



# Town of Eddington

906 Main Road Eddington, Maine 04428

## BOARD OF APPEALS

November 29, 2016

6:00 pm

## MINUTES

**CALL TO ORDER:** Jeff Thurlow called the meeting to order at 6:00 pm.

**ROLL CALL:** Members present were Pat Wilking, Tim Higgins, Gary Poisson, Cindy McDonald, Jeff Thurlow, Roger Huber of Farrell, Rosenblatt and Russell. Cindy McDonald-Melanson is excused from the discussion as she is related to the applicant.

**DECISION:** The Board is meeting tonight to present a decision regarding Anthony Melanson and the rescinding of a Building Permit for the two-acre lot sold out of the 10-acre lot acquired from Bangor Savings Bank at auction on Sprucewood Drive.

Jeff T reminded everyone of the previous Public Hearing at the last meeting where items were submitted for the record. The Board took copies of the exhibits home to review and now meet tonight to discuss any further advisements that Attorney Huber has for them and then make a decision on the case. Roger H had been left with the charge to form an opinion as to whether the parcel of land acquired by Mr. Melanson from Bangor Savings Bank, which Mr. Melanson divided off a two-acre lot, from a legal perspective, created a Subdivision. They also needed to decide if the land purchased was part of the Cedar Grove Subdivision and thus any division of that parcel would require subdivision approval from the Eddington Planning Board. He continued that a subdivision is the division of a tract or parcel of land into three or more parcels within a five year period. None of the exemptions of the Eddington or State Subdivision Ordinances apply here. The 10-acre parcel that Mr. Melanson purchased has always shown as retained land on the Cedar Grove Subdivision Plans. It is Roger H's legal view that despite the fact that it is shown as retained land, it doesn't make that retained land part of the Subdivision. He feels that it was part of the tract or parcel of land to be divided, but was not part of the subdivision. The retained 10-acre parcel of land is now its own tract or parcel of land. Bangor Savings Bank, under direction of the Town of Eddington did not do anything with the parcel for five years, which he thinks was correct. When Anthony M conveyed out a 2-acre parcel to Venice Bard, it did not create a subdivision but created two lots; a 2-acre lot and an 8-acre lot. He feels that with certain exceptions, the next dividing of either lot will create a subdivision. Roger H said that Mr. Gilbert had recognized the 5-year rule but also that it was unique circumstances because the 10-acres is accessed only via the Subdivision roads. Roger H has researched this issue and has found no exception that would support a modification of that general rule. It is Roger Huber's legal opinion that the retained parcel is not part of the Cedar Grove Subdivision and that it is its own tract or parcel of land having existed on its own without any modification for a 5 year period leading up the conveyance to Ms. Bard and the conveyance to Ms. Bard only created two lots and did not require Planning Board approval. Mr. Huber wanted to clarify that when Mr. Gilbert presented all the Subdivision plans he thought it was because he wanted us to know that even the developer knew that he had to come back to the Planning Board, but Mr. Gilbert had said no. In regards to the three plans, he wanted noted that yes the developer came back, yes the developer was further dividing his retained land, but it is notable that all of those divisions took place within 5 years and he was presenting at each visit were 3 or more lots. In regards to the road and whether the development of this lot means that the road needs to be brought up to specs, he wanted to advise the Board that their decision tonight has nothing to do with the road.

Gary Poisson asked if retained is land the term that is usually used to break off a portion for a subdivision? In this case when Frank Pawlencio came before the Board he had intentions to divide the retained land. Roger H said it has no bearing and the Planning Board did it correctly in requiring him to show the retained land on the subdivision plan because it was part of the tract or parcel of land.

In this case Charles N issued a building and plumbing permit and then rescinded it because he had been advised that it needed to go to the Planning Board. The road was never a part of this case.

Motion that the Code Enforcement Officer erred in rescinding the Building and Plumbing Permits and they should be reinstated. **By Tim Higgins/Gary Poisson 2<sup>nd</sup>. Vote 4-0**

The next step is for the Board to present a written decision and send it to the interested parties. To save the Town some expense and the Board from having to come back for a third meeting Mr. Huber has drafted a decision that he would like the Board to review and make any changes to it. They would then vote as a group to accept it. He would make the changes and then they would each come in to sign it. Roger H will change the vote to reflect the motion that was made.

Motion that we accept the findings and decisions as written by Mr. Huber **By Gary Poisson/Tim Higgins 2<sup>nd</sup>. Vote 4-0**

Mr. Huber will make the changes and forward it to the Town. The Board members should stop by as soon as possible to sign it. Russell S will call everyone when it is ready to sign.

**ADJOURNMENT:** Motion to adjourn at 6:40 pm. **By Gary Poisson/Tim Higgins 2<sup>nd</sup>. Vote 4-0**

Respectfully Submitted,

Denise M. Knowles

Cindy McDonald, Chair \_\_\_\_\_

Jeff Thurlow, Vice-Chair \_\_\_\_\_

Tim Higgins \_\_\_\_\_

Gary Poisson \_\_\_\_\_

Pat Wilking \_\_\_\_\_

**IMPORTANT NOTE:** These Minutes are a general reflection of the discussion that transpired at the Board of Appeals Meeting held November 29, 2016. While every effort has been made to ensure the accuracy of these Minutes, these Minutes are not part of the decision or the official record of the appeal filed by Anthony J. Melanson. The transcripts of the hearing and deliberations, the exhibits submitted at the hearing, and the written decision of the Board of Appeals issued on November 29, 2016 constitute the official record. The official record shall control in the event of any inconsistencies between these Minutes and the official record.