

CAMDEN ZONING BOARD OF APPEALS
MINUTES of MEETINGS
January 27, 2011

PRESENT and VOTING: Chair: Frank Toole: Members: Leonard Lookner and Sam Smith; and Alternate Members: Jean Blair and Linda Norton

ABSENT: Members: Tom Laurent and George Wheelwright

ALSO PRESENT: Town Attorney Bill Kelly and CEO Steve Wilson

The Meeting was called to Order at 5:10 pm in the Washington Street Conference Room. There are three regular members and two alternate members voting. Mr. Toole read the procedure for the Public hearing.

DECLARATION OF CONFLICT

Members were asked to declare any possible conflicts of interest they might have regarding the case before them; none did.

STANDING

The Applicant stated that has owned this property for nearly forty years. The Chair found that this gives him standing to make this Application.

**VARIANCE FROM THE HIGH ELEVATION DISTRICT
PERFORMANCE STANDARDS**

Request to exceed the percentage of trees that can be harvested (40%) and the maximum square footage of non-contiguous clearings (7,500 SF) on lots in the High Elevation Overlay District in the Rural 1 (RU-1) District.

Howard and Dorothy Wright: Map 216 Lot 4: Barnes town Road.

Mr. Wilson informed the Board that this Application was not here because of the denial of a permit from the CEO, but because Mr. Wright's request of the Planning Board to amend the performance standards of the High Elevation District had been denied. Variances from Performance Standards are permitted, and that is currently the only option left to Mr. Wright.

Mr. Wright informed the Board that he was expecting his forester to assist him with this application as well as Mr. Tom Doak, Executive Director of the Small Woodlot Owners of Maine who was interested in this issue.

Mr. Wright summarized his history of ownership since the purchase of this lot in 1967. He outlined the steps he had taken over all these years to ensure the lot was professionally managed so he create a model of a productive small woodlot and maintain the long history of production of firewood. From the Maine Forest Service to professional foresters to foresters from the University of Maine, Mr. Wright has over the years worked with a succession of professionals to develop his harvesting plan. He has been working with licensed forester Paul Miller since 2008, trying to develop a plan to recover from the devastation caused by the ice storm several years ago, and that is when he discovered that the High Elevation Standards, implemented since his last harvest, limit what can be done. Mr. Millers' plan calls for removal of a larger percentage of trees than permitted in a contiguous area that also exceeds the square foot limits of the non-

contiguous blocks that are required now. This is not a clear cut - the purpose is to harvest to this extent so the lot can recover from wide-spread damage caused by the ice storm.

Mr. Lookner: Asked how large the lot was. Mr. Wright explained there was a discrepancy between what the Town tax records show (20 acres) to his own records which put the lot at about 33 acres. It is in tree growth and he has complied with the forestry management requirements of that tax reduction program by working with foresters to create a harvest plan for harvest for the past 20 years or so. The last harvest was in 1991 shortly after his parcel was accepted into the Tree Growth program. Mr. Lookner wonders if the High Elevation Standards might have been in place at that time – he thinks they were.

Mr. Belair: Asked if Mr. Wright could have cut the allowable percentage each year to begin the plan to recover, Mr. Wright agreed that he could have done this but no harvester could be found to work under the constraints of the Ordinance – it just didn't pay unless more wood can be taken.

Mr. Smith: Asked about the quality of the timber downed in the ice storm. Mr. Wright indicated that his forester, Paul Miller, would have those kinds of answers. He does know that with the current conditions of the lot it is not good for re-growth. He has found two harvesters that have agreed to do the work under Mr. Miller's supervision if they can take more wood. In response to Mr. Smith's question, Mr. Wright replied that he believes Mr. Miller has a plan for the cutting, but he doesn't know if it is in writing – he is sure, though, that Mr. Miller can do this, and will do this, before any cutting begins.

Mr. Lookner: Concerned that the variance request to cut 80% of the lot doubles the current limit. Usually variances are for incremental variations from the standards not 100% more.

Mr. Toole: Clarified that Mr. Wright was waiting for his forester to arrive – he was.

Mr. Kelly: Asked for information to clarify the record:

Mr. Wright has said several times that he “couldn't get anybody to do it.” In a cut that would be less voluminous than you are asking for. Did that mean he couldn't find anyone to cut the wood at their own expense without Mr. Wright paying them to do the work? Mr. Wright replied that it did – it would be a business-type arrangement.

Mr. Kelly asked if it could be done if Mr. Wright were to hire someone and pay them on a hourly basis to do the work and then he could re-sell the wood afterward. Mr. Wright said that he supposed that if he were that affluent he could, and even if he could re-sell the wood he didn't think this was feasible. There are family matters and other things (he has just become a parent again), that would keep him from being able to enter into this. That is why he has hired quality foresters right along to manage the lot – he is not a manager.

What is the topography? What are the slopes and over what portion of the property? Would he please generally describe this? Mr. Wright replied that there are various contours: There is a bald peak on the north (Hope) line; there is a deep slope running east; then there are areas where the harvest could be achieved; and then there are some rock out-croppings that would negate any kind of harvesting. It is not like one smooth surface.

Would Mr. Wright say that there are slopes that exceed a 25% grade? Mr. Wright replied that he would have to have his forester answer this – he is the expert. Mr. Wright is not trying to dodge the question, he just isn't sure

Can it be hiked? Mr. Wright replied that there are lots of rock outcroppings that make it hard, but he has walked the property. Can it be hunted? Mr. Wright replied he is sure that people do hunt there, and he has seen snowmobile tracks cross the land on the woods roads as well.

Mr. Toole said the Board would proceed while waiting for the forester to arrive to offer testimony and answer questions. Meanwhile they will continue with the hearing:

Proponents: There were none.

Opponents:

Barrie Brusila: 1320 Western Road, Warren, Maine: She is a consulting forester working for Mary Bok, an abutter. The Chair asked Ms. Bok to identify herself and she did adding her address as 300 Barnestown Road in Camden. She certified that Ms. Brusilla was there to speak on her behalf. Ms. Brusilla said that she had worked for the Boks for over ten years and knows the property well. Access to Mr. Wright's land is the most important issue to them. The land used as access for the cut done in 1991 on Mr. Wright's land is no longer available to him. There is a right-of-way over the Bok land from the late 1800's for access to that lot. Mrs. Bok's attorney, Thomas Karod, submitted a memo (dated January 20, 2011) that addresses this ROW. Mr. Karod is of the opinion that the ROW is 12' wide based on surveys and historical information. In her professional opinion, a 12' wide ROW is not wide enough to accommodate today's wood harvesting equipment – it would be unusable. Accessing Mr. Wright's lot using this ROW would involve slopes of greater than 25%. The road that would be needed would have a huge impact on Mrs. Bok's property. Mr. Karod also addressed other ordinance requirements in his memo, and she asked if she should address those issues. Mrs. Bok certified that the memo referenced by Ms. Brusilla is the one that Mr. Karod prepared for her. The Chair noted that all members of the Board had the memo and they would discuss it at the appropriate time.

Ms. Brusilla stated that she is not anti-cutting or anti road building. The lot Mr. Wright purchase had limited access when he purchased it. It can be common in Maine that a woodlot has good wood but not useable access – sometimes you just can't get the wood out.

Mr. Smith: Asked if she knew what the slopes on Mr. Wright's property were – she is not sure. She has walked around the lot once with Paul Miller. The lot itself is not that steep – at least in parts she didn't walk all of it. But it is the access to get the lot that causes a problem in her mind. In this case if the ROW is 12' wide it would be inadequate to accommodate harvesting equipment. A road that would meet standards to access Mr. Wright's property without crossing slopes of greater than 25% would be huge to accommodate many switchbacks. The more of a slope you have the bigger road you have. It involves cut and fill to create safe shoulders – it would be a phenomenal cost. Just to get equipment across the Bok property would require access wider than 12'. They want to do a chipping operation of whole trees as part of the cutting. They would have machines that cut trees at the stump; then they would have a gravel skidder put the whole trees out – the tops of the trees are a lot wider and as they are dragging them down. Mr. Miller suggested a road +-15' for yarding whole trees. In her experience the roads are wider than

that just to accommodate the whole tops. In addition, Mrs. Bok is not inclined to allow the wood yard located on her property – that is not part of the passage. This would mean that the trucks would have to go across her property to reach the Wright’s land to the place where he stored the logs until they were cut and loaded. This alone would be a phenomenal road building expense.

Mr. Lookner: He doesn’t think the ROW is in their purview. How far is it from the Boarnestown Road to the woodlot. MS. Brusilla thinks it is about 1600’’, and she thinks the ROW is of interest to the Town because the access road is part of the performance standards – it can’t cross slopes of over 20%. Mr. Lookner asked how far this would be from the hiking trail just down the road – Ms. Brusilla didn’t know.

Mr. Lookner asked if the Bok property suffered the same damages from the ice storm. She said the lots are fairly similar in elevation – Mr. Wrights is a little higher – but all the lots got hit pretty hard during that ice storm. She has had two different loggers in there harvesting and it is low value wood, and Mrs. Bok didn’t make much money from the cutting. But, she did get some harvesting done and she has invested in the property by doing some thinning. One fellow has been there with a skidder and one with a horse and a small old skidder on another part. They have stayed within the 40% criteria.

Mr. Lookner asked if there was a 12’ ROW could you twitch with animals or a tractor – Ms. Brusilla said yes – this would even accommodate a skidder. Mr. Lookner asked if she was testifying that a 12’ ROW is not adequate to handle the equipment necessary to accomplish an 80% cut on Mr. Wright’s property. MS. Brusilla replied that a road crossing Mary Bok’s property is problematic. Mr. Lookner asked if there would be environmental consequences. Ms. Brusilla replied that she thinks it would be a real challenge to build an adequate road in that area that does not erode and cause water quality problems. They didn’t have a problem because they had a wood yard on Mrs. Bok’s property and moved wood in and out from there with a horse and skidder. Using equipment more than that is problematic. Ms. Brusilla added that without a wood yard it is too long a skid distance to reach Barnestown Road.

Mr. Belair: Asking about the utility of the property – would one be able to take a horse clean it up over time? Ms. Brusilla responded that you could use a horse to do the cutting, but it is actually getting the wood out and being able to market it that is...Mr. Belair interrupted to say that what if economics were not the issue but environmental issues were the primary driver, could someone take a small tractor, a couple horses – whatever was needed – could the lot be cleaned up and brought back to health? Ms. Brusilla responded that you could do that, but getting them out is still the problem. If you were just going to leave the logs there you wouldn’t even need a horse or tractor. Would it be possible to take the trees out one by one without causing environmental damage to Mrs. Bok’s property? Ms. Brusilla said theoretically probably it was. Mr. Belair said that it is an economic argument that is being made and economics are not part of the Board’s venue, and they need to be clear that economics are not germane to the discussion. Mr. Belair asked if the Board is talking environmental issues, good forestry practice, good management, good neighborliness – all of those issues could be dealt with in this manner. Ms. Brusilla said she supposed it was theoretically possible but impractical and improbable.

Mr. Kelly: Why wouldn’t someone harvest wood on the Wright property cut the slash there, leave it there and only haul out logs as opposed to hauling an entire tree down a ROW? Ms. Brusilla suggested that Mr. Wright’s forester could speak to that, but she would guess they are

looking at maximizing the income from potential timber sales. They are looking to get as much money as they can once they

Mr. Kelly: Why would they leave slash there and haul just the logs – why would they haul a whole tree down a 1600' ROW instead of just taking out what they needed. Ms. Brusilla said there are different kinds of timbering operations and Mr. Miller is recommending what is called “whole tree harvesting system” – there are different reasons. One is that some people like the look of having all the slash gone and one is to maximize the income. Why this method was chosen she cannot say. Just because they have a chipping operation doesn't mean they chip the whole tree. They may save the logs and chip only the brush – she doesn't know the particulars why this was chosen.

Mr. Kelly asked where she relies on this information that is in the record. Ms. Brusilla said from previous correspondence with the forester and conversations. She reviewed her own file, but Mr. Kelly noted that this information will be for Mr. Wright to submit.

With 33 acres if Mr. Wright wanted to have a wood yard on his property to prepare logs to take down the ROW with a tractor – why is that difficult? Ms. Brusilla said that the reason was that the value of the wood in this load that would be taken down this way is way less than the cost to take it down.

Mr. Kelly asked about Ms. Brusilla's comment that she did not know the slope of Mr. Wright's property, and she clarified that she could not speak to his property to the slopes there, but she can speak to the slopes on Mary Bok's property and there are slopes of over 25% there on the proposed access way.

Mr. Wright was given the chance to ask a clarifying question, but he asked to make a rebuttal statement instead. When no one else came forward Mr. Wright came forward. He said that they hadn't gone into access because they thought it was putting the cart before the horse – before they resolve access they would like to have permission to cut. The question first is whether he will be allowed to harvest. He met with Mary Bok in February of 2009 and he began to discuss the details of this discussion and others to follow. Mr. Kelly interrupted and asked if these were conversations that were not fruitful, and when Mr. Wright responded yes, Mr. Kelly informed him that this information was not admissible here. Those are settlement discussions that are not under discussion here. He does know that he has an insured ROW, and has offered several different access routes – and one that is not over 25%. He walked it 1 ½ years ago and saw fresh tractor tire marks and horse droppings. He hired a horse harvester but it just didn't work out. He did see logs cut, but he has no idea if this logger did that or not. He offered the Boks the opportunity to select a logger, but heard nothing.

He addressed Ms. Brusilla's comments saying only that his professional forester has some differing opinions.

Mr. Kelly: Asked if Mr. Wright disagreed that his entire lot is above the 500' elevation. Mr. Wright replied, no he did not. He then asked the Code Enforcement Officer to indicate what slopes if any are indicated on the Town Maps that relate to Mr. Wright's property. Mr. Wilson had the April 1, 2001 Steep Slopes Map and he indicated the location of Mr. Wright's property. The map showed slopes ranges in differing colors and Mr. Wilson showed where the areas of

slopes greater than 25% that are above 500' ran on both Mr. Wright's property and Mary Bok's property. A road could be wound up the hillside without crossing slopes of greater than 25%, but going up in a straight line would be very difficult.

Mr. Kelly asked Mr. Wright if it was fair to say that his 80% harvesting plan includes some or all of the areas that were shown on the steep slopes map as being on his property. Mr. Wright answered that they would not do anything on slopes of greater than 25%.

The Chair noted that ordinarily the next order of business would be, by Motion, to close the Public Hearing. If that is done the Board would not be able to hear the testimony of the forester. Mr. Wright replied that he can only think that it was an emergency that kept Mr. Miller from appearing. He spoke to him two hours ago. Both have been in contact with Mr. Wilson regarding the memos submitted. He noted that Mr. Miller is usually on time. Mr. Toole said that they can close the hearing and move to deliberation.

MOTION by Mr. Lookner seconded by Mr. Smith to close the Public Hearing and move to deliberation.

Discussion: Mr. Toole noted that the Board has the option to continue the hearing to another date to give the witness another opportunity to appear. Mr. Wright said that would be appreciated. They all received a packet tonight and they will be meeting again on February 10th. Mr. Wilson noted that one of the two applications on the agenda for that evening ("Rita, LLC") asked to be deferred until they return from travel. Mr. Toole suggested that they hear the other agenda item (Dietz-Ahearn), Continue "Rita" to avoid the cost of re-advertising, and put Mr. Wright on for a continuation of his application re-opening testimony solely for the purpose of hearing the forester's testimony.

Mr. Lookner asked if it was fair to say that there is anything that Mr. Wright's forester can tell the Board that would establish testimony that could alter the decision. Mr. Kelly said hopefully – he doesn't think the Board wants to go down that road. The test before the Board is if there is some excusable reason why Mr. Wright should be given a continuance: Is there something he could have done to prevent this? Is there something he could have done to control the situation? Mr. Lookner asked if it was fair to put the opposition to trouble and expense – they brought in a paid witness. Mr. Toole replied that was part of the decision. He added that he tended to agree with Mr. Wright that something unforeseen happened to prevent his forester from appearing. Even the witness for the opponent referred to Mr. Wright's forester as having answers, and Mr. Toole personally would like to hear from Mr. Miller – it will make a more complete record.

VOTE: 1 – 4 – 0 with Mr. Lookner voting to approve

The Motion fails.

MOTION by Mr. Toole seconded by Mr. Belair to grant a continuance of the proceeding until February 10, 2011, when they will resume for the sole purpose of hearing testimony from Mr. Wright's forester after the Board concludes their regular order of business for that night.

Mr. Toole asked that Mr. Wright inform the CEO if the forester would not be available. In that case the Board will reconvene, go to deliberation and render a decision.

Mr. Kelly clarified that this includes the right of the opposition to offer rebuttal.

VOTE: 4-1-0 with Mr. Lookner voting no.

MINUTES:

March 15, 2010:

MOTION by Mr. Toole seconded by Ms. Norton to accept the Minutes of March 15, 2010.

VOTE: 3-0-1 with Mr. Smith abstaining due to his absence and Mr. Belair not voting because he was not yet a member of the Board.

April 29, 2010:

MOTION by Mr. Lookner seconded by Ms. Norton to approve the Minutes of April 29, 2010.

The CEO noted an error in the Minutes at page ????

VOTE: 3-0-1 with Mr. Smith abstaining due to his absence. Mr. Belair was not voting because he was not yet a member of the Board.

There being no further business before the Board they adjourned at 6:30 pm.

Respectfully Submitted,

Jeanne Hollingsworth, Recording Secretary