Board Member Jim Briggs, Board Member Kevin Robinson, and Board Chair Paul Napolitano, were present. Board Members Thaddeus Day and Board Member Norman Smith were absent. Board Chair Paul Napolitano asked for a motion to make Alternate Board Member Mike Mallory a voting member.

Board Member Jim Briggs, seconded by Board Member Kevin Robinson, motioned to make Alternate Board Member Mike Mallory a voting member. Vote 3yes/0.

Attorney Mark Bower was present at the meeting.

Board Chair Paul Napolitano announced that they did not have the minutes from the January 18th or the February 1st meetings and would be going into the appeal.

Appeal Hearing (21:34 - 1:43:50) Lincoln Merrill introduced the appeal for Map/Lot 013-013-00B (21:34 - 57:44). His co-appellant, David Comparetto, was not present. Lincoln Merrill made it clear that he is unrepresented but had spoken with three different real estate attorneys. David Comparetto does have counsel but they are not involved in the appeal.

Lincoln Merrill announced that he believes that the code enforcement officer issued the building permit incorrectly.

Lincoln Merrill did not speak with any parties involved, any of the property owners on any of the adjoining properties, or anyone that had prepared the deeds. His work was based on what had been filed at the Cumberland County Registry of Deeds, his review of the Land Use Ordinance, and his knowledge of some of the properties involved.

Lincoln Merrill mentioned that he wanted to speak particularly about lots of record.

Lincoln Merrill went through his appeal. He stated that the lot does not meet the acreage requirement for the zone, that the lot is a nonconforming lot, no property taxes were paid on it, and that a nonconforming lot cannot be transferred to a non-abutter.

Lincoln Merrill listed the following points:

1. The lot is nonconforming.
2. The lot was never a lot of record until last year.
3. The lot is too small to build a home on.
4. The people that own the lot today do not have clear title.

Board Chair Paul Napolitano acknowledged Board Member Thaddeus Day in the audience. Board Member Thaddeus Day explained that he was conflicted out and recused himself.

Board Chair Paul Napolitano asked if any members of the board had any questions.

Board Member Kevin Robinson asked Lincoln Merrill if the deed (book 37976, page 282) on page 15.5 of the packet was the first time the property was specified.

Lincoln Merrill stated that the deed on page 6 in the packet mentioned the whole property first.

Board Member Kevin Robinson asked if the property was transferred to the Royal River Conservation Trust.

Board Member Mike Mallory asked what the shortest boundary line length is on the property.

Lincoln Merrill says that the deed and survey show different lengths.

Board Member Jim Briggs mentioned that the first map shows an extra 4.63 feet. The difference between the deed and the map is that one goes to the pin, and one goes to the end of the road.

Board Member Jim Briggs asked about the property referenced on page 8.

Lincoln Merrill responded.

Attorney Mark Bower asked if the deed on page 15.5 and the deed on 18.2 were describing the same lot because they have different descriptions.

Lincoln Merrill says that 18.2 is an accurate description.

Attorney Mark Bower asked if there were any earlier deeds that explain the parcel.

Lincoln Merrill said yes. The deed on page 5 from 1856.

Board Member Jim Briggs mentioned that if it is 95 rods then it would be 56 acres. Board Member Kevin Robinson agreed.

Lincoln Merrill said that he assumed it was 95 square rods.

Ben Scipione, Code Enforcement Officer, presented his defense (57: 51 - 1:08:11). He asked Board Chair Paul Napolitano if he could enter his findings into the record.

Board Chair Paul Napolitano allowed him to hand out his findings to the board members, Lincoln Merrill, and to Paul Hodgetts.

Code Enforcement Officer Ben Scipione went over what was shown in the paperwork. He had an email from the previous code enforcement officer and screenshots from the assessing software that aided him in making his decision to approve the building permit.

Code Enforcement Officer Ben Scipione stated that he issued the building permit correctly. Proof of right title and interest, building permit application, a septic permit, and a plot plan showing setbacks, are what is required for a building permit and the current owners of lot 013-013-00B provided him with this information.

Code Enforcement Officer Ben Scipione mentioned that title issues is not something that falls under the scope of a code enforcement officer.

Board Chair Paul Napolitano asked when Ben felt that the parcel became a lot of record.

Code Enforcement Officer Ben Scipione said that he does not know and cannot speak to this.

Board Member Kevin Robinson asked where the guidelines are to define a lot of record.

Code Enforcement Officer Ben Scipione read the definition of a lot of record from the Land Use Ordinance, Section 11.3 Subsection B.

Board Member Kevin Robinson asked how it becomes a grandfathered lot.

Attorney Mark Bower directed the board to an additional section, 2.5A, where lot is defined. It states that the lot must be in existence by June 14, 2005. The lot had to have come into existence before this date to be a nonconforming buildable lot.

Attorney Mark Bower advised that the board should first focus on if this lot was a lot of record. If they decided that it was, then they could go into the issue of right title and interest.

Board Member Mike Mallory asked when the lot became a lot of record.

Board Members and Attorney Mark Bower discussed.

Lincoln Merrill mentioned that Donny Cluff never owned the land and that the email that previous Code Enforcement Officer Ryan Keith sent to Code Enforcement Officer Ben was misleading.

Board Chair Paul Napolitano asked for a motion to close the public hearing at 6:35pm.

Board Member Kevin Robinson, seconded by Board Member Jim Briggs, motioned to close the public hearing. Vote 4 yes/0

Board Members deliberated.

Board Member Kevin Robinson felt that the lot was not mentioned until March 13, 2021, meaning it is not a lot of record. Board Chair Paul Napolitano agreed.

Board Member Jim Briggs was not convinced that there was clear ownership. Board Chair Paul Napolitano agreed as did Board Member Mike Mallory.

Board Member Kevin Robinson felt that Code Enforcement Officer Ben Scipione made the best decision that he could based on the information presented.

Attorney Mark Bower said that there is a low threshold to have a proper application for a building permit and that the board members should focus on if the lot is buildable.

Attorney Mark Bower asked if the 95-rod description would be enough to consider the lot. Board Member Kevin Robinson said that he could not convince himself that it was the same parcel.

Board Members and Attorney Mark Bower discussed.

Board Members came to an agreement that the lot was nonconforming.

Lincoln Merrill said that the reason he brought the issue of clear title and interest to the board was because someone owns the lot and that someone ought to be paying taxes on that land.

Attorney Mark Bower said that the ZBA cannot clear a title as that is something that needs to be brought to court.

Board Member Kevin Robinson did not feel qualified to make this decision. Board Chair Paul Napolitano and Board Member Jim Briggs agreed.


Board Members and Attorney Mark Bower discussed adverse possession.

Board Member Kevin Robinson, seconded by Board Member Jim Briggs, motioned to have the Attorney Mark Bower draft up the ZBA decision. Vote 4 yes/0.

Board Chair Paul Napolitano suggested starting the next meeting at 6pm at the earliest.

Adjournment (1:44:10 - 1:44:16) Board Member Kevin Robinson, seconded by Board Member Jim Briggs, motioned to adjourn the meeting at 6:58pm.

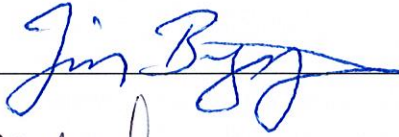

Paul Napolitano, Chair


Kevin Robinson, Secretary

Thaddeus Day

Norman Smith

Jim Briggs



Mike Mallory

