

Zoning Board of Adjustment
October 23, 2018

Members Present: Chris Stafford, John Russo, Roger Denison, Roger Whitehouse, Walter Baird

Others Present: Nathan Albee, Debbie Plourde, Robert Meaney, Thomas Latham, Carol Baird

Case 2018-4, Thomas Latham, appeal from an administrative decision:

All members present were designated voting members. Chris explained the procedure for the hearings: testimony would be heard from both sides, there would be time for questions and clarifications, then the public hearing would be closed, during which time the Board would deliberate.

Chris gave a brief history of the property (from email). This is the same 25-acre piece that was under discussion previously with the Board, but the subject home has been separated onto a 2+ acre lot.

The meeting was opened to the public.

Thomas Latham explained that when he was first considering what home to build on the property, he had spoken with the former building inspector, Ed Morrison, who has since passed away. Mr. Latham said that Ed told him there would not be an impact fee. Mr. Latham was faced with the decision of tearing down the building or repairing it. He decided that since it was close to the road and in rough shape, he tore it down and rebuilt further away from the road. The new home has three bedrooms, meets all the local and state requirements, is safer and worth more than what was previously there. He said that if he had fixed up the old building, there would have not been an impact fee.

A portion of the Zoning Ordinance (ZO) defining new development as it pertains to impact fees was read. This included:

- a. Construction of a new dwelling
- b. Construction of a new commercial building
- c. Conversion of an existing use to another

Mr. Latham gave a paper to the Board members explained his opinion of the matter. He said he spoke with the new building inspector, Bob Bogosh, when he got the building permit. He said that Bob told him he would have to check for asbestos when he tears down the old building and that he would have to pay an impact fee when the certificate of occupancy is issued. Mr. Latham said the new home has less of an impact to the town.

Chris read Article XIV.B.6. a-e from the ZO. He told the Board that what he struggles with is that a tax abatement was filed in 2013, granted in 2014, in which the applicant Grace Rogers notes that the building is uninhabitable and due to the power and heat being disconnected in 2009, it is merely a "shell." He said his opinion is that this changed the use of the building from a dwelling to a structure. He said that he interprets this as a change of use, as outlined in B.

Mr. Latham said there is a home in town in which the heat has been shut off and no one has lived there for years. He asked if there would be an impact fee if someone tore down that structure and rebuilt a new one. He said the home he built utilized the updated septic system and has been taxed as a home since it was first built in the 1700s.

It was pointed out that the tax abatement granted in 2014 reduced the assessment of the property by 75%. The town recognized at that time the very poor condition of the home. Chris said that there are always grey areas, otherwise there would be no need for a ZBA. He said that each circumstance is different and reviewed on its own merits.

Robert Meaney said he sold the property to Mr. Latham and explained some recent history of the property. The former owner died in 2009, after which people broke into the home and stole the copper pipes and otherwise vandalized the home. Mr. Lee had plans for the property but withdrew them from the Planning Board eventually. Mr. Meaney then purchased the entire 25+/- acres property and had plans to raze the building. Due to state law at the time, allowing parcels to be unmerged that had previously been “involuntarily merged,” Mr. Meaney unmerged the parcels through a discussion with the Board of Selectmen, making three lots conforming to today’s zoning requirements. The parcel in question was then sold to Mr. Latham. Mr. Meaney said Mr. Latham has done a good thing by tearing down the building, saying it was a hazard to anyone who may trespass. He said Mr. Latham shouldn’t have to pay an impact fee in addition to all the money he’s already put into the property.

Roger D. asked if there was ever an impact fee levied on the prior home. It was explained it was built in the 1700s before impact fees were part of zoning.

Roger W. pointed out that the abatement decreased the assessed value of the property by 75%, which made the taxes less like a dwelling and more like a shed or barn.

Debbie Plourde, resident of the new home built by Mr. Latham, said that Mr. Latham did his due diligence when he reviewed what was necessary to build on the property. She does not believe a building has to be occupied to be considered a dwelling.

The definition of “dwelling” from the ZO was read: “any legal home of record...used exclusively for residential occupancy.”

It was pointed out that Mr. Latham signed the building permit, including the impact fee computation form, on March 8, 2018. He said he did sign it but never received a copy of it. He pointed out that Bob Bogosh, the inspector who issued the permit, forgot to sign the copy until March 14.

John pointed out that the definition of a dwelling is that it is used for occupancy. He read the definition of a structure from the ZO, in that it is a combination of materials that for a construction with the intention of maintaining the structure indefinitely, whether for use, occupancy, or ornamentation. Chris asked Mr. Latham if he considered appealing the decision when the building permit was issued in March. Mr. Latham said Bob Bogosh does a good job as

the inspector, but he didn't see the fees at the time. Chris asked if they talked about the fees when the permit was issued. Mr. Latham said they did and that the fee would be due at the time the certificate of occupancy was issued. Chris asked again if the fees were discussed in March and that the permit was signed at that time, including the fee schedule. Mr. Latham said they were signed and that he and Mr. Bogosh discussed the impact fees and that Mr. Bogosh said the levy of the impact fee could be appealed.

There was a short discussion about the square footage of the old and new buildings.

Roger D. asked Mr. Latham if Mr. Bogosh told him when he could appeal and if they talked about any stipulations regarding an appeal. Mr. Latham said no, but this is the same scenario as the property on the corner of Sweet Street and Main Street in which the appeal was granted and no impact fee was levied. Chris said that case was something that had gone through the Planning Board subdivision review and that the Planning Board had made an agreement with that owner that no fee would be incurred for the existing structure.

Nathan Albee said that the new house on that lot will more than make up for any taxes lost when the abatement was granted to the present time.

Mr. Meaney explained the unmerging procedure that created this lot.

The public hearing was closed.

Chris said the decision needs to be made whether the building inspector was in error by applying the impact fee ordinance to this property. Walter said that the ZO states that if a dwelling is rebuilt within two years of being destroyed, there is no impact fee. The demolition permit was issued in July 2017 and the new building permit was issued in March 2018. The abatement in 2013 states the house has been a virtual shell since 2009. It was stated this structure ceased to be a dwelling when it became uninhabitable, creating a change of use when the new home was built.

Roger D. said his only concern is how this Board defines the "use" of the structure and if it changed from a dwelling to simply a building. Roger W. said the abatement alerted the town to the fact that the use changed. Chris said this Board needs to determine if the building inspector made an error in judgement or if his interpretation of the Zoning Ordinance was correct.

Mr. Latham asked to speak. He said he doesn't remember seeing the impact fee worksheet and that Mr. Bogosh had forgotten to sign the building permit when it was issued. Chris said this is the public record and it has Mr. Latham's signature on the fee schedule, dated March 8, 2018 and the building inspector's signature dated a week later.

Chris said he'll allow further comment from the public. Mr. Albee said he was there when the building permit was issued, and that Mr. Bogosh had forgotten to sign the permit.

The public portion of the meeting was closed.

The Board discussed whether to discuss this with the building inspector to get his input. It was mentioned that it seems Mr. Bogosh thought the impact fee applied in this case. Walter stated we don't know what was said when the building permit was issued and that any discussion from others about the night of March 8, 2018 is hearsay. Mr. Bogosh may have personally disagreed with the ZO but had to go by what it outlines. Walter said that anything Mr. Bogosh says about what happened when the permit was issued will not sway his opinion that the ZO was interpreted correctly.

Chris asked the Board members if they thought there was pertinent information from Mr. Bogosh that needs to be reviewed for this case. Roger W. and Walter answered no; John said he is unsure. Roger D. said there may be laws we don't like but they still have to be obeyed. It may be that the reason Mr. Bogosh imposed the fee was simply because the ZO says he has to. Chris said he's looked at the evidence and believes Mr. Bogosh made the right decision.

Roger D. asked about the time-frame for appealing decisions. Chris said he did not want to discuss that, considering the revision to the Rules of Procedure that this Board is considering.

Walter said Mr. Latham signed the paperwork in March, we're not sure why Mr. Bogosh signed it a week later. The Board was asked if they felt the need to speak with Mr. Bogosh about this. Walter, Roger W., Roger D., and John each said no.

Chris said that it appears this Board does not believe the building inspector made an error in judgement. Chris made and Roger W. seconded a **motion to deny Mr. Latham's appeal from an administrative decision**. The motion **passed** unanimously.

Mr. Latham was told he can appeal this decision. Mr. Meaney asked if the Board was aware of any similar decision going to court. The Board members said they are unaware of court decisions regarding this.

Rules of Procedure:

Carol Baird briefly explained the Olde Meeting House case that was before this Board. This brought to everyone's attention the Atwater case in which the timely of filing an appeal needs to be made when a conditional approval is granted by a Planning Board. This is a lesson learned by this town since it had previously been the notion that an appeal is to be made after final approval. She said the appeal clock starts when a decision is made, and that can be when a conditional approval is granted.

The ZBA sets the appeal period and specific language should be in the Rules of Procedure outlining when the appeal clock starts. This was discussed with the town attorneys, Peter Loughlin and Matt Serge, and they agreed that the ZBA may include a waiver clause regarding the appeal clock. Any revision regarding a waiver could also have similar language in applications, alerting property owners of the time frame for appeals.

Carol explained that the Atwater case continues to be discussed in the supreme court. There have been ten recent cases dealing with this, suggesting that there is still some grey area regarding this. Matt Serge has recently won a case in court involving a challenge to the Atwater

decision. John said he believes the appeal clock should start with a Planning Board's final approval but can understand that often conditions yet to be met are not impactful to the overall decision of a Planning Board application.

Chris asked when the clock starts when a building permit is issued. He said that abutters may not know a permit has been issued until well after 30 days, if the applicant waits to begin construction. Peter Loughlin recommended including a waiver clause for this purpose. Chris said there should also be a determination when an impact fee is involved: when the permit is issued or when the fee is to be collected at the time the occupancy permit is issued. Roger D. said the fee is known when the permit is issued

It was reiterated that something should be added to the applications as well as the Rules of Procedure. Roger D. suggested stating that the 30-day clock begins after the conditional approval, or after final approval if no conditional approval is granted.

Two amendments to the Rules of Procedure were proposed:

1. Chris suggested adding to part V.1.a: "An appeal from a Planning Board decision must be filed with 30 days of conditional approval or final approval for cases where conditional approval was not given. Appeals of impact fees must be filed within 30 days of building permit issuance." Chris said that if someone does not agree with the impact fee, they can also choose to not build the house or roll the fee into the selling price.
2. A word under section VI is incorrect and will be changed from "prohibited" to "provided."

Chris said he thought this Board discussed adding language regarding the voting process for variances. Specifically, this would require each criteria of a variance to be voted on by each member. Roger W. said this is how we currently vote. Chris said it should be documented in the Rules of Procedure for future Board members.

Chris made and Roger W. seconded a **motion to make the two aforementioned amendments to the Rules of Procedure**. The motion **passed** unanimously.

It was agreed to meet on November 27 at 7:30pm to finalize the amendments.

Walter suggested that the Planning Board review the reference to the word "structure" in Article XIV.B.6.e and clarify if this refers to a structure or a dwelling.

At 9:36pm, Roger D. made and Roger W. seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,
Janet S. Denison