Great Barrington Zoning Board of Appeals

Minutes of April 24, 2018, Meeting

Vice-Chairman Carolyn Ivory opened the Great Barrington Zoning Board of Appeals meeting and continued the public hearing at 7:32 p.m. at the Great Barrington Town Hall. Attending were members Kathy Kotleski, Steve McAlester and Michael Wise and alternates John Katz and Don Hagberg. Also, Town Counsel Ilana Quirk.

The recording secretary read the notice for the appeal filed Dec. 28, 2017, by GJO LLC (Gary O’Brien) of a cease-and-desist order issued Nov. 22, 2017, by Zoning Enforcement Officer Ed May regarding property at 11 Roger Road.

Chairman Ivory said the last meeting ended with three attorneys assigned to see if an agreement could be reached.

Town Counsel Quirk said she, Mr. Feldman and Attorney Donald Dubendorf representing the building inspector had a good-faith discussion about the 1996 Agreement for Judgment, but reached no compromise that respected critical rights of both Mr. O’Brien and his Blue Hill Road neighbors. She distributed to members a compilation of exhibits presented to the ZBA thus far, also a new draft decision/checklist of findings to be made. She said a building permit issued in 2003 for a building on the property is in order but lacks detail other than a description, “A barn.” A main issue is whether use on the property in 1996 has changed. The burden of proof, she said, is on the town to show there is a violation. The 1996 court decision lacks important detail. On an issue of property abandonment, she said excise records are not available through the town/state due to confidentiality laws, but there are no records on file in the town for 2002, 2003 or 2004.

Attorney Paul Feldman presented a new affidavit by Robert Brownson that includes one 1996 excise tax page and a list of 13 vehicles from 1996 and attests the fleet was much the same in 2003 for Roger Trucking. Mr. Brownson, he said, owned the property from 2009 to 2015. He said the property was never abandoned. He reviewed the 2011 appeal and result. He said the business is the same but there are new neighbors. He offered a two-page sheet of potential conditions that he said Mr. O’Brien would accept. They include limiting some large-truck traffic and “Jake braking” and setting hours for some activities.

Regarding Ms. Quirk’s proposed findings, he disputed a sentence that suggested bringing fill to the property (to create an un-permitted parking space) was in itself illegal. The property owner has the right to bring in soil, he said. And needs to go through Planning Board site plan review. As to the 100-acre property from Leamon Roger’s time now being reduced to 8 acres, Mr. Feldman said truck and other activity has only ever been on that eight acres. The 2002 building is on the 8 acres, he said.

Ms. Quirk asked if Mr. Brownson waived his privacy rights regarding the excise tax listing. Mr. Feldman said that was his belief. He said further that tax records are a single piece of evidence, but not necessarily instructive as to how a property was used.

Ms. Quirk invited the public to submit new affidavits regarding property use in 1996.

She said the board must reach a decision by Monday, April 30.

Roger Belanger, 43 Fairview Terrace, said a half dozen or more Irish Trucking 16-wheel trucks leave the O’Brien property most mornings. He asked if any 16-wheel
trucks showed up on the excise tax sheet. He said the board’s decision will make or destroy the neighborhood.

Mr. Dubendorf said the Brownson affidavit regarding a solid-waste hauling business was supported by a 1995 affidavit by Judith Kale. But there was no landscaping, no general trucking, no mechanic’s garage, no 24-7 traffic mentioned. Not all trucking uses are equal, he said. Until 1994 it was a mom-and-pop business and neighbors were okay with it. It changed in 1996 with solid-waste transfer activity. He urged the board to find the present use inconsistent with the 1996 decision.

Ed Abrahams, 15 Pleasant St., said some of the people making complaints have lived on Blue Hill Road for a long time. He said the issue of fines came up at the previous night’s Select Board meeting.

Ms. Quirk said the issuance of fines is up to the zoning enforcement officer. They are a non-criminal disposition, an issuance of tickets that may be appealed to District Court. Mr. Dubendorf said there is no current effort to issue tickets. Mr. Feldman said Mr. O’Brien appealed one ticket and the judge found it was not properly administered. Mr. May said there was a ticket issued in 2001 but there are none currently pending.

Michael Andelman, 17 Blue Hill Road, said if a $25 ticket were issued every day trucks trafficked the road, the town would be due a sizable amount of money. Regarding the 100-acre farm now being 8 acres, he said the percentage differential is too big. He submitted a folder of papers representing his documentation of truck traffic in recent months.

Ruby Chang, 1 Roger Road, said there once was only an old farmhouse on Roger Road, now there are three houses built since 2005. The neighborhood has changed, she said. She said police reports from neighbors should indicate trucks traveling the road. She urged ZBA members to visit Roger Road. She said O’Brien removed material from the property in anticipation of a site visit, then brought it all back. She later questioned whether ZBA members had conflicts of interest.

Frances Kollman, 34 Blue Hill Road since 1972, said Irish Trucking vehicles do much damage and have brought pollution so there are no spring peepers, no vernal pools this year. The constant beeping of trucks backing up is intolerable, she said. At times the sound of metal grinding from the garage penetrates the otherwise quiet night. She said when the Rogers mostly had a farm with horses, goats and other animals, a garbage truck and a circus truck.

In answer to a question from Town Manager Jennifer Tabakin, she said the farmhouse was vacated in the 1990s.

Betty Jones, 19 Blue Hill road since 1958, said Sara Roger died in 1992 and Leamon Roger in 2006. He sold the property to his daughter and son-in-law, Dedee and Billy Brownson, and his grandsons eventually took over the trash hauling business. Some runoff containers were stored in the woods opposite the Roger barn on Stockbridge Road. After Billy Brownson died in 2001 Dedee left the house and it was empty.

Paul Jones, 19 Blue Hill Road, said he father is a retired Great Barrington deputy police chief. He suggested O’Brien took over a scofflaw business. He said Leamon Roger never ran a garbage truck out of his yard before 7 a.m. Neighbors have to lose sleep, he said, so he can have an industrial business. He said since the last hearing he has phoned the Great Barrington Police Department 13 times and written to Building Inspector May.

Ms. Tabakin said a request has been made to GBPD for copies of log entries re 11 Roger Road.

ZBA minutes 4-24-2018
Mr. Wise moved to continue the hearing to Thursday, April 26, 2018, at 7:30 p.m. at the Great Barrington Senior Center. Ms. Kotleski seconded and all were in favor.

The meeting adjourned at 9:07 p.m. on a motion by Mr. Hagberg, seconded by Mr. Katz, and given positive votes by all members.

**List of new exhibits:**
- Town Counsel 04-23-18 Draft ZBA Decision
- 31-section compilation of exhibits submitted by Attorney Quirk
- New affidavit of Robert Browson, undated but attested by Attorney Kathleen McCormick to have been taken and signed 4-23-18
- Memorandum from Attorney Feldman outlining proposed operational conditions
- Graph, pie charts and multiple pages of counts of truck trips from 11 Roger Road, 2-18-18 to 4-14-18, from Michael Andelman

Respectfully submitted,

[Signature]

Bernard A. Drew
Recording Secretary