

BOARD OF SELECTMEN
Minutes of May 23, 2013

MEMBERS PRESENT: Chairman Phil LoChiatto called the meeting to order at 7:00 PM. Selectmen Roger Hohenberger and Kathleen DiFruscia were present; as was Assistant Town Administrator Dana Call. Selectmen Ross McLeod and Al Letizio, as well as Town Administrator David Sullivan, were excused. Mr. LoChiatto opened with the Pledge of Allegiance.

PUBLIC HEARING: Chairman LoChiatto read the attached public hearing notice into the record, then deferred to Town Counsel Bernard Campbell. Attorney Campbell explained that the purpose of RSA 674:39-aa is to allow an owner of two or more historic lots, which are shown as one on local tax maps, to petition the Board of Selectmen to restore them to their historic status. He went on to note that he had been asked by the Assessor to investigate the grounds to grant or deny Mr. Ferris' request and report same to the Board of Selectmen. Atty. Campbell gave a brief review of the statutory language, and noted that the burden of proof that a previous owner voluntarily merged their lots lies with the Town. He then advised that he conducted a title search and found the following:

- There is no dispute that there were two (2) parcels in the early 1900's; with a parcel line falling on iron pins.
- In June of 1955, the parcels were conveyed from Virginia O'Brien to Dorothy McLaughlin. The deed contained two (2) parcel descriptions, and one parcel was separately mortgaged by Ms. McLaughlin in October of 1959.
- In June of 1963, Ms. McLaughlin took action which exhibited that she regarded the properties as "merged" into one lot, including:
 - Completing and recording a survey which encompassed both parcels as a total square footage. This survey was signed by the Planning Board Chairman on June 6, 1963, and Attorney Campbell indicated he felt it clearly demonstrates that Ms. McLaughlin believed she had one parcel totaling 9,950 square feet.
 - By deed dated June 7, 1963, Ms. McLaughlin sold the property to Albert and Nancy Proctor. The property is described as a parcel of land containing 9,950 sft, and the deed references the new survey.

Attorney Campbell indicated that his conclusion is that by surveying the property, and recording and using said survey to then transfer the property, the only conclusion is that Ms. McLaughlin intended to merge the parcels and eliminate any lot line. He added that, if the Board concurs, then the current owner cannot request that the lots be unmerged; rather he must go through the subdivision process instead. Attorney Campbell also noted that the placement of the existing well suggests there was no consideration of a "line" between parcels; adding that for these reasons he would recommend the Board deny the request as the parcels were previously, voluntarily merged.

Mrs. DiFruscia inquired whether Mr. Ferris had purchased the parcel as a single lot, and Atty. Campbell replied that the deed description has not changed since 1963. Mrs. DiFruscia then inquired whether the property was treated as a single parcel for tax purposes, and Atty. Campbell replied in the affirmative.

Mr. LoChiatto noted there are some non-conforming issues with the lot, and inquired whether they were relevant to this matter. Atty. Campbell replied in the negative, and a brief discussion ensued.

Mr. Sean Ferris approached reiterating that the burden is on the Town to prove that the lots were merged by a previous owner; adding that he had done his own title search and found no such proof. Mr. LoChiatto inquired how Mr. Ferris would address the fact that, since 1963, the property had continually changed hands as a single lot. Mr. Ferris replied there was nothing, anywhere, stating that Ms. McLaughlin wanted to merge the parcels. Discussion ensued regarding Ms. McLaughlin's survey and the sale of the property, which Mr. Ferris indicated was by description only and that he had not had a survey done. Mr. Ferris noted that the parcel is broken by a high slope and could not be used as one.

Mrs. DiFruscia noted that the metes and bounds as shown in the deeds reflect a single parcel as per Ms. McLaughlin's plan. Mr. Ferris noted that there were no Planning Board records to that effect, and Mr. LoChiatto disagreed; noting that that the survey was signed by the Planning Board Chairman. Tax Assessor Rex Norman then advised that he had also researched the Planning Board minutes, and found that the June 6, 1963 minutes were missing. Discussion ensued.

Mrs. DiFruscia then moved and Mr. Hohenberger seconded that the application of Sean Ferris, owner of 34 Cobbetts Pond Road tax map 21C-274B, for the unmerging of lots be denied based on the testimony, research and documentation presented by Attorney Campbell that demonstrates since 1963 by the actions of Dorothy McLaughlin, and in accordance with how the property has been taxed, that it has been treated as having been merged. Passed 3-0.

OTHER BUSINESS: Mr. Norman reviewed with the Board a request for a waiver of application deadline for a veteran credit; noting the property owner had been out of State and the application received two (2) days late.

Mrs. DiFruscia moved and Mr. Hohenberger seconded to accept the late application for veteran credit. Passed 3-0.

Mr. Norman indicated that two (2), late requests had been received relative to the special exception for residential properties located in commercial zones. He advised that the properties in question were 49 and 55 Haverhill Road, and had been received two (2) and seven (7) days late, respectively.

After a brief discussion, Mrs. DiFruscia moved and Mr. Hohenberger seconded to accept the late applications for special exception. Passed 3-0.

The Board then executed timber tax warrants at Mr. Norman's request.

NON-PUBLIC SESSION: Mrs. DiFruscia moved and Mr. Hohenberger seconded to enter into nonpublic session in accordance with RSA 91-A:3 II b. Roll call vote all "yes". The topic of discussion was hiring and the Board, Mrs. Call and Ms. Devlin were in attendance.

The Board discussed the remaining, vacant lifeguard positions. Mrs. DiFruscia moved and Mr. Hohenberger seconded to approve hiring of the recommended candidates. Passed 3-0.

Mr. Hohenberger and Mrs. DiFruscia seconded to adjourn. Passed unanimously.

Meeting adjourned at 7:40 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

NOTE: These minutes are prepared in draft form and have not been submitted to the Board for approval.



TOWN OF WINDHAM, NEW HAMPSHIRE

OFFICE OF THE BOARD OF SELECTMEN/TOWN ADMINISTRATOR
POST OFFICE BOX 120, 4 NORTH LOWELL ROAD, WINDHAM NH 03087-0120

PUBLIC HEARING

Application for Restoration of Involuntarily Merged Lots

The Board of Selectmen will hold a public hearing on Thursday May 23, 2013 at 7:00 pm at the Windham Town Hall to consider the application of Shawn C. Ferris, Trustee of the Shawn C. Ferris RT II, owner of 34 Cobbetts Pond Road (Tax Map 21C-274B) to unmerge his lot/parcel to its pre-merged status as provided for in RSA 674-39-aa; and in accordance with the Town's "Application for Restoration of Involuntarily Merged Lots" process. All public input is welcomed and encouraged.

Dated: May 16, 2013