

# **Zoning Board of Adjustment meeting Sept 18, 2014**

Submitted by stoddard on Thu, 09/18/2014 - 5:44pm.

Preliminary

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Town of Stoddard

Zoning Board of Adjustment

Minutes of Meeting held September 18, 2014

Meeting brought to order by the Chairperson at 7:30 pm.

Members Present:

Chairperson Peter Athearn, Vice Chairperson Paul Krampfert, Richard Scofield,  
Angel Nicoletti, Curt Taylor

Alternate Member Present: Edmond Saleski

Others Present: Town Attorney Homer S. Bradley, Town Compliance Officer Harry Power, Selectmen; Steven McGerty, Arnie Stymist and John Holter. Representative Daniel Eaton, Fire Chief Patricia Lamothe, Applicant Donall Healy, Mr. Healy's Attorney Paul Alfano, Planning Board Secretary Patricia Putnam, Town

Administrator Jim Coffey

#### Previous Minutes

- Peter made motion to accept the minutes of the August 21, 2014 meeting as printed. Angel Nicoletti seconded the motion and the motion carried.

Motion from an Administrative Decision by Donall Healy, Motion for Recusal

The Board of Selectmen, Town of Stoddard and through it's attorneys, Bradley & Faulkner, P.C. By Homer Bradley

- The Chairman asked if all the members of the Board have read the Motion for Recusal. They stated they had.
- The Chairman asked Attorney Bradley if he would like to speak regarding the Recusal. Attorney Bradley stated the Board is prejudiced for listening to Mr. Healy speak last month and by doing so breached procedure. That the Chairman of the Board circulated some or all of the results of his private investigation via email to other members of the ZBA. He also stated a Selectman was not present at the August hearing, that the hearing was not published and abutters not notified and that again the ZBA breached procedure. He asked that the entire current ZBA, namely: Peter Athearn, Paul Krampfert, Angel Nicoletti, Richard Scofield, Curt Taylor and Ed Saleski recuse themselves from acting on the appeal of Donall Healy and that the appeal of Donall Healy be held in abeyance until a replacement ZBA is appointed and qualified and grant such other and further relief as may be just.
- Attorney Bradley asked if any of the members of the Board had received information from the Chairman. Angel Nicoletti stated the only information the members has received was sent to the Board from Mr. Healy and his

Attorney, Mr. Alfano. She continued, there have been no emails or papers exchanged from the Chairman to members regarding this case.

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- Curt Taylor spoke reiterating what Angel stated and stated Mr. Healy presented himself to the Board and was told prior to speaking, that he was welcome to speak but that no one would be allowed to comment or ask questions.
- Paul Krampfert spoke stating Selectman McGerty was present at the meeting and if the other selectmen wanted to know what was said they could have asked him. Mr. Bradley stated Mr. Power was there also but that it didn't matter.
- The Chairman addressed the items of the Recusal. He explained Mr. Healy had not gotten the appropriate forms from the Town for a hearing to occur in August, so the hearing had to be rescheduled to September. As a courtesy to Mr. Healy, the Chairman said he could speak as a member of the public at the August meeting, but he could not discuss anything regarding his appeal and that no one would comment or ask questions on what was said. At the time he spoke, the Board had yet to receive information they currently have from Mr. Healy's lawyer, so it would not be possible for them to be prejudiced at tonight's hearing.
- The Chairman also stated the Motion for Recusal came only after the ZBA gave the information given to them from Mr. Healy to Mr. Coffey, the Town Administrator. The Chairman offered the information, as it seemed at the time to be the fair thing to do.
- Also, as far as the August meeting, it was a regular Zoning Board Meeting not a hearing, therefore not requiring notice to abutters.
- Repudiating the "fact finding mission" the Chairman stated the Board initially only received from Attorney Alfano, a copy of a letter from Attorney Bradley stating the Town would file a petition for an injunction against Lakefalls, half of an application for Appeal from an Administrative Decision from Mr. Healy and a letter from Attorney Alfano requesting a hearing. This Board has not experienced an Appeal before and had very little information explaining the situation. He went to see Mr. Coffey, the Town Administrator, to find more information about what was happening and was told the information was attorney/client privilege. He also read the past six months of Selectman Meeting minutes looking for information as to what precipitated the letter from the Selectmen and found no information.
- The Board then received 17 pages of information from Mr. Healy clearly stating the situation.

- The Chairman has contacted our attorney, Matt Serge, who felt it was not necessary for him to come to this meeting as he thought the Motion for Recusal, you sent him a copy of, was baseless.
- The Chairman stated all members of the Board have read the Motion for Recusal. He asked if any of the Board had something to say. Richard stated "I see no need to recuse myself." Paul stated "I see no reason to recuse myself." Angel stated "I stand by my previous statement. Nothing I've heard is reason to recuse myself." Curt stated "I stand by my previous statement, I'm not going to recuse myself." Peter stated "I don't feel any need to recuse

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myself from this appeal."

- The Chairman asked if anyone from the audience wanted to speak to the issue of the Motion for Recusal.
- Attorney Alfano said the board is justified to refuse to recuse themselves. He stated that the Board of Selectmen also gave Mr. Healy no chance to speak to them or for himself. He also stated it was outrageous for the Board of Selectmen to recuse the entire ZBA so they could appoint new members to the Board. He asked if Mr. Bradley had taken a vote of the Selectmen to authorize the Motion for Recusal. The Chairman asked Mr. Bradley if he wanted to respond to Mr. Alfano's question.
- Attorney Bradley answered that he acted on his own as he was shocked that the ZBA behaved the way they did.
- Richard Nicoletti of Stoddard spoke, stating the recusal in itself is prejudicial to the hearing that would follow it.
- The Chairman asked if anyone had anything to say regarding the Motion for Recusal. No one spoke.
- The Chairman then made a motion to deny the Motion to Recuse. Richard seconded the motion. The Chairperson polled the members for a vote. Richard voted in favor of the motion, Paul voted in favor. Curt voted in favor. Angel asked for the motion to be repeated and then voted in favor. The Chairperson voted in favor. It was a unanimous decision by the Board to agree to deny the motion.

#### Application for Public Hearing

- The Chairperson read the Appeal from Administrative Decision by Donal Healy, concerning Article IV, Section 1 and Article V of the Community

Planning Ordinance. Applicant proposes to reverse the decision of the Board of Selectmen that the use of the subject property is commercial and should the use be commercial, that it does not predate Stoddard's Zoning Ordinance. The property is located at 750 Aten Road in Stoddard, NH and located on Map #418, Lot 2 in the Rural zone.

- The Chairperson also read Attorney Alfano's first letter dated July 23, 2014 asking for a hearing to be put on the agenda for August 21, 2014. The Chair explained how the incomplete application was the Town's fault, explaining why the hearing is tonight and not last month.
- The Chair polled members if they had read all the information sent to the Board from Attorney Alfano. All members answered in the affirmative. The information consists of: Letter to Jim Coffey dated 5/16/2014, Relevant excerpts from minutes of selectman Meetings on 4/28/14, 5/12/14, 5/19/14, 6/09/14, 6/30/14, and 7/28/14. Transcripts of recordings made by Mr. D. Healy at the BOS meetings on 6/9/14 and 7/28/14, Map of Lakefalls property, Memorandum from Paul Alfano to Don Healy re "commercial use", Comparison of old and new Stoddard building permits, Lakefalls rental brochure from 1970's, Screen capture of six recent web postings for Stoddard property rentals to demonstrate that Lakefalls is not the only

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property to promote rentals on the web. Photo of 9/18/2006 John Warner Event showing attendance by over 200 people. 8 Letters and 2 affidavits from abutters, renters and event organizers.

- Attorney Alfano spoke for applicant, Mr. Donall Healy. Attorney Alfano submitted a full copy of what Mr. Healy read to the Board at the August meeting, as it had been a prepared document.
- Attorney Alfano stated the first information Mr. Healy received about the issue was a letter from Attorney Bradley stating he was in violation of a zoning ordinance and must apply for a Special Exception or cease and desist activities at Lakefalls.
- Mr. Healy went to the Selectmen Meeting minutes on line, and came across an item on April 28<sup>th</sup> in the minutes where "*Jim Coffey, the Town Administrator, reported a zoning violation at the end of Aten Road by*

*reporting a web site promoting a venue by Lakefalls Associates, for up to 400 people for functions along with fireworks, if desired. It was noted the Zoning Board will be notified.”*

- Mr. Healy sent a letter to Mr. Coffey asking what precipitated the rush to claim a violation without any investigation, but received no answer.
- As note in the 5/12/14 Minutes, Harry Power reported to the Selectmen that building permits from 2006, 2004 and 2002 at Lakefalls and they indicated no commercial enterprises were planned.
- Here the Selectmen altered their normal procedure which would have been to contact the owner and investigate. Instead, they sent a letter ordering cease and desist.
- On 6/09/14 Mr. Healy appeared before the BOS to ask why no notice was given or questions asked of him. After many attempts over 3 months, Mr. Healy discovered that posting his rental property on the internet appeared to be the single factor triggering the alleged zoning violation. That and when completing building permits and asked if his property was commercial or industrial he said no. Which is correct as he rents his property and renting is not commercial.
- Attorney Alfano noted there is no definition of “*commercial*” in the Town Ordinances. He cited four instances of case law as defining “commercial” in his Memorandum to Donall Healy. The two elements needing to be present to be considered “commercial” for zoning purposes are 1.) Profit motive (undertaking for gain or livelihood) Lakefalls is a large piece of property, 240 acres, and has expenses and he rents it out to cover those expenses. 2.) Continuity (an activity is engaged in seriously or frequently) versus something here where it is rented out seasonally.
- There is also an Accessory Use which permits use of your home/residence for an incremental commercial use, where you can use your own house for some commercial activity that does not become a profitable end to itself. Should renting be considered commercial here, he feels the use of Accessory in this case could fall under this. This could be an alternate use after submitting this

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#### Appeal.

- Finally, no services are offered with the property. The Healy's are just like other people that rent their homes out around town. It's just the scale or size of the property is larger.
- Why in Stoddard, if you post your property for rent on a web site, is it grounds for a zoning violation, subject to a Special Exception and site plan

approval? Does anyone know this is what happens?

- The second issue is the property has had the same use since the 1970's and as such would be grandfathered as a preexisting nonconforming use. There has been no substantial change in it's use since the 1970's as the letters and testimony given the board will show.
  - We feel that the Board of selectmen have interpreted the zoning ordinance incorrectly. Renting your personal property is not a commercial use. Even if it were it would be grandfathered and not require a Special Exception & site visit.
  - Mr. Healy's packet to the Board includes his advertising brochure from 1970's, but back then it was mostly advertised through word of mouth. Today it is advertised on the web. He has rented it three times this year and has 3 more weddings booked for the site.
  - The Chairperson told Mr. Alfano he would have one other chance to speak on this subject tonight. He asked if Mr. Donall Healy had anything to say.
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- Mr. Donall Healy spoke stating he had brought a copy of what he read at the August ZBA meeting and was willing to read it to the audience tonight and give a copy to the Board. Chairperson Athearn said that would not be necessary as Attorney Alfano had already submitted a copy this evening.
  - Mr. Healy continued saying he was never advised by the Selectmen of anything, and is here on his own volition as he was to two of the Selectmen meetings, and wants to ask why he wasn't notified of the purported zoning violation and to ask the Selectmen to rescind the Motion because of the reasons he spelled out in his letter to them dated 5/16/14.
  - The only evidence presented by Harry Power's investigation was the three old building permits. Those permits asked the question of are you operating a business on this property? I was not operating a business there I was building an addition to a house or garage. The new permits now have check boxes asking if this property is commercial or industrial. To say I have lost all my "Grandfathered" rights by not checking that box is not true.
  - He closed by saying it is a very expensive property to operate. It is 240 acres, four buildings plus a cabin that needs renovation and he needs more income to support it. He currently rents the cabins seasonally and the lodge for special events. If he can't rent his property for weddings, who determines who he can rent it to and for which purpose? Does he need to go before the Selectmen each time, to ask if he can rent it to specific group without being in violation?

Many people spoke about the unique rural character of the property and their experiences renting there over the years. Those speaking included:

- Mr. H. Healy who bought the property through Attorney Bradley in 1970. Renting & leaseing the cabins from 1970 – 1975. There were 4 or 5 mainly summer rentals with Shinbone Shack, being rented year round. After the lodge was fixed up larger groups visited there.
- Bob Weeks, lives in Richmond, NH wanted to address the grandfathering. He rented a cabin there starting in 1970 for 15 years. He edited the book Perley with Perley's granddaughter and read the above statement which is printed in the book.
- Dan Eaton of Stoddard, stated in late 1970's he responded, as the Police Chief, to a complaint at a rented property there. In 1990 or 1992 he officiated at a wedding at LakeFalls and has attended many political events of over 200 people there and has never had a problem with egress or ingress to the property.
- Steve Reilly, who lives on Chandler Road, stated he has been there since 1957 and lived there full time since 1980. There have always people going in and out of the property.
- Buz McLaughlin, who lives on Aten Rd., a half mile from Healys' property, rented a cabin there seasonally in 1980 – 1991. He has rented the lodge for a week and in 1992 rented the lodge for a Board meeting and also for his daughters wedding. He stated there has never been a problem with people attending the events. The Healys have improved the buildings and the quality of life for everyone.
- Bob Englund, a neighbor, living on Cameron Cove in Munsonville, spoke about the generosity of the Healys and their support for hosting fundraisers for groups such as Apple Hill Center for Chamber Music, the Cheshire County and Stoddard Historical Societies and many political events. There has never been any problems with traffic or behavior of the people. He also hosted their daughters wedding party on the site.
- Sandy Sherman of Stoddard, has attended many events there and the food has always been brought in and it is always a marvelous place to meet.



Chairperson Athearn asked the members and participants to take a five minute break to stretch.

Attorney Bradley submitted a Memorandum, using ZBA as the letterhead, stating all material at the hearing tonight, should have been brought tonight, read and gone over at the meeting, not before hand.

- He stated the selectmen don't have to wait for a complaint to address an issue. They can bring a violation to an owners attention. They don't hold meetings to discuss violations, they enforce the codes. Then the person brings the issue to the ZBA as an Appeal if they disagree with the Selectmen. In this case, the Selectmen feel the applicant should be required to apply to the ZBA for a Special Exception and to the Planning Board for a site plan

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review.

- The definition of commercial the Selectmen have used is on pg 2 of this memorandum. (RSA 21.1 and in RE: Serodio, 2013-199 (NHSC) dated 8/22/14) The Board of Selectmen feel the current use of the Healy property is commercial.
- He stated Mr Healy's appeal is about whether the current use of the property predates the adoption of Stoddard's ordinance in March of 1986.
- Regarding Grandfathering – The Selectmen used the definition noted at the bottom of pg 2 of the memorandum citing RSA 674.16. The Board of Selectmen feel the use of the Healy property has significantly changed since 1986, citing improvements shown on building permits #02-043, a 28'x20' extension on Lake Fall Lodge, #02-052, a 40'x50' garage and #06-059, a 16'x16' extension on Snow Shoe Cabin. Tax records were also submitted.
- The question on each of the permits “Does applicant plan to operate any type of business from this property?” was answered no.
- The Selectmen ask the ZBA to find and rule that the use of the property today has substantially changed from the way in which it was being used in 1986 and prior, and that the current use has a different effect on the neighborhood. Electricity and plumbing have been installed and updated since 1986.

a. Town Selectman John Holter stated he moved to N. Shore Road in Stoddard in 1982/1983. He had occasion to drive on Aten Road and his early recollections of the Lodge and Shinbone Shack area confirms that it was very rustic and that today it is a place of beauty.

b. Supporting the Town, Compliance Officer Harry Power, who was on the zoning Board prior to 1986 and stated he reviewed the old roads to the Lakefalls lodge at the time prior to 1986. He stated that it has changed and improved since that time, which is great for the Town of Stoddard. He says it's a great operation but it is a business. In the future a new owner may want to expand the property. He feels some documentation needs to occur so the Town knows what is up there.

c. Selectman Steve McGerty, feels this issue did not come about the way it should have.

d. Mr Bradley stated that the Motion for Recusal was his idea, however he was asked by the Board of Selectmen to represent their interest here tonight, to enforce the Zoning Laws in the Town of Stoddard.

- Attorney Alfano spoke for Donall Healy; Mr. Halter didn't mention seeing the buildings and in regards to the future, all Mr. Power had to do is to ask the Healys and they would show him what they have. Addressing the statement about a business's main objective as profit, the Healy's have had only 3 weddings there this year.
- We have supplied photos of the property from our ad's in 1970 including those from our website today in our packet. Even if the use today is a bit more intense than it was in 1986 they have that right, provided there is no

substantial difference in services.

- Mr. H. Healy spoke stating the Lodge has never had public service as it is a mile and half from the grid. They rely on generators, batteries and at one time a water wheel for power.
- The Lodge is fed from a spring up the hill, now as it was in the 1970's and heated by wood stove now as then. The Cabin was converted from a garage in the 1970's as Alice Hyatt stated she and her family have rented it from 1970 – 1992/93 as her affidavit states.
- The building permit #04-052 garage has not been built, the permit #02-043 for the extension to the Lodge has the foundation laid but the building has not been erected and the permit #06-059, Snow Shoe Cabin was to replace a rotted bedroom floor that was torn off and constructed on the other side of the building.
- The enormous septic was required by law to support the snow shoe cabin, the lodge and shinbone shack. The lodge has no more bedrooms now than it had back then. Weddings for hundreds of people is arranged to be under tents, they do not stay in the Lodge. Solar is our current source of power now, we use generators, there is a small furnace to heat the bedrooms, a gas heater in the kitchen and a wood burning stove. The Lodge is shut down after Thanksgiving.
- When asked if the Board or anyone else had questions, no one did. Asked if anyone wants to speak on Mr. Healys behalf Buz McLaughlin stated his family rented the lodge for a week in 1980 and it is not significantly different now in regarding accommodations from what it was then.

#### Chairperson summary

- There are too many facts to review point by point at this time. The tax information has no comparisons, the changing of use doesn't mean changing the intensity. It seems Mr. Healy understands if he puts in a cafe there it would be a change of use and require permits. He is renting his property, not providing services (food etc...). If renting means he is running a business the repercussions of that statement could affect many more people in the Town of Stoddard who also rent their properties. The Chairman asked members if they have anything to say in summary. No one spoke.

Angel made a motion to close the public input to this hearing and continue with deliberation at the next regularly scheduled meeting on October 16, 2014, at 7:30pm, at the Town Hall. Richard Scofield second the motion. Angel, Richard, Curt and Paul voted to accept the motion, Peter voted against the motion.

Peter made a Motion to adjourn the meeting, Paul seconded the motion and all members voted for adjournment at 10:30pm.

The next meeting will be on October 16, 2014 at 7:30pm at the Town Hall.

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Respectfully submitted,

Kathleen Ellis

Secretary for the

Zoning Board of Adjustment