

Westmoreland Zoning Board of Adjustment

Minutes of April 13, 2016 Meeting

These Minutes are unapproved until voted on by the Board.

Present: Chairman Peter Remy, Vice-Chairman Barry Shonbeck, Brian Merry, Ernie Perham.

Chairman Remy opened the meeting at 7:00 PM and asked the Board to review the minutes of the previous hearing which took place on February 17, 2016. When all Board members had finished their review a few typographical errors were mentioned and corrected. Mr. Merry made a motion to accept the minutes as read and that motion was seconded by Mr. Shonbeck. All voted in favor of accepting the minutes.

Chairman Remy then directed the Board's attention to the motion submitted by Attorney Tom Hanna on behalf of Mary Ellen and Andy Russell, abutters to the property in question, requesting a rehearing of the Board's February 17th, 2016 decision to uphold the Select Board's decision to unmerge the four lots of record located at 819 River Road, Map R-10, Lot 17 owned by Walter Derjue who had applied to the Select Board on the grounds that the lots had been merged involuntarily.

The Russells contend that certain actions by the Derjues constituted a voluntary merging of the lots as described by the statute RSA 674:39-aa, and that neither the Select Board nor the Zoning Board had the authority to unmerge lots which had been voluntarily merged. Voluntary mergers are permanent.

Chairman Remy told the Board that much of the motion was a rehashing of the original hearing attended by Attorney Hanna's objections to the how the Board had misinterpreted the statute in making their decision to uphold the Select Board's decision.

Chairman Remy said that the Board should focus on the second affidavit of Scott Hagstrom the septic engineer who had designed and installed a new septic system in 2009 for the ranch house rental on one of the lots. At the February 17th hearing Attorney J.R. Davis, acting for Mr. Derjue had included an affidavit by Mr.

Hagstrom which differed from the one submitted by Attorney Hanna in his motion for the rehearing.

Attorney Hanna's motion quoted Board member Shonbeck as closely questioning Attorney Davis about Mr. Hagstrom's statements and whether they relied on his memory of this job of seven years ago or whether he had visited the site to refresh his memory. The motion also quoted Attorney Davis assuring Mr. Shonbeck that Mr. Hagstrom had revisited the site.

Chairman Remy asked Mr. Shonbeck if Attorney Davis' response to his inquiry whether Mr. Hagstrom had revisited the site to refresh his memory led him to believe that Mr. Hagstrom had revisited the site. Mr. Shonbeck said that it had made a difference in his mind.

Chairman Remy said that reading the second affidavit it would appear that Mr. Hagstrom had not revisited the site before signing the first affidavit. He read Statement #7 of the second affidavit. "At no time in 2015 was I asked by either the Derjues or by their attorney to visit the 819 River Road property, either before or after I signed the 10/7/15 affidavit."

Mr. Shonbeck pointed out that Statement #8 of the second affidavit stated, " I did not visit the Derjue property at 819 river Road at any time from 2009 through Tuesday, March 15, 2016."

Chairman Remy said that Mr. Hagstrom has sworn that he did not do what Attorney Davis represented. He asked the Board if they had seen anything else compelling in Attorney Hanna's motion.

Chairman Remy asked the Board members if they felt that this was enough to require a new hearing.

Mr. Merry said that Statement 14 of the second affidavit said that when Mr. Hagstrom did visit the site on March 15, 2016 and was shown the 'purported location of the internal lot line for the 2.63 acre Ranch House lot in the vicinity of the new system, it was apparent to me that the proposed Upslope Swale shown as part of the 2009 approved design, as well as the related drainage system,

extend approximately 25' to 30' across that internal lot line and onto the adjoining lot and that the outlet of the drainage pipe empties onto the adjoining lot.'

Mr. Merry added that he knows 'from personal experience that nowadays you can't get away with draining your septic system into an adjoining lot. That doesn't fly.'

Mr. Merry agreed with Mr. Shonbeck that it would be beneficial to have Mr. Hagstrom at any further meeting. He also felt that the other points raised by Attorney Hanna were adding up.

Chairman Remy asked Mr. Perham for his views.

Mr. Perham said he was placing a lot of importance on the drawing that Mr. Derjue had made for the Selectmen which clearly showed the property consisted of four lots.

Chairman Remy said that he agreed with Mr. Shonbeck and Mr. Merry that there was enough new evidence to suggest that the Hagstrom affidavits be reconciled before reaching a final decision on whether to uphold the Select Board's decision to unmerge the Derjue lots. He said that the evening's discussion only represented one side and a rehearing would give the Board a chance to evaluate everything. He asked for a motion.

Mr. Merry moved to schedule a rehearing on the application submitted by Attorney Hanna. It was seconded by Mr. Shonbeck. All voted in favor.

Chairman Remy said that it would be scheduled for the regular May meeting as there was not enough time to advertise the hearing and notify the abutters by next week. The Zoning Board clerk said the meeting would be on May 18, 2016 at 7:30 PM

Attorney Davis asked the chairman if the Board would take note of the last paragraph of the letter he was submitting to them that the Derjues requested that the Board schedule a view of the property before the next hearing in the interest of time.

Chairman Remy said that the Board would not be viewing the property before the May 18th hearing. If a viewing were necessary it would be done after the next hearing. He asked for a motion to adjourn.

Mr. Shonbeck moved to adjourn. It was seconded by Mr. Perham and all voted in favor. The meeting ended at 7:50 pm.

Respectfully submitted by, Jackie Cleary, Zoning Board Clerk