

## Appeals Board Meeting Minutes March 30, 2023

Members present: Vice Chairman Peter Leavitt, Patrick Hanna, Gemma Baldinelli, Maryjo Hanna, Jon Bartlett.

Meeting minutes: Kelly Willey

Attendees: Attorney Neal Weinstein, Mike Carson, Keith Emery, Joshua Tuller, Chris Baldinelli, Maryjo Hanna, Chad Poitras, Mathieu Poitras, Joseph Powers, Maria Tickle, Dave Field, Francis Pulsoni, Attorney Aga Dixon, CEO Patti McKenna, Administrative Assistant Kelly Willey.

Public hearing: Gemma Baldinelli made the motion to open the public hearing, Jon Bartlett seconded the motion, all were in favor.

Joshua Tuller, resident of Tickle Way, spoke. Prior to his home being built he was required to obtain a one-home subdivision approval. This approval was granted with no conditions. The building permit was issued by the town's prior code enforcement officer and the home was built. They then received a notice of violation regarding the road; the road wasn't wide enough and doesn't meet the town ordinance. He is being asked to widen the road 5'-9' as well as rolltop it.

Boardmember Gemma Baldinelli asked Mr. Tuller if he signed any type of road maintenance agreement when he purchased the property. He did sign a road maintenance agreement which is registered with York County.

Vice Chairman Peter Leavitt asked what the condition of the road is today. Mr. Tuller advised while the road could use some maintenance it's definitely passable and he uses the road daily. No one has wanted to put money into the road in fear of wasting time and money dependent on what the outcome of the case is.

Boardmember Patrick Hanna reviewed the planning board findings, specifically condition 2 that states the applicant has to comply with provisions of #13.5.F, then refers to section 12. He states it seems the town skipped a few steps with regard to issuing permits in this matter. Mr. Tuller argued that if he had to comply to those articles then building and occupancy permits should not have been issued in the first place.

Vice Chairman Peter Leavitt asked if it was the prior code enforcement officer who issued the building permit and the occupancy permit. Joshua Tuller said the building permit was issued by the prior code enforcement officer and the occupancy permit was issued by the current code enforcement officer.

CEO Patti McKenna spoke. She wanted to advise there are seven homes on this road – a triplex, a duplex, and two single-family homes. Article 10 states that if there are three or more homes it has to comply with article 12, which is the road standards for a public road. Photos of the road were shown; the road is 15' for most of the way and there are no defined ditches. The road is unlevel with many potholes. There is also a culvert at the 's' turn that is part of the 15' measurement and is not functioning very well. The hammerhead at the end is approximately 27' deep but is supposed to be 60'.

Vice Chairman Leavitt confirmed that this is a private road and he feels the time to take care of the road would be when the developer was building the road. Since that didn't happen, now it's falling to the people that live on that road, and that's not the intent of the ordinance. He asked CEO McKenna if she agrees with that statement. She responded that she can't speak to the intent of the ordinance, only as to what it says and how she interprets it. Chairman Leavitt then asked if she would agree that the prior code enforcement officer should not have issued permits. CEO McKenna said as she reads the ordinance she would have required the road to be done before issuing a permit.

Attorney Aga Dixon spoke. She is representing the code enforcement office, however she does not represent the board of appeals. She handed out a packet to the appeals board and the public outlining the history of the land division, the parcels at issue, and when they were divided and created. She reminded the board that the question being brought forth is whether the notice of violation based on the current condition of the road is valid according to the language in the ordinance. There is no question that Tickle Way is in poor shape and does not meet the road standards. The language in the ordinance is that it must meet road standards if it has three or more dwellings. As such, the code enforcement officer did not make any error in issuing the notice of violation. For that reason, she is asking the board to affirm the decision. In her opinion, the issue at stake is not whether the road should be brought up to standard but rather who should pay for it.

Attorney Neal Weinstein spoke. He is representing homeowner Mike Carson. His client owns approximately 50' of the road in question. He believes it was the town's responsibility to let the Tuller's know this was an illegal subdivision and that the road was inadequate if the town felt it was inadequate. Today's square foot cost of a paved road is approximately \$5.00, which

means if you have a 2,000 square foot road it's going to be a \$250,000 project. What the town should have done, and the former code enforcement officer did not do, is require the road to be built before there was a subdivision, then have a developer post a bond to prevent any issues. Vice Chairman Leavitt asked if that is an accurate figure. Attorney Weinstein responded by saying roughly, because it's about \$5.00 per square foot and 20' x 2,000 wide.

Boardmember Gemma Baldinelli asked Attorney Weinstein if his client signed a road maintenance agreement. Mike Carson did sign a road maintenance agreement but it was only for his portion of the road.

Joshua Tuller spoke as he wanted on record the following timeline:

October 2021 building permit received

June 2022 email from previous code enforcement officer indicating 15' road required

August 2022 certificate of occupancy received

Maria Tickle spoke. She was told by the original builder and the previous code enforcement officer that the road requirement was 15' and she had her house built based around this information. She believes responsibility lies with the town and not the residents.

Keith Emery spoke. He reviewed what the ordinance states regarding measurements are subdivisions. The only resident who came before the planning board was Mr. Tuller for to obtain approval for a single-lot subdivision. In Mr. Emery's opinion it is the previous code enforcement officer who is liable.

Boardmember Maryjo Hanna spoke. She wanted to clarify that the code enforcement office and the planning board normally work together. Mr. Emery said the code enforcement office contacts the planning board when something needs approval from them. She asked if there was any documentation that this did nor did not happen in the instance of this case. Mr. Emery advised that it wasn't brought to the planning board's attention until Joshua Tuller, who was at least the fourth resident, when he had to get the single-lot subdivision approval. She then asked Joshua Tuller if he knew prior to purchasing the property that the road needed the work done to it, would he still have purchased the property. Joshua Tuller replied, "I wouldn't be living in Buxton. I assure you that my name would have never been put on paper to a lot, let alone ever touched it to build".

Joshua Tuller addressed Attorney Dixon. He showed the June 1, 2022 email from the previous code enforcement officer that reiterates the 15' road requirement. He also wanted to note that it was not a month but two and one half months between obtaining his occupancy permit and receiving the letter from her office.

Joe Powers spoke. He wanted to state for the record that the beginning of Bradbury Lane is on a right of way owned by him and Mike Carson has access to that right of way. According to his survey, Tickle Lane is not on his right of way.

Boardmember Patrick Hanna made a motion to close the public hearing, Maryjo Hanna seconded the motion. Vice Chairman Leavitt reminded the board that this is an administrative appeal and they are going to either agree that the code enforcement officer can do what she did, or agree with the person appealing it and that she didn't have the right. Patrick Hanna feels that due to the previous code enforcement officer's error, the current code enforcement officer should not have sent the notice of violation. Maryjo Hanna agrees with this. Joshua Tuller already stated that he would not have purchased the property if given the correct information by the previous code enforcement officer.

Patrick Hanna made a motion to open the public hearing, Maryjo Hanna seconded the motion. Chairman Peter Leavitt asked if anyone wanted to speak before the vote. Attorney Neal Weinstein spoke and advised the residents in this matter did everything they should have in this matter to comply. He is requesting the board uphold the appeal. Attorney Aga Dixon spoke and explained the process whether the decision is upheld or not. She reminded the board that this appeal is from Joshua and Ashley Tuller and that none of the other notices of violation that were sent have been appealed, and none of the rights of any other landowners will be affected by the decision. Regardless of the board's decision, either party (the town or the Tullers) could appeal. It would be a decision of the selectboard whether or not to file an appeal. The notices of violation were originally sent because the landowners couldn't agree on who was going to pay to have the road repaired. The town doesn't have the authority to repair the road, nor do they have authority to waive the 24' standard. She expects that whatever decision the board makes will be appealed and a judge will have to decide the proper allocation of cost and responsibility will be.

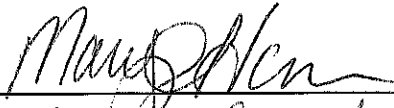
Maria Tickle spoke and reiterated that if she had known this was going to be a subdivision she would not have built on the parcel as the previous code enforcement officer assured her that this would not be a subdivision.

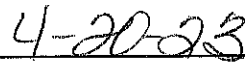
Patrick Hanna made a motion to close the public hearing, Jon Bartlett seconded the motion. Vice Chairman Peter Leavitt asked that all boardmembers wishing to uphold Joshua and Ashley Tuller's administrative appeal to raise their right hand. Vice Chairman Peter Leavitt then asked that all boardmembers that were opposed to raise their right hand. **The vote to uphold Joshua and Ashley Tuller's administrative appeal passed 3-2.**

Approval of minutes: none

Approval of bills: none

Meeting was adjourned at 8:25pm.

  
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Vice-Chairman Secretary

  
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Date