

**Development Review Board Minutes  
Town Office New Haven, Vermont  
November 20, 2017**

**Members Present:** Kathy Barrett, Carol Charbonneau, Tom Fyles, Charlie Roy, Mike Sweeney

**Members Absent:** Donald Johnston, Susan Smiley

**Staff:** Dave Wetmore\*, Karen Gallott-Minute Taker  
*(\*Dave Wetmore was the Zoning Administrator at the time the zoning permit was issued October 3, 2017. Dave has since resigned the position of Zoning Administrator)*

**Guests:** June Moncrief, Nick Tonzola, Jan Bark, Steve Revell, Douglas Tolles

At 7:00 PM, Kathy Barrett-Chair, called the Development Review Board (DRB) to order. Introductions were made.

**Adjustments to the agenda:**

Decisions for the Colander and Stark Mountain Woodworking hearings will be deferred.

**There was no Visitors Business.**

Barrett mentioned that she did have ex parte discussion with Attorney Russell; scheduling was the only thing discussed. Barrett has served on the Selectboard while Doug Tolles served on the Selectboard. If this is a conflict of interest she will recuse herself. Tolles asked that Barrett recuse herself. Which she did.

Fyles made the motion to elect Mike Sweeney as acting chair. All DRB members agreed to the motion.

**Public Hearing**

A. *Appeal of ZA decision related to zoning permit #2017-ZP-46 by Moncrief/Tonzola #2017DRB-15-A.*

A letter dated Oct. 31, 2017 from Attorney Michael Russell indicated that he had a pre-scheduled conflict for the date of this meeting and was unable to attend. Sweeney asked Moncrief/Tonzola if they wanted to continue or reschedule tonight's hearing. Moncrief/Tonzola indicated they were OK to proceed with the hearing tonight.

Sweeney asked all DRB members if they have had any ex parte communications associated with this hearing. All present indicated they did not have any ex parte communication.

**Moncrief/Tonzola**

Maps and pictures were distributed which show where the access was originally proposed and now where it is located. Access construction has been started and is located through a wet area and further north than proposed.

The notice sent out to all abutting property owners does not indicate that notices were sent to anyone abutting Tolles property. Dave Wetmore explained that the Tolles property is both in New Haven and Waltham. Properties abutting Tolles in Waltham were not originally notified. It was asked if the hearing should be re-warned and continued. We have never notified individuals in other towns. We normally notify the surrounding towns. Wetmore mentioned it was in error that the Planning Commission of the Town of Waltham was not notified.

The proposed road is in a septic easement the Moncrief/Tonzola have on the property. Moncrief/Tonzola came before the Selectboard in April 2017; the Selectboard asked the Town Lawyer to write a letter to Tolles/McBride. This letter states that any permit issued for lands subject to easement rights is issued subject to that easement. The access permit

was issued on condition of respect of easement rights. Without respecting easement rights, construction of the permit should be voided, until construction conditions are met. The driveway will destroy the easement for intended purpose as required by the State septic replacement regulations.

### **Steve Revell**

Explained the easement and why it is there. The deed explains why the easement addresses the creation of the lot. This lot couldn't not be created without this septic easement as per Regulations: Section 1-304 A (2) in place August 8, 1996 when the lot was created. This lot was created under the Homestead Exemption in the 1996 rules that require that if a septic was not located 100 ft. from the property line, there must be enough easement added to meet the 100 ft. The creation of an easement is so construction of a septic replacement could be located within it.

This easement is a legal encumbrance on the Tolles property.

Replacement septic rules have changed in January 1, 2005 and these rules only apply to mound systems. The current Moncrief/Tonzola septic system is not a mound system.

Road or road access construction to the point of what has been done, negatively impacts the easement to the point it may not be available for a permitted replacement in that area. The construction is a disturbance of soil with equipment and materials that have been placed there, creating a loading impact on soils. The area has been disturbed and is now different than the property was prior to the placement of the road.

Tonzola indicated that the easement area is a natural drainage area. The road creates a dam and water back up. Continuation of the construction of the road (raising it higher) in the area will result in ponding.

It was stated that the DRB was here tonight not to blame, but to determine to continue the road or not continue the road.

### **Dave Wetmore**

- The appeal is whether Wetmore made the correct decision at the time of issuing a permit.
- Wetmore not see the attorney's letter of May 8, 2017. Wetmore's decision to grant the permit was based on the regulations and not on the contents of the letter.
- A Zoning Administrator's job is to enforce the Town's regulations which doesn't say anything about control or consider easements.
- Wetmore had visited the property and consulted a topographical map.
- Wetmore is not disputing what Moncrief/Tonzola presented tonight. He also felt that this is a civil matter between Moncrief/Tonzola and Tolles/McBride.
- When the permit was issued to Tolles, Wetmore raised the issue of how the property was to be used.
- Wetmore issues zoning permits on a regular basis, he does not normally issue zoning permits for driveways.
- Tolles came before Wetmore and indicated that the driveway was in access of 50 yards, was not a personal driveway; it will be for access to the back meadows, it will be for agricultural purposes, or for whatever future needs.
- Wetmore mentioned that getting a zoning permit would put the neighbors on notice and they could appeal the decision if desired.
- Section 525: Filling of Land - of the zoning regulations was read.
- Wetmore feels draining issues, ponding of water erosion of soils could be handled by conservation practices.
- Wetmore issued an access permit for the property; Wetmore based his decision in part on the access permit.
- Wetmore had raised concern regarding the septic easement to Tolles at time of granting the permit. But strictly interpretation of the regulations, Wetmore didn't feel he had any other option that to issue the permit.

### Steve Revell

Feels the construction of the road impacted the water flow in the area. Purpose of the easement is to allow placement of a replacement septic area.

### Joug Tolles

Presented a letter indicating he had permission to speak on behalf of McBride.

He asked Wetmore to read the following:

**Zoning By-Laws, page 10 Definition-Section 130...** the word "street" is synonymous with "road"

**Zoning By-Laws, page 17 definition of Street** – public way for vehicular traffic which affords principal means of access to abutting properties.

- Throughout the evening the access has repeatedly been referred to as a road; Tolles indicated that his access way is not a road or street, it's a private access way

**Page 20, Section 321-Exemptions:** No zoning permit is required for the following. Minimum setback compliance is encouraged where possible. **Item #5** – Driveways and accesses properly permitted by the Town or State.

- Hallock Road is a town road and there is a valid access permit recorded. The "gravel path" constructed qualified as being exempt, is not a driveway as it does not access a house, but does access private property.
- Wetmore indicated earlier; that Wetmore doesn't normally issue zoning permit for driveways and he encourage Tolles to get a zoning permit for this, encouraged Tolles to get a permit as it is not typically characterized as a driveway as it doesn't access a private home, but it was built for the access of Tolles' private property.

### **Zoning bylaws, Section 525: Filling of Land**

- A permit was issued for more than 50 yards of stone
- Wetmore considered drainage
- Wetmore visited the site
- No impact on Hallock Road
- Tolles indicated that Wetmore did his job by issuing a permit though it wasn't required.
- The easement is not in the rules.

The parties are going to civil court, it will be up to the judge to decide if the easement is valid or not. Tolles feels the easement is not valid.

Tolles indicated a lot of misinformation was presented tonight.

- Moncrief/Tonzola intentionally flooded the area
- A curtain-drain discharges into this area
- Intentional ponding was created to take the picture
- Moncrief/Tonzola's failed septic oozes across the Tolles property into that area
- Moncrief/Tonzola with the current wastewater regulations could put a replacement system on their property

Tolles again mentioned that Wetmore did his job.

Tolles got the zoning permit so years from now there would be a paper trail.

DRB asked how the May 8, 2017 letter from Attorney Hill, comes into bearing.

Tolles got the driveway permit, Kathy Barrett (Selectboard Chair) wrote on the permit for farm access only; she did this on her own accord. The town never cashed the check. Tolles reapplied for the permit because he did not want "farm access only" on the permit. Barrett had Attorney Hill send this letter to Tolles/McBride. Tolles felt the letter stated that he has the permit, but it doesn't wipe out the easement if it exists. The validity of the easement where a mound system can't go in, is beyond the scope of the DRB; and that is why is going to court.

Wetmore indicated the May 8, 2017 letter was issued prior to issuance of the zoning permit.

**Doug Tolles**

Mentioned that Wetmore suggested if Tolles would build outside the setback area (even though not required). Tolles respected Wetmore's request and trying to be a being a good neighbor and knowing Wetmore does his job; he moved it.

**Jan Bark**

Are easements considered when permits are issued? Wetmore mentioned he has no idea where all the easements in town are located. There is no question on the permit application pertaining to easements. The job of the Zoning Administrator is to enforce the By-Laws as written.

**Steve Revell**

The reason the parties are here tonight because no one took into account the fact that there is a legal easement on the property. The appeal is brought about to protect the easement and stop what was going on now. The property owner that owns the easement brought it to attention of town and appealed the town's decision; what was approved by the town interfered with the legal easement and rights to use that easement for a specific purpose.

**Doug Tolles**

Not truthful to say that the easement issue did not come up in this process, Wetmore refers to it in his decision. The easements are outside the jurisdiction.

**Dave Wetmore**

Acknowledged that there was a wastewater easement; the permit is based on zoning regulations and it complied. Mistakes happen.

**RB asked** - Does the DRB have jurisdiction over existing easements when doing this work? relative to this appeal?

**Dave Wetmore**— it's up to the DRB to decide based on testimony presented tonight. Did the applicant satisfied the burden to proof did Wetmore error, or, did Wetmore not look completely enough before issuing the permit?

**Moncreif/Tonzola**

Tonzola came before the Selectboard to say they don't oppose the road, they oppose the road over the easement. At that point the road could have been moved.

Fyles made the motion to stay in open session during DRB deliberation.

Roy seconded

Agreed by DRB members

Acting Chair indicated the DRB options are: uphold the appeal, or, uphold the permit/decision

Fyles made the motion to negate the decision

Charbonneau and Roy disagree

Roy: the permit was legally issued; feels it is up to the courts to decide

Charbonneau: Wetmore issued permit based on the By-laws as written. Wetmore did his job.

Fyles: we should negate the decision

Roy made the motion to uphold the decision made by Wetmore to issue the permit.

Charbonneau seconded

Discussion - none

Vote: Yes – 3 (Charbonneau, Roy, Sweeney)

No – 1 (Fyles)  
Abstention – 0

Did not carry.

Charbonneau made the motion to continue to a new time and date, to December 4, 2017, allowing time to consult with Attorney Hill.

Roy seconded.

Discussion – none

Vote: Yes – 4 (Charbonneau, Fyles, Roy, Sweeney)

No – 0

Abstention – 0

Motion carries

**Steve Revell:** recessing to different date and time reopen hearing and anticipate both parties to be present same and new and different information?

**Mike Sweeney, Acting Chair:** we will contact the parties after consulting with the Town's Attorney.

**The Public Hearing ended at 8:15 PM**

**Sketch Plan Review – none**

**DRB Regular Business**

**Review minutes:**

November 6, 2017 was deferred to the next DRB meeting on December 4, 2017

**Review and Sign Decisions:**

Colander and Stark Mountain Woodworking – deferred

**Review Decision Compliance and/or Sign Final Plat – none**

Correspondence – none

**New Business – none**

**Old Business – none**

Charbonneau made the motion to adjourn

Fyles seconded

Discussion – none

Vote: Yes – 4 (Charbonneau, Fyles, Roy, Sweeney)

No – 0

Abstention – 0

Motion carries

The meeting was adjourned at 8:17 PM

Respectfully Submitted By

Karen Gallott

Kathy Barrett, Chair

Mike Sweeney, Acting Chair

Carol Charbonneau

Tom Fyles

Charlie Roy