

East Kingston Board of Adjustment
Minutes
October 26, 1995

FILE

Attending: Chairman John Daly, David Boudreau, Norman Freeman-Alternate, and Ed Cardone-Alternate.

Abutters: See attached attendance sheet. It is noted that additional residents in addition to abutters notified by certified letter were also in attendance.

Others Attending: Mr. James Bolduc (Applicant), Mr. James Long (Certified Soil Scientist), Craig N. Salomon (Attorney), Glenn Clark (E.K. Building Inspector), and Dennis Quintal (Conservation Commission representative).

This meeting convened at 7:43 PM.

The chairman, Mr. Daly opened the public hearing for applicant Stonemark Management (for Heirs of E. Currier, C/O Jean Bacas), regarding 34 Rowell Road (MBL #2-1-34, Lot 10), and 8 Rowell Cove Road (MBL #2-1-37, Lot 12). This application is for an Appeal from Administrative Decision from the Deputy Building Inspector (Glenn Clark) regarding Article IV (General provisions), D.6 (Septic system leach field boundaries). This application is also for variances from Article IV (General Provisions), D.6 (Septic system leach field boundaries), Article IV (General provisions), D.7.B.2 (Poorly drained soils), and Article IV (General provisions), D.7.A.2 (No poorly drained soils). (1995-06)

Mr. Daly noted the first order of business would be to address the Appeal from an Administrative decision from the Deputy Building Inspector, and referenced a letter from Glenn Clark (Deputy at that time). This letter was addressed to NH Soil Consultants, and Mr. Daly read the contents of the letter, (attachment to the minutes).

Attorney Salomon commented, first addressing the 20 foot setback on the plan submitted at this public hearing. Secondly, he noted lot 11 is not part of this proposal. He referred to the map, and indicated this proposal is pertaining to lots 10 and 12.

Mr. James Long, a certified Soil Scientist (among additional credentials), stated that his firm (NH Soil Consultants) was hired to delineate the edge of wetlands on site, and hydric B soils in order to determine where to put the septic system. He gave a definition of hydric B soils, that it contains water, and that doesn't mean water is at the surface. He added there is water that flows through the culvert, but it is greater than 100 feet from the existing leach field.

Mr. Salomon, clarified that what Mr. Long was saying, is that when Mr. Long looked at the lots, the location of the water is more than 100 feet from that leach field location. He added that section 6 talks about being 100 feet from standing or running water, and section 7. B.2, talks about distance from poorly drained soils, and supports the fact that the Building Inspector's interpretation is wrong. Mr. Salomon stated East Kingston's ordinance distinguishes between water, and poorly drained soils, therefore there should be no problem being 100 feet from water.

Mr. Glenn Clark was present to say the period that he reviewed the plans, he was working together with Mr. Joe Conti, the prior Building Inspector. Mr. Clark said he is familiar with the property on Rowell Road, and has experienced driving through the running water which runs through the corner lot. He rejected the plan due to the setbacks noted on the plan. When the water flows through that area, water does run constantly on the other lot. Mr. Clark recalled discussing with Mr. Conti, that Mr. Conti had issued a letter that it was his (Conti) feeling that all three lots (10, 11, and 12) should be combined into one buildable lot.

When asked by the chairman, if Mr. Clark stood by his interpretation of the ordinance, the Building Inspector's reply was yes.

Mr. Bolduc asked Mr. Clark to demonstrate on the plans where the culvert was located. Mr. Dennis Quintal stepped in to say it was located 60 feet from the property line. Mr. Quintal provided a septic design for the lot 11, which was recently surveyed, clarifying the 60 feet distance.

Mr. Salomon summarized the point being that they could show 50 feet from the proposed leach field to the wet area, some more land to the property line, and then another 60 feet to the culvert.

Mr. Lester Knowles, (abutter) stated that his well is located in his front yard, 12-15 feet from the lot line, and pointed out that between his well, and the running water, there is not much room in the middle. Mr. Bolduc showed the map to Mr. Knowles, indicating a 100 foot radius. Mr. Knowles stated that he understood hydric to mean wet, and was concerned once the digging started, what would be the impact to his well, and to his cellar.

Mr. Long stated there would be no impact on the wetland area.

Mr. Charles Boudreau asked when running water was addressed, and defined running water as still in a channel, and also defined standing water, stated it is not going to show a channel when it is full of water.

Mr. Long answered that the argument was about surface water, and wanted to know if a puddle was considered standing water or surface water. He stated his definition of hydric B, not hydric A soils which means fully drained, water is at, or near the surface for up to thirty days during the growing season, and added that it is 50 feet away from the proposed leach field, and admitted that yes, the soils are delineated as being wet (designated on the map in green).

Mr. Clark stated when water flows through the culvert, it does spread out. He said there is sort of a swampy pond on the other side of the road, and most of the year is always wet.

Mr. Norm Freeman recalled that area as being pretty wet, and suggested a willingness to see the location, and kick around the leaves. Mr. Cardone agreed, and offered to accompany any Board members to the area, with the Building Inspector to view the property.

Mr. Long was asked for the date he viewed the location, and Mr. Long answered on October 12, 1994, (once), and that his partner did the test pit data (was at the location more than once).

Mr. Bolduc offered to also join the Board for a site walk, together with Mr. Long, and felt it was a reasonable request by the Board.

The chairman opened the floor to the abutters, asking that they state their name(s) for the record.

Mrs. Betty Beane, of 35 Rowell Road, stated she is located across from Mr. Knowles, and has lived at this address for about 23 years. She noted that this is the second time in almost 23 years that the surface looks dry at that location. There is normally a complete pond about 8-10 feet to the culvert area. It is a full stream almost year round, except for this year which was a dry year.

Mrs. Vicki Mello of 1 Rowell Cove Road, a resident for 14 years, stated this has been the driest year since she has lived there. It is generally very wet in that location, and in the springtime the road is in fact a river, and the corner near the culvert gets washed out.

Mr. Chip Dodge of 7 Rowell Cove Road, stated that water comes down the dirt road to his property, or the property on the right side. A tremendous amount of water comes into the swamp, in the springtime when the runoff fills up the back area. With the road in the condition it is in, no drainage or culverts, the lot across from his property takes on a big portion of water.

Mr. Bolduc pointed out to Mr. Dodge, that it was not their intent to build on the lot across from him (Dodge), but the site they wish to build on, is the lot located on the paved road.

Mr. Norm Adams of 9 Rowell Cove Rd., spoke up to say he resides next to the Dodge's, and Rowell Cove Road, and Rowell Road is a great place to walk except during mosquito season. Mr. Adams stated that they have happily resided here for almost 16 years, but it is a swampy area, and it is a bad place to build a house, because it is too wet. He referred to either the lot next to the culvert, or the lot across from him, and added that they are very wet areas.

Mrs. Doreen Hayden, lives at the very end, (soon to be Indian Road). She called the Wetlands Commission on wetlands, and also the Selectmen's office. She learned this area is considered wetlands, and reported this road is lop sided, with gullies and ditches.

Mr. Long emphasized there is no impact in the wetland area with the proposal construction of the home with the leach field. The wetlands has been delineated, and is shown in the plan. Mr. Long stated the question in his mind is the set back from the wet area, either 50 feet or 100 feet. He added it is shown on the plan where the proposed leach field is going to be, is 50 feet away from the wetlands.

Lois Flynn of 23 Rowell Cove Road, stated that she maintains the road, as it is considered a private road, and not a maintained town accepted public road yet. Mrs. Flynn noted that the wildlife here is also an important factor. She referred to the recently built home, noting that this has already disrupted the culvert. She has lived in this area for over 20 years, and stated the water is a natural stream, and saturates the entire area of the proposed construction site. She added that the entrance to the cellar of the recently built home faces where the water runs, and predicts they will not have a dry basement. Mrs. Flynn stated that the neighbors have to put

little pumps to get rid of the water that runs off, and have no where to put it (the water). The abutters of this property will be flooded out.

Mr. Robert Mello of Rowell Cove Road, stated that in the 14 years that he has resided there, that road has been wet more than it has been dry. Mr. Mello disagrees that the wetlands have been delineated, and states that it is a swamp. Mr. Mello also predicted that some year we will have more water than normal, and someone's septic will be floating all over the on the neighbors property.

Mr. Bolduc stated that he has been building for 20 years, and agrees with the abutters, that they will not build on wet land, and stated again the proposed building will be on the lot located on the paved road.

Mrs. Flynn said that if they build, they will disturb the water flow, and they will just move it to go somewhere else, by putting fill in. She stated this water is still going to flow, and will only be re-directed to someone else's property.

Mr. Salomon directed the focus on the State, and the Town having characterized the area as wetlands, and noted that the Town ordinance does not define wetlands. He stated that the plans were consistent with the Town ordinance. His client does not propose to construct either a home, driveway, or a septic system in wetlands as defined in the Town ordinance. He added the only issue is in regard to the buffers as defined in the East Kingston ordinance. Mr. Long has scientifically mapped in the field of the wet land the way East Kingston defines it.

Mr. Daly clarified for an abutter that it wasn't simply that the ordinance did not provide a description of wetlands, the ordinance (Article IV, D.6) does not say wetlands, the ordinance says 100 feet from any standing or running water. Mr. Daly added that the applicant has defined wetlands according to state regulations on the plans, and they are not showing any standing or running water. Mr. Daly explained to the audience that this Zoning Board that is hearing this issue, only has jurisdiction to decide whether or not the Building Inspector was correct in submitting his decision. He said the applicant applied for a building permit, and the Building Inspector has denied it.

Mr. Long explained to the chairman that their work, whether done in October, or in the spring was based on the mythology of the soils as well as the vegetation that is growing there, and in his opinion, his mind would not change if the work had been done in the springtime after a hurricane, or done during a drought.

Mr. Bolduc again repeated that he agreed about the wetlands, that is why they are combining the two lots, and will stay out of the wet area.

Dennis Quintal, a member of the Town Conservation Commission, a licensed septic system designer, and a civil engineer of the state, wanted to clarify some things. At this point, he addressed the 100 foot separation, his experience with septic designs in this area, the term standing water means "year round" standing water.

He referred to the soil map drawn, that it was done according to the standards of today's specifications, and he believed they were done correctly by Mr. Long.

With respect to the abutters concerns, Mr. Quintal believes water does "pond" in the area, and based on engineering that is a drainage problem, and it is evident that a serious problem exists in the area. In this case, if Mr. Quintal were to define standing water, it would be standing water "year round". Mr. Quintal believes in this case, it is not standing water "year round".

Mr. Quintal felt there are a few issues at hand. First, the definition of standing water, and whether the system proposed is 100 feet from standing water. Mr. Quintal did believe the proposed system is more than 100 feet from standing water, if you term standing water as "year round" standing water. It is obvious that the water does dry up at some point. Mr. Quintal felt that the drainage issue does come into play, which is why some people may have an argument.

Mr. Dodge stated that the abutters were here as an association to protect themselves, and keep their property out of jeopardy. He wanted to know if the builder will put up a bond for 5 years, to set aside some money in case someone's well does get tainted? Mr. Dodge recommended waiting at least six months, until the spring to build, to see the area when it is wet.

Mr. Bolduc explained that Mr. Bacas has passed away, and that they are working with the estate through his (Bacas) daughter. They realize they no longer have three lots, they have two lots, and there is a problem here with the Bacas' as well, and noted Jean was here a long time.

Mr. Bolduc addressed the question of impact on someone else's well, and said the answer is no, that the plans are drawn according to town and state regulations, so they don't cause contamination to surrounding wells, and noted the proposed site is not down in the poorly drained area.

Mr. Knowles inquired as to how much fill will be placed at the location.

Mr. Long reported that there is a water table of 34" witnessed by Joe Conti, and test pit and design septic system done by Mr. Long's partner, Larry Morse. Mr. Long stated that about 38" of fill will be needed on top of the leach field.

Mr. Knowles wanted to know once you start fooling around with the soil, what is going to happen to the water underground.

Mr. Long and Mr. Bolduc said it is not going to change.

Mr. Glenn Clark referred to Article VIII, Section B, first paragraph, which was a definition and designation of wetlands, that it states what is happening in this area, pertaining to ponds, perennial streams, and soils that are classified as poorly or very poorly drained. He stated that this area is a wetland.

Mr. Salomon said that is precisely the point he was going to make. The reason for this meeting is pertaining to Section 6 relating to setback requirements. The setbacks for the wetlands is defined in Article VIII. Mr. Salomon stated they are not talking about doing anything in the wetlands defined in the ordinance. The ordinance says in soils that are classified as poorly and very poorly drained. Mr. Salomon said the green area designated on the map is at least 50, (and in most cases more) feet away from the septic, and further than that from the house, and even further than that, from the driveway.

Mrs. Beane stated with all due respect for all the tests and the drawings, the area is now dry, was concerned about impact during a very wet season.

Mr. Long stated there is a 50 foot buffer between the septic system and the considered wet area. Mr. Dodge thought that perhaps the green strip located on the map should be larger.

The chairman welcomed the abutters to view the map, and permitted a ten minute recess.

The meeting reconvened, and Mr. Salomon stated that during the recess he consulted with his client, and it appeared that everyone's best interest would be served by taking the site walk. His client consented to postponing this hearing until after the site walk.

Motion: Mr. Norm Freeman motioned that the site walk take place before these articles are further addressed. Mr. Cardone second. The motion passed unanimously.

Mr. Daly observed there is a lot of interest in this issue. The issue on the first application to appeal the decision of the building inspector is that you have to be 100 feet from standing or running water. A lot of what had been said at this meeting addresses the variance requests which are later on the agenda, which will be dealt with after the first issue (regarding the appeal).

A time will be set, for the applicant, their counsel, and any interested Board members, so that they may walk the site, and see this for themselves. Mr. Daly added that any interested members of the public are also welcome to be there, that the site walk will not be a hearing, or a time to answer questions, or to discuss any part of this. This hearing (October 26th) will be re-adjourned, at a time and place to be posted. Anyone is welcome to submit any information, but reminded that the issue is how to define standing or running water, clearly different than how to define wetlands, which is not relevant to the first issue, but relevant later on the agenda (pertaining to variances).

Mr. Salomon spoke to the chairman, stating that Mr. Bolduc has authorized him (Salomon) to tell the Board, that he (Bolduc) will pay the cost of notifying the abutters of formal notice of both the site walk, and the adjourned hearing.

This meeting was adjourned at 8:51 PM.

Respectfully submitted,

Sandra Johnson
Administrative Assistant