

Zoning Board of Adjustment meeting minutes for October 11, 2011

Present: Chair John Smith, Lewis Major, Bernie Rideout, Todd Page, Alternate Mike McGrath and CDC Kathryn Lynch. Dorianne Almann was excused. Applicant was present; five members of the public were present.

7:00 pm Chair John Smith called the meeting to order and read the public notice for an Application for Appeal of tax map 20 lot 62, 112 Fox Run Rd, in the Rural Agricultural District, case # 1011. Board asked Barry Clement to approach the Board to explain his appeal. Mr. Clement explained that he was here because he was accused of doing something that he isn't. He has been accused of having a wood business on his property. He will prove at a future date that he is not conducting a business at his property. Mr. Clement asked the Board, if I am conducting a business where are the trucks to take the wood out, where is the wood going? Mr. Clement explained to the Board that he has four other lots of land in NH and MA, why would he bring the wood to the lot in Hinsdale to cut when he has other places to do it. Mr. Clement explained that he cuts wood for his own use and follows the noise ordinance. He does not start cutting wood until 8:30 am and stops at 5 pm. Mr. Clement explained that he is going to have his wood cutting machine's decibel level checked at a future date. Mr. Clement then explained that he is not going to stop cutting wood on his property for his own personal use, that is his right and no ordinance tells him otherwise. Mr. Clement wants the proof that he is operating a wood splitting business backed up with proof. Mr. Clement said that he will continue to split wood unless the law changes. Mr. Clement then stated that he is going to wait for the decision from the Board, and then he did explain that all wood splitting has stopped at his property since receiving the cease and desist order from the Building Inspector dated 9-15-2011. Mr. Clement then stated again that he is only cutting wood for his own use.

Chair John Smith asked for comments from the public opposing the cease and desist order.

Joe Schlembach, 10 Pond Rd, explained that he knows Mr. Clement since he moved here, stated that Mr. Clement only uses wood for his own use, which is to heat his home and garage.

Doug Martin, abutter, 106 Fox Run Rd, explained that he is home two days a week, has never seen a vehicle loading or unloading wood, and has never been disturbed with noise, kids go to bed without complain of noise.

Chair John Smith asked for comments from the public in agreement with the cease and desist order.

Lisa Cameron, abutter, 113 Fox Run Rd, read a letter that is attached to the minutes. Ms. Cameron explained her surprise to learn that Mr. Clement was appealing the cease and desist order when it was explained to her by Rod Lawrence upon their first meeting that Mr. Clement admitted that he had a business at an alternate site and that the activity on his property was "overflow" from that alternate site. Ms. Cameron explained that she purchased her home because it was a quiet neighborhood, and enjoys relaxing around her house during her free time. Ms. Cameron explained that she made several trips to the neighborhood prior to the purchase of her home and saw nothing that gave her pause regarding the purchase, she did not feel she needed to worry about businesses, large trucks, commercial equipment, or constant noise in the area. Ms. Cameron explained the noise is impossible to get away from and each year it seems to grow. Ms. Cameron explained that each year the petitioner expands his operation, larger

equipment is brought in and the noise is constant. Ms. Cameron explained that she is not talking about someone splitting wood a few days in a row or over the course of a couple weekends. The splitting has been almost daily, including weekends and holidays for six months. It starts at 8 am and goes into the early evening hours. Wood is brought in by the dump truck load in the evening and emptied into the driveway. Ms. Cameron explained that one evening the dump truck arrived at 8 pm and was so loud that it jolted her from her seat in her living room. Ms. Cameron explained that until the cease and desist order the wood in Mr. Clement's yard covered his front lawn and driveway. Mr. Clement has to use the road to park his vehicles because there is no room to park in the driveway. Ms. Cameron explained that this is not a one man operation, other workers come and assist. A bucket loader is used to drop the split wood into a trailer to be hauled out of the development. The activity is loud and emits a strong exhaust-type smell. Ms. Cameron explained that the noise is audible inside her home with windows and doors shut. During the summer months she ran the a/c to attempt to drown out the noise, it was minimally successful and too expensive to continue. Ms. Cameron explained that she was on vacation for a week in August of 2011, and the petitioner split and loaded wood every single day. Ms. Cameron has spent days in bed enduring the noise of the splitter, she suffers from migraine headaches. Ms. Cameron has stopped inviting company, enjoying outdoor barbeques and avoids outdoor activities around her home because of the noise of the wood splitting. Ms. Cameron stated that when the splitting stops the loading process begins, it is unrelenting. Ms. Cameron explained that she cannot put into words how stressful the constant noise has proven to be, she has endured tremendous anxiety and lack of sleep due to this activity. Ms. Cameron then asked these questions of the Board: Why would someone load the split wood into a trailer and truck it out of the development if it's solely for personal use? Why would someone disclose to Inspector Lawrence that there was a business and now claims that there is not a business? Why was there a "Wood for Sale" sign posted in the petitioner's driveway last year? Where is the line drawn? Who is charged with monitoring this activity to determine when it crosses the line from personal to profit? Ms. Cameron then explained that she feels that the volume of wood and duration of splitting proves that this far exceeds personal use. Ms. Cameron explained that she contacted three tree companies, independent loggers and again, others whom heated with wood their entire lives and learned the following: The average household uses six cords of wood per year. On average a person could split one cord of wood in approximately 7 1/2 hours, average one days work. Ms. Cameron explained that if the petitioner is splitting wood six days a week for six months that would average out to be 138 cords of wood which will last 23 years. Loading and splitting continued until 9-22-2011. Ms. Cameron stated that the petitioner's operation is constant noise, and the smell and its physical appearance has decreased her overall property value. Ms. Cameron stated that she requests that the cease and desist order be upheld as this home occupation violates the Hinsdale Zoning Ordinance.

Kathleen Tkaczyk, abutter, 113 Fox Run Rd, read a letter that is attached to the minutes. Ms. Tkaczyk's letter explained that she can substantiate Ms. Cameron's report. The wood splitting noise is excessive. Ms. Tkaczyk had surgery and was home for eight weeks and throughout her entire recuperation was subjected to the daily constant noise of the wood splitting business. It is a long standing annoyance. Ms. Tkaczyk stated that she has heated her home almost her entire life with wood and can attest that the amount of wood in and out is absolutely not for personal use. Ms. Tkaczyk believes the heart of the matter is the need for a quiet and peaceful neighborhood and to have a respectful relationship with your neighbors, she presumes that need is important to others and something we all want.

Chair John Smith closed the public portion of the meeting. The Board looked at pictures from Ms. Cameron and discussed the case. Pictures are attached to the minutes in the Community Development Office. Bernie Rideout made a motion to defer for legal opinion on the issues brought before the Board tonight, hearing scheduled for November 8, 2011, seconded by Lewis Major. Unanimous and individual “aye” votes to defer, motion passed unanimously.

Todd Page made a motion to approve the minutes dated September 13, 2011 as written, seconded by Bernie Rideout. Unanimous and individual “aye” votes to approve, motion passed unanimously.

Todd Page made a motion to adjourn, seconded by Bernie Rideout, motion to adjourn unanimous.

Respectfully submitted by,

CDC Kathryn Lynch

Draft of minutes until approved and signed