

Danville Zoning Board of Adjustment

Nov. 12, 2013

Members present: Chris Stafford-chairman, Tara Burkhart-vice chairman, Roger Denison, Joe Luna, Curt Springer, Annemarie Inman-alternate, Janet Denison-clerk

Others present: Paul Belkas, Elaine Belkas, Priscilla Lane, Gilbert Lane, Nina Amore, Mark L. Dufouere, James F. Daley, Gregory Mitchell, Kerry Sullivan, Chris Teale, Betsy Sanders

The meeting began at 7:30pm and was televised.

Minutes: The minutes of October 15, 2013 were reviewed. Curt made and Tara seconded a **motion to accept the October 15 minutes as written**. The motion **passed** unanimously.

A short recess was held until the applicants arrived at 7:40pm.

Case #2013-5: an appeal from an administrative decision for property known as Tax Map and Lot 2-54-5, 13 Coburn Hill Road, owned by Ociel Group, LLC.

Chris explained how the meeting will progress: the application will be reviewed, the public will have an opportunity to comment and ask questions, and after further discussion the Board will close the public hearing and deliberate on the case. It was also explained the Board had previously contacted the town attorney, Peter Loughlin, regarding this application. Research had been compiled and provided to Mr. Loughlin who then submitted his opinion about the matter. The research of town records, comprising 27 documents, and a copy of Mr. Loughlin's letters, both dated November 12, 2013, were provided to the applicant. An affidavit from Mrs. Denison, stating she had researched all records in the Town Hall, was included in the information provided to the applicant.

Mr. Teale introduced himself, Gregory Mitchell and Kerry Sullivan as members of the Ociel Group, owners of the property being discussed. He explained he had also contacted Mr. Loughlin and had briefly discussed the application. Chris explained the research included looking into how zoning has changed, the history of the lot, history of the assessing records, and building permits.

A short recess was held in order to have the applicant review this information. The meeting resumed at 8:00pm.

Mr. Teale explained they reviewed the letters from Peter Loughlin but did not review the other documents thoroughly.

Mr. Teale expressed his wish to have the issues clearly defined. He said Peter's letter spoke about many issues. He said he considers three issues to be of most import:

1. Can a building permit be issued for the second structure, whether it is a workshop or a bungalow? Mr. Teale was asked to refer to the second structure not as a dwelling but a

structure. He stated that it's his opinion that regardless of the status of the structure, a building permit can be issued.

2. If a building permit cannot be issued for the second dwelling, whether or not to seek a variance should be discussed.
3. Municipal estoppel is a key discussion point to this application and is mentioned in Mr. Loughlin's letter. Mr. Teale stated the tax card has been assessed as a bungalow and has been taxed accordingly and he is now paying those taxes on it. He said this leads to the questions: does the town have to allow them to use the building as a second dwelling or does the town have to compensate them as tax payers because they relied on what is on the tax card? He said Avitar did the assessment and presented it to the public at large as a second dwelling, assessing it for its extra features and causing the town to collect taxes. Mr. Teale further stated, if they are not allowed to use it as a second dwelling, it will cause a diminution of value, and he asked if the town is prepared to defend this.

Point of order: Avitar is not the vendor hired by the Town to assess properties but is the name of the assessing database used by the Town.

Chris explained they are here to discuss a denial for a building permit and if that decision was based on proper zoning issues.

Mr. Teale explained he was denied a building permit for all work on the second structure. He asked, if the Board decided to issue a permit, will it be issued as a second dwelling or a workshop. Chris said the assessment is a separate issue and the Board is there to discuss the appeal.

The Board reviewed the email from Jim Daley, Danville's building inspector, to Chris Teale sent on September 3, 2013. The correspondence was briefly described as being sent after observation of work being done on the second building. There was a follow-up meeting in the Town Hall with Mr. Teale. The email outlined that only one dwelling is allowed on a parcel and the second building is not authorized to be used as a living unit. It also explained work was being done on both structures without benefit of any applications for inspections.

Mr. Teale said that's not his interpretation of the events. Mr. Mitchell said they realized after they purchased the property that the first building posed immediate safety hazards and their electrician was doing repairs to alleviate those hazards. Chris pointed out a permit was subsequently issued for the first building and this hearing needs to focus on the second structure.

Mr. Teale clarified that no building permit was filled out for the second structure due to the email from Mr. Daley. Mr. Mitchell stated the tax card calls the second structure a "bungalow" and the issue of using it as a second dwelling was never discussed with Mr. Daley. Chris explained that Mr. Loughlin stated the second building could not be used as a second dwelling unless variance relief is granted by the Town. The denial of the permit was based on the possibility of the second building being used as a residence.

Mr. Mitchell said this is not pertinent because they were denied a permit to make improvements to the building. Mr. Teale said if they have a permit to make repairs as a workshop, it still leaves

the issue that they were induced to buy the property. He said the assessment is held at large to the public and that is what they reviewed before making this purchase. Curt said the Zoning Ordinance is also held at large to the public.

Mr. Teale said this is an existing structure and asked how many people go to a town hall to look through the files before purchasing a property. He said people rely on the tax card and the assessed value of the home. He also said treating the second building as a workshop will cost them a lot of money to sell the property.

Chris suggested the Board discuss municipal estoppel. Mr. Teale said that the town hires a third party to do the assessments, and in all fairness will agree the town does not have time to review every piece of a vendor's work. However, the town is ultimately responsible for a vendor's work. Chris asked Mr. Teale if he is aware of the zoning for this property. Mr. Teale answered that since this issue has arisen they have reviewed the town's zoning. Mr. Mitchell said they review zoning, subdivision regulations and other town documents when they plan to build a new structure. In this case they did not; they relied on the tax card and the fact that Danville has been collecting taxes on the second building. He asked if the town is going to refund the taxes to all previous owners. Chris told Mr. Mitchell he may file for an abatement if he wishes, but the discussion with the Board tonight should be on municipal estoppel. Mr. Teale said the possibility of this not being an additional residence will cost them a lot of money.

Chris said there are four criteria to review when discussing municipal estoppel. The four were briefly described to the audience.

1. Was the information on the tax card a representation or concealment of facts made by town officials who had knowledge of those facts?
2. Was the party to whom the representations made ignorant of the truth? Attorney Loughlin also offered for consideration the question: Did Mr. Teale have constructive knowledge of the zoning for 13 Coburn Hill Road and was it up to him to confirm the permitted uses on this lot?
3. Was a representation of information on the tax card made with the intention of inducing other parties to rely upon it?
4. Were Mr. Teale and his clients induced to rely upon the representation to their injury?

Curt asked if there was an actual paper permit filled out by the applicant and on file in the town records for the second structure. Mr. Daley confirmed there was not. Mr. Mitchell said the extent of the repairs include new shingles, drywall and other simple items. He said they are not doing any plumbing or tying into a septic system. With the extent of work encompassing repairs and cosmetics, he didn't think they needed a permit but their request to have a permit was denied. Chris mentioned the denial was for using the building as a second residence.

The meeting was opened to the public. Elaine Belkas, 9 Coburn Hill Road, explained they have lived there for 29 years and knew the original owner. She said the second building was built as a workshop. The original owner sold the home to someone from Lawrence, Massachusetts who had people living in it from time to time. The neighbors told the new owners they are not allowed to use this as a second dwelling. The home was sold to one of their family members

who continued having people live in the second building. Again the neighbors told them they could not do this and the neighbors were told to mind their own business. She said because it has different rooms and a septic, people seem to think it is ok to live there. Chris explained the Selectmen were made aware of a possible illegal use in 2007 and it was addressed that year. He stated the use of the building is an enforcement issue.

Paul Belkas, 9 Coburn Hill Road, said he is not sure where the word “bungalow” came in. He mentioned that the Board should rely on facts, as anything else is hearsay, including his own and his wife’s opinions. He said there has been work done on the property. There was a short discussion about parking in the winter in which it was explained that it is difficult to park anywhere but the street during the winter. Mr. Teale stated they’ve had an engineer look at how to reconfigure the driveway. Mr. Belkas said there have been dumpsters and surveyors on the property.

There were no other questions or comments from the public and the public discussion was closed.

Chris referred to the letter from Mr. Loughlin which outlined the responsibilities of the board. He referred to the email from Mr. Daley which states the second building is not approved as a living space. Chris said the question the Board must answer is if Mr. Daley correctly determined the second structure is not approved as a dwelling. Mr. Teale stated the question goes further in that it must be determined if it is a workshop or not. Chris said this Board can give an opinion but the appeal is for granting a permit for a second residence. He said there is already a building permit on file for this structure as a workshop. He reiterated that you can only get a permit for a second dwelling on one lot if a variance or other relief is granted by the Town, as two residences are not allowed per zoning. Chris stated the Selectmen advised the former owner that a second dwelling is not allowed. Additionally there is no state record of a second septic system.

There was a short discussion of the tax card. It was 1F (one family) and changed to 2F (two family) in 2007. When the Selectmen were apprised of this, they had the tax card corrected to 1F, before the Ociel Group purchased the property. It was stated the record was changed by the assessor in 2007 for unknown reasons. Mr. Teale stated the record still states the second structure is a bungalow and this is what is presented to a potential buyer. Curt pointed out the disclaimer on the tax card which states the information is not a legal description and property rights are not infringed or granted due to errors on the card. Joe pointed out the notes on an earlier card which state the owner was a “no show” for an appointment with the assessor. When an assessor cannot go inside a structure, an estimate will be made regarding the construction, condition, and functionality of the building by looking at the outside. Joe pointed out a tax card cannot be the only relied upon source of information. Mr. Teale pointed out the tax card printed from the town website does not have the aforementioned disclaimer and stated this, the website information, is what people rely on when purchasing a home. Chris asked if that card stated 2F. Mr. Teale answered there are two cards: one for each structure. He asked if, when purchasing a home, potential buyers go to the town hall to look at the records. Several Board members answered in the affirmative.

Chris asked if there was misinformation on the card or a purposeful attempt to conceal information. Mr. Teale said the question is whether or not this was done fraudulently or is Danville ultimately responsible for the work done by hired contractors. He said misrepresentation is the issue. Chris stated there was evidence that Board of Selectmen agreed only one residence is allowed on this lot and they made a conscience decision to change the tax card to state 1F in 2012. Joe, a selectman in 2007, stated the Selectmen directed that the tax card be corrected. Mr. Teale said the tax card is contradictory because it states it's a bungalow. Chris stated that is a use issue and the building can be used as a shop or storage. He posited that building permits perhaps need to be clearer on uses.

Chris asked for the Board member's opinions on the first municipal estoppel condition. Curt said that tax cards should be taken with a grain of salt. The assessing process was explained such that the assessor evaluates construction as well as measuring the structure. The example was given of several horse barns in town of similar size but have vastly different assessed values due to type of construction. Mr. Teale said if a workshop is going to be assessed at \$53k+ he'd be happy to build one for everyone. It was restated that the assessed value is determined by what goes into the construction and Joe pointed out the ZBA members are not assessors.

Mr. Teale stated the irony is that the town has made a lot of money from these taxes. Curt stated we are not here to discuss the assessed value. Chris asked the Board members again for their opinion of criterion #1. Curt clarified that a town official, for example, is a member of the Board of Selectmen, not a vendor. It was agreed by the Board members only one residence is allowed per lot and this is a known fact by town officials.

Chris asked about the second criterion. It was agreed that it is the buyer's obligation to confirm and be aware of permitted uses. Curt explained there are some allowed non-conforming uses in town, but this is not one of them.

The Board discussed the third criterion and if the information on the tax card was intended to induce the buyer. Joe stated his opinion that he didn't see how the town tried to induce the buyer in any way. Curt explained that the Registry of Deeds forces someone to click on a disclaimer before being able to view any recorded information online. He said that even though a screen shot can be made of this information when viewed online, only copies obtained from the Registry are considered legal copies. Curt stated it's common sense and common knowledge to review more information than just what is on a tax card. Chris said that there can be errors on the tax card and the Zoning Ordinance is the document that determines what can or cannot be exist on a lot.

Mr. Teale asked if something is non-conforming, if the assessing record and the actual taxes levied are reviewed, what is he supposed to think? He asked if it's reasonable to expect him to also look at zoning. Chris said that when a person moves to a rural town which is mostly residential and has few apartments, it should be expected that there may be restrictions relative to zoning. Mr. Mitchell asked if they are supposed to rely on assumptions rather than the tax card. Chris said they should rely on the Zoning Ordinance. He said there are no variances for this property which would have changed the use; if there were, we wouldn't be meeting tonight.

Mr. Teale stated again that the town collected about \$7,000.00 last year in taxes for this property, his deed states there are two structures, and the town is holding it out to the public as such. He said the card states this is a bungalow, the town collects money on it, and asked what's to trigger him to look for more information. He was answered that most people look at more information than a tax card when buying a home. It was agreed by the Board members more information than the tax card is and has been readily available.

Chris asked about the fourth criterion and whether the applicant was induced to rely on information to his injury. It was mentioned that "induce" is a strong word. It was agreed there is no evidence here that anything was purposely done to mislead anyone. A mistake was made on the tax card and corrected by order of the Board of Selectmen.

Chris clarified the purpose of this meeting. This is an appeal from an administrative decision to deny a building permit for a second residential unit on one lot, and the word "residential" is very important. Chris asked if there were any final comments or questions. There were none. Curt made and Joe seconded a **motion to deny the appeal for a building permit for a second residential structure at 13 Coburn Hill Road**. The motion **passed** unanimously.

Chris explained the decision will be documented and will be forwarded to the applicant.

At 9:10pm Roger made and Joe seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison-clerk