

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

MAY 16, 2018

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:35 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT: Mr. Dator Mr. Rabolli
 Mr. Larson Mr. Straffin
 Mr. Montroy Mr. Whiteman (In at 7:35 p.m.)

ABSENT: Mr. Almeda Mr. Kearney
 Mr. DeSilva

ATTORNEY: Ms. Sophy Sedarat, Esq. covering for Mr. Ben R. Cascio, Esq.

PROFESSIONALS: Mr. Michael J. Kelly, P.E.
 Ms. Debbie Alaimo Lawlor, FAICP, P.P.

I. APPROVAL OF BILLS:

4/24/18	\$41.25	Ben R. Cascio, Esq. Ramapough Mountain Indians DKT #1423-17
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A motion to approve the bill was made by Mr. Whiteman, seconded by Mr. Montroy. A roll call vote revealed 6 aye votes by Mr. Dator, Mr. Larson, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman. A discussion took place regarding the payment of this bill coming from the Professional Fee account vs. an Escrow account.

II. APPROVAL OF MINUTES:

A. MINUTES OF APRIL 4, 2018

A motion to approve was made by Mr. Whiteman, seconded by Mr. Montroy. All eligible members voted in favor.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. None were received.

V. PUBLIC HEARING:

**1. DOCKET #1413-16 - SEAN ROYLE
16 SKYTOP DRIVE, BLOCK 154, LOT 17**

Application for a "C" Variance for the construction of a single-family home on vacant land without frontage upon a street, carried from the May 2, 2018 Board of Adjustment Meeting.

Mr. Dator recused himself from this Application.

Mr. James Jaworski, Esq., of Wells, Jaworski & Liebman, LLP, Paramus, NJ approached on behalf of the Applicant. He referred to the Title Searches; Exhibits A-15, A-16 and A-17, the Title Searches of the three adjacent properties and distributed copies to Members of the Board that were not at the previous meeting regarding this case.

Mr. Rabolli announced that the following signed certifications were received for this application:

Mr. J. Larson	May 2, 2018 Meeting Certification
Mr. G. Montroy	May 2, 2018 Meeting Certification

Mr. Jaworski referred to Exhibit A-9 (the easement) regarding the language within and stated that it was acceptable to the Applicant. Mr. Jaworski also stated that the Applicant is amenable to the recording of the Resolution.

Mr. Jaworski informed the Board that the Applicant has withdrawn all references to construction of the dwelling, construction of the right-of-way and site plan issues. The discussion at this meeting is whether the property is grandfathered and whether the right-of-way is still intact. Ms. Sedarat asked if the grandfathering provision referred to the lot

area and lot depth only. Mr. Jaworski confirmed and consented to coming back to the Board regarding the home, right-of-way and development for continuing jurisdiction. Mr. Jaworski commented that he would like to convene a meeting with those most affected beforehand. Mr. Rabolli stated that tonight's meeting would be the determination of the variance requirements. Mr. Rabolli summarized the process of swearing in witnesses, testimony and closing arguments.

Ms. Sue Driscoll of 25 Stone Fence Road approached on behalf of the neighboring Public, not as an attorney. Mr. Rabolli indicated that all of Ms. Driscoll's exhibits are entered into evidence. Mr. Jaworski placed an objection on the record with respect to all of the exhibits in terms of relevance.

Ms. Megan Charles 10 Skytop Road approached and stated that she and other neighbors have prepared statements to be read after Ms. Driscoll.

Ms. Driscoll introduced herself. She then requested that absent Members of the Board listen to the CD to be eligible to vote, not just that there is a quorum, as Mr. Jaworski had requested at the November 1, 2017 meeting. Mr. Rabolli responded that her concern is noted, but the rule is that in a scenario where there is a majority vote, there is an established quorum. Ms. Driscoll distributed a catalog of the Exhibits and gave a Power Point presentation representing the four impacted properties. She gave the order in which she would discuss the exhibits. The four pertinent areas being covered are:

- 1) The 2011 Land Re-Assessment and Zoning Permit Approval
- 2) The Grandfathering Argument
- 3) When and how the lot was created
- 4) The Right-of-Way

Ms. Driscoll continued that the 2011 Zoning Permit left out information on the application. She referenced land re-assessment; all four properties were re-assessed in 2011. Ms. Driscoll commented that the Zoning Permit failed 30 years ago. There were five vacant acres up to 1981. This land could have been used to satisfy the lot depth and lot area deficiencies. In her opinion, the front lot line should have been the one parallel to Skytop Drive. Ms. Driscoll referred to Grandfather Section 24-5.1 Lot Regulations.

Ms. Driscoll referred to Filed Map #2432, she discussed the lot of official record, she discussed the access of the right-of-way and made note of Ramsey Manor. It was noted that the lot was Exception #27 and was not part of the sub-division. It was noted that a right-of-way exists, but referring to the deeds for Lots 17 and 18, it is unclear on who has the rights to access it.

Ms. Driscoll presented three poster boards regarding the grandfathering objector arguments as follows:

1. Adjacent or adjoining vacant land
2. Lot of official record
3. 50 foot access right-of-way

The Township Tax Map was referred to which indicates a right-of-way and permanent easement, however, no deed reflects any ingress or egress and who can utilize it. Several of Ms. Driscoll's main points were that there was vacant land available, the Map was approved by Hohokus, not Mahwah, and the lot does not have deeded access. At this time, although Ms. Driscoll gave a presentation and not testimony, Mr. Rabolli opened the hearing for Board questions. Mr. Jaworski understands there was adjacent land but it would not satisfy the lot width. The definition of "Lot Line" was read into the record by Mr. Kelly. Both arguments as to which is the front lot line were acknowledged by Mr. Rabolli.

Mr. Jaworski indicated that the sub-division created the right-of-way to the lot for access. He discussed the re-evaluations performed, assessments, and fair market value. The Royles have been paying taxes on a lot that is buildable. If Ms. Driscoll's arguments are correct, the lot would be unbuildable and result in inverse condemnation. Mr. Jaworski indicated that when the lot is developed, it will be clarified who can utilize the right-of-way, maintenance of the right-of-way, and the like.

There was no more testimony from the Public, however, several of the objecting neighbors read from prepared statements and/or made comments:

Ms. Alexandra Schultz of 14 Skytop Drive approached and read a prepared statement stating her concern with the Royles' prior habits regarding construction.

Mr. Greg Shultz of 14 Skytop Drive approached and read a prepared statement referencing the Filed Map and the grandfathering argument. He commented that the lot was not large enough, was land locked, and had no deeded access. Mr. Shultz questioned how six "little" lots were turned into one.

Mr. John Fesen of 20 Falcon Court approached and read a prepared statement saying that the Township has two responsibilities; to promote and protect. He commented that the land locked property has been under discussion for two years and if approved, it is not promoting the Town. Mr. Fesen questioned how some things are built and stated that "common sense values" should be at the forefront.

Mr. Andrew Boruta of 25 Stone Fence Road approached and made reference to the second meeting in January of 2018 where he had invited the Board Members to visit the lot and stated that no one came. Mr. Rabolli replied that he had visited the lot. Mr. Boruta commented that three members of the Environmental Commission had been to the lot and advised against building on it. He referred to the Midvale Mountain easement case where there were three lots, and stated that extra effort was given, as all Board Members went to the lots. Mr. Boruta commented that the same effort should be shown in this case.

Ms. Kim Condatore of 6 Skytop Drive approached and read a prepared statement, commenting on the quiet and peaceful environment with privacy and wild life. She stated that the properties are certified by the National Wildlife Federation. Ms. Condatore read the Environmental Commission Advisory Board's comments against land locked properties. She also stated that the proposal is to remove 40 trees, which currently are a natural buffer. Even more may be lost during construction which will impact the neighbors.

Mr. Rabolli called for a five minute recess at 9:00 p.m. The meeting reconvened at 9:08 p.m.

Mr. Ralph Musco of 54 Walnut Street West approached and commented that this case is "ripe for litigation" on either side, and nothing should be moved without clear understanding.

Mr. Artie Keys of 2 Clarana Street, Ramsey, NJ approached and discussed the right-of-way. He stated he was told by Mr. Royle that he would be able to get in and out of his backyard. He asked Mr. Royle a year and half ago to open the right-of-way so he could get his row boat and log splitter in and out. Mr. Keys also discussed fire truck turn-around and how many responders arrive; cop, chief, pumper trucks, 65 foot long aerial truck, fast team from another town. He stated it has been two years and he still cannot get in his backyard.

Ms. Megan Charles of 10 Skytop Drive approached and commented that Mr. Royle served on the Board until 2016. She believes that facts have been omitted and the truth has been misrepresented. Ms. Charles stated that the Royles do not have a deed for the right-of-way; an easement deed was created in Ramsey. She stated that the Royles never came to her or the neighbors to discuss the land locked, non-conforming lot. Ms. Charles commented that Lot 17 is so small that fire trucks will not be able to turn around. She also stated that she would be losing one-third of her property. She stated that 1,200 square feet is encased by her fence and has been since 1987, and that her property is landscaped as it has been for the past 30 years. Ms. Charles reiterated that the lot was never approved by Mahwah.

Ms. Alexandra Certosimo (sister of the Applicant) of 87 East Main Street, Ramsey, NJ approached and voiced her dislike for the comments made about her brother and father. She stated that she loves Mahwah too, and wants to build and live in Mahwah.

Mr. Kelly questioned Mr. Jaworski about access to the right-of-way. Mr. Jaworski responded; if a property touches the adjacent right-of-way, there should be access rights to it. Discussion took place between Mr. Kelly and Mr. Jaworski regarding the access easement in Ramsey to access the right-of-way. Mr. Kelly contended that a variance would be necessary as it does not meet standards of an improved or approved street. Mr. Jaworski disagreed, stating the 50 foot access right-of-way was not vacated. Mr. Rabolli stated that it was established by the Filed Map.

Mr. Jaworski stated that he had met with the Fire Sub-Code Official, Tom Dillon, years ago, at which time they agreed that sprinkler alerting the dwelling, which is not common, was the best plan for this location. Mr. Jaworski added that the right-of-way was established in the 1920's; the lot was conforming at the time it was created, and the right-of-way was also created – directly into the subject property. Mr. Jaworski read from the 1976 Ordinance 24-5.1 Lot Regulations regarding the right-of-way as the street right-of-way. It does meet the grandfathering provision of the Ordinance Sub-division; the 50 foot access right-of-way has not been vacated. He concluded that it does have viable access to the one lot (Lot 17), and is a buildable lot, and if not moved forward would result in inverse condemnation.

A motion was made by Mr. Whiteman, seconded by Mr. Montroy to close the Public Hearing of the meeting for this Resolution and move into Work Session. All voted in favor.

VI. WORK SESSION:

1. DOCKET #1413-16 - SEAN ROYLE 16 SKYTOP DRIVE, BLOCK 154, LOT 17

Application for a “C” Variance for the construction of a single-family home on vacant land without frontage upon a street, carried from the May 2, 2018 Board of Adjustment Meeting.

Mr. Rabolli stated that any Members of the Board that might feel conflicted should step off; those that can be fair and impartial should remain.

Mr. Montroy disclosed that he has known the Royles for 31 years, has approved at times and not approved some of his applications, and can be objective. Mr. Montroy said the

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lot complied when created, there is no way to make it conform today. He believes it is grandfathered in. Everyone that abuts the right-of-way has use of the whole right-of-way. Referring to Fire Department access, Mr. Montroy stated that there are many areas where access is one way in and one way out; two way is not always possible.

Mr. Whiteman stated that the lot was conforming when created and access to the right-of-way is undeniable. He commented that the property owner and the neighbors have to be protected.

Mr. Straffin asked about the guard rail. Mr. Rabolli replied that the Applicant had withdrawn from all references to the width of the road, the gate and the guard rail. If approved, those items will appear somewhere in the future.

Mr. Larson asked for a definition of inverse condemnation. Mr. Rabolli explained that if the Applicant is denied, the property would then be zoned into disutility. The most that could be done on the property would be to walk on it, garden on it, but not build a house on it. The Applicant would be constrained by what the Code says, but has the right to appeal.

Mr. Rabolli summarized, stating that this is a non-conforming lot that was conforming at the time it was created. He made reference to Sections 35 and 36, commenting that the standard is different from a C Variance. There is no slope or safety issues and the street is approved. Mr. Rabolli read the definition of a right-of-way from the Moskewicz Book as the right of one to pass over the property of another. Each right-of-way is unique to the circumstances. He stated that it is clear on the Filed Map and on some deeds, and that the evidence is overwhelming of the existence of a right-of-way that was conforming at the time. The Objectors have the right to appeal.

A motion to approve was made by Mr. Whiteman with the condition to return to the Board, seconded by Mr. Montroy. A roll call of eligible voters revealed 5 aye votes by Mr. Larson, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

Mr. Kelly commented that the conditions would include a Plot Plan and Soil Movement Application. He said the Board is not stating that this is a buildable lot. All other Government approvals would be required. Improvements to the access right-of-way would not count as impervious lot coverage for the neighbors. Mr. Rabolli stated that Ms. Sedarat can put the discussion in the Resolution. When the Applicant makes notice, all properties within 200 feet of the right-of-way would be noticed.

The Applicant agreed to file a Resolution of Approval with the County.

VII. ADJOURNMENT:

A motion to adjourn was made by Mr. Montroy, seconded by Mr. Whiteman. All voted in favor. The meeting adjourned at 10:22 pm.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on October 12, 2018 for approval at the Regular Meeting to be held on October 17, 2018.