

**APPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
September 22, 2020**

Present: Mark Wright, Chairman. Mike DiPietro, Vice-Chairman, Stephen Carroll, Kevin Stuart & Dennis Vieira, Members of the Board. Shawn Matte, Alternate. Minutes recorded and prepared by Denise Royce.

Also, Present: Carrie Rouleau-Cote, Building Inspector/Code Enforcement Officer. William Herman, Town Administrator. Stephen Bennett, Town Counsel. Attorney Brenda Keith, Counsel to the ZBA. Attorney Patricia Panciocco, Counsel to the Gramatikas'. Eric Mitchell, Engineer for the Gramatikas'. Todd Beddard, Keith Leclair and Michael Rolfe, Board of Selectmen. Stacey & Eric Haddad, Ryan Woodbury, Marc & Jennifer Daneau & Suzanne Bunnell, Abutters.

Absent: Dale Phillips, Alternate.

Mr. Wright called the meeting to order at 7:04 p.m.

Mr. Wright began by reading the Meeting Preamble During COVID-19 Emergency which is as follows:

MEETING PREAMBLE DURING COVID-19 EMERGENCY

Good Evening, as Chairman of the Zoning Board of Adjustment, I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that any public gathering of people may pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19 and is reinforced by Emergency Order #16 issued by the Governor on March 23rd. In concurring with their determination, I also find that this meeting is imperative to the continued operation of Town government and services.

Governor Sununu issued Emergency Order #12 on March 23rd which provides local government boards the ability to conduct business using technology to hold remote meetings and not provide a public place of meeting, but provide for the public's ability to listen to the meeting.

As such, this meeting will be conducted without a quorum of this body physically present in the same location.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote as required by RSA 91-A:2, III (e).

At this time, I welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply.

Let us start the meeting by taking a Roll Call attendance. When each member is called please state your name, and also please state if there is anyone in the room with you during this meeting, which is required under the Right-to-Know law (RSA 91-A:2, III (c) and whether you agree to your voice being recorded.

Mr. Wright moved on to the roll call of attendees and began with the Board members as follows:

Mr. Wright moved on to call on Mr. Michael DiPietro. Mr. DiPietro indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Kevin Stuart. Mr. Stuart indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Stephen Carroll. Mr. Carroll indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Dennis Vieira. Mr. Vieira indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Shawn Matte. Mr. Matte indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mrs. Phillips was not available.

Mr. Wright moved on to the members of the Board of Selectmen. Keith Leclair indicated that he was alone and consented to his voice being recorded. Todd Beddard indicated that he was alone and consented to his voice being recorded. Michael Rolfe indicated that he was alone and consented to his voice being recorded.

Mr. Wright moved on to counsel for the Board of Selectmen. Attorney Steve Bennett indicated that he was alone in his office and consented to this being recorded.

Mr. Wright moved on to the appellant and asked if they were present this evening. Pamela Gramatikas commented that she consented to being recorded. Mr. Wright asked if she was in the room alone. Pamela Gramatikas stated that, she was in a room with Attorney Patricia Panciocco and Eric Mitchell. Mr. Wright asked Mr. Mitchell to announce his name and if he consented to being recorded. Eric Mitchell stated that, he consented to being recorded. Attorney Patricia Panciocco stated that, she consented to being recorded. They are the only three (3) that are in a room together.

Mr. Wright asked if Counsel for the Zoning Board of Adjustment was present. Attorney Brenda Keith stated that, she was present and that she was alone in her office and that she consented to being recorded.

Mr. Wright called on Ms. Denise Royce. Ms. Royce indicated that she was with Mrs. Rouleau-Cote at Town Hall and consented to this meeting being recorded.

Mr. Wright called on Ms. Denise Royce. Ms. Royce indicated that she was with Mrs. Rouleau-Cote at Town Hall and consented to this meeting being recorded.

Mr. Wright called on Mrs. Carrie Rouleau-Cote. Mrs. Rouleau-Cote stated that she was at Town Hall with Ms. Denise Royce and that she consented to this meeting being recorded.

Mr. Wright introduced himself as Chairman of the Zoning Board of Adjustment and indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright asked if there were any abutters present or anyone else that he has not called on to please state their name and whether or not they were alone or with someone and if they consented to being recorded.

Mr. Eric Haddad stated that he was with his wife Stacey Haddad and they consented to being recorded and they resided at 96 Hunting Road. Marc Daneau of 89 Hunting Road stated that, he was with his wife Jennifer and that he consented to being recorded. Mr. Wright asked Stacey Haddad to state whether or not she consented to being recorded. Stacey Haddad commented that, she consented to being recorded. Jennifer Daneau of 89 Hunting Road stated that, she consented to being recorded.

Mr. Bill Herman, Town Administrator for the Town of Auburn stated that, he was at home by himself and that he consented to be recorded.

Mr. Wright explained that, they would proceed forward by having Ms. Royce read the case into the minutes for the record. Mr. Wright went on to say that, after the case is read into the minutes that he would ask the Board of Selectmen through their counsel to present their side of the case. Mr. Wright further added that, at that time, there would be no questions or comments from the Appellant or abutters. Following the presentation of the town's case, Zoning Board members would be given an opportunity to ask questions. After the Zoning Board has gone through their questions, he will ask if abutters have questions or comments. After that, he will ask the Appellant to present their case and go through similar protocols with Zoning Board Members and other parties. Mr. Wright asked everyone to please mute their speaker unless they are speaking or recognized by the Chair.

Ryan Woodbury of 36 Appletree Road entered the remote teleconference. Mr. Wright asked Ms. Royce if he was an abutter. Ms. Royce said yes. Ryan Woodbury commented that, he consents to his voice being recorded.

Mr. Wright continued with the explanation for tonight's procedures by pointing out that, if the Board enters into deliberations that, everyone can hear what they are saying but cannot ask questions at that time. Mr. Wright asked that, everyone hold their questions until they come out of deliberation. Before he asks the town to present, Mr. Wright would like to ask Counsel for the Zoning Board to briefly review an issue that he would like the Zoning Board Members to understand and perhaps allow for the counsels' for the Board of Selectmen and the Appellant to address and comment on an issue relative to ownership transfer of property and timing and how that might impact the law and their decision this evening. So, with that said, Mr. Wright would like to get this out in front to give the counsels an opportunity to address. At this time, Mr. Wright asked Attorney Brenda Keith to speak on this issue.

Attorney Brenda Keith began by saying that, one of the arguments in the Appellant's appeal involves the question of common ownership and she has raised the concern of the recording of Corrective Deeds in January. Attorney Keith believes that, it needs to be addressed whether Arthur Gramatikas passed with or without a will because the record did not show that and believed we needed to know that. If he passed with a will then the statute and that Title Std. 7-22 requires the lots to be Probated in order to pass to the legatees. Attorney Keith did not believe a Corrective Deed would be sufficient to pass the lots to Gary and Pam Gramatikas and perhaps the Probate file would show that and believes we need to know the answer. If Mr. Gramatikas passed without a will, then pursuant to Title Std. 7-23 (Intestacy), then the title would have passed to all the heirs. Attorney Keith further pointed out that, because Mr. Gramatikas passed prior to 1997, that usually requires a Quitclaim Deed with an affidavit and not a Corrective Deed. In conclusion, Attorney Keith wanted to address this because it was not addressed and if the two (2) lots have not passed properly to Gary and Pam Gramatikas then there is no common ownership.

Mr. Wright commented that, he just wanted to make sure that they got this out there and if counsel for either party has anything to add, clarify or answer for us to please do so and if not, please let us know that as well.

Sue Bunnell of 80 Hunting Road joined the meeting and stated that she was alone and consented to having her voice being recorded. At this time, Mr. Wright asked if there was anyone else that has not announced their name and address and consented to being recorded. None were noted.

Mr. Wright moved on to get right into the case before the Board tonight and asked Ms. Royce to read the first case which was Case #20-10. Ms. Royce read the first case into the minutes for the record.

Case #20-10
Gary & Pamela Gramatikas
20 Appletree Road, Tax Map 18, Lot 52
Zoned Residential One

Applicant is requesting an Appeal from decision made by the Town of Auburn Board of Selectmen ("BOS") on July 13, 2020 ("Decision") denying their Application for Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa ("Application") to the Town of Auburn Zoning Board of Adjustment ("ABA") as provided by RSA 674:39-aa(III). Article 14, Section 14.04 – Appeals to Zoning Board of Adjustment.

Mr. Wright turned the meeting over to Counsel for the Board of Selectmen. Attorney Bennett began by saying that, based on the input from Attorney Keith that he had a question, he has not done a title search on this property to determine whether or not it was passed through Probate. Attorney Bennett did agree with Attorney Keith that Corrective Deeds do not pass title. If in fact, the correct process was not followed and he did not know the circumstances of Mr. Gramatikas' passing or status with a will but, if in fact the property has not passed legally to Gary and Pamela Gramatikas he did not know why we would move forward with this. Attorney Bennett stated that, they would not be the legal owners of the property from what Attorney Keith has stated. Mr. Wright thanked Attorney Bennett's comment.

At this time, Mr. Wright turned the meeting over to Attorney Patricia Panciocco for comment. Attorney Panciocco began by saying that, she has not done a title search on the property either as this has just come to her today. Attorney Panciocco did agree that, Corrective Deeds are not the proper vehicle and did agree with Attorney Bennett. Attorney Panciocco shared with the Board that, Mrs. Gramatikas just shared with her now that, Arthur Gramatikas died without a will and there was no Probate. Mr. Wright addressed Attorney Keith and said, if there was no will then there would have needed to be deeds to go through Probate and in order to determine ownership and there may very well be other children and we don't know that for sure. Attorney Wright believed that this

may change the analysis given the state of ownership and transfer and the voluntary and involuntary nature of what may have occurred by the various parties. Attorney Wright asked Attorney Keith if her recommendation would be to Table this until they obtain an answer on title. Attorney Keith stated that she would recommend that and mentioned that Exhibit I, Attorney St. Hillaire's memo to the town as she did make reference to death certificates being filed for Marguerite and Arthur Gramatikas and actually referenced Probate files in Hillsborough County with docket numbers. Attorney Keith went on to say that, usually you do not have a docket number for Probate unless there is a will and you file it not probated. So this is rather curious, unfortunately, you will probably have to Table it as Attorney Wright suggested and right now you cannot get into the Probate Court to look up old records so it may take a bit. Attorney Panciocco agreed with Attorney Keith and they needed to get to the bottom of this.

Mr. Wright believed that this was a very important piece and commended Attorney Keith for raising this issue and while it was towards the end of her legal memo, it was highlighted as an important piece of the case and should not wait until the end of our hearing to raise this issue. Mr. Wright asked if any other members of the Zoning Board had questions or comments before he suggests a motion to Table this. None were noted.

Mr. Wright believed that all parties concerned have raised question and issues and did not believe they could effectively hear the case and decide unless they know for certain how title was transferred and when. Mr. Wright mentioned the fact that, they cannot get into the Probate office but would look to Attorney Panciocco to do her best and figure out what she can and cannot do within the timeline but if Attorney Panciocco can get back to Ms. Royce as soon as she knows to see if we Table it out for a month and if we need to extend that timeline. With that, Mr. Wright asked the Board for a motion to Table this case until next month and if necessary, they could open it up and extend it beyond that but why don't we plan on Table it until next month.

Mr. Vieira made a motion to TABLE this case until we can ascertain ownership of the property, for Case #20-10, 20 Appletree Road, Tax Map 18, Lot 52. Seconded by Mr. DiPietro.

Mr. Wright asked if there was any further discussion. None were noted.

Mr. Vieira voted to TABLE, Mr. Carroll voted to TABLE, Mr. Stuart voted to TABLE, Mr. DiPietro voted to TABLE, and Mr. Wright also voted to TABLE this case until next month (October 27th, 2020). A vote was taken and, all were in favor and this case has been TABLED until Tuesday, October 27th, 2020.

Mr. Wright commented, that he believes all parties, the Board and the abutters understand that a decision on this case is a bit premature until they get a bit more clarity into the title and the timing of when ownership has passed assuming that it has. We will take this case up in some form or another during our next scheduled hearing which will be the fourth Tuesday in October. If it is clear that we will not have an answer, then we will still open up the meeting and then deciding to Table it and for how long. In the

meantime, if anyone has any questions that they can call Ms. Royce at the Town Hall and she can give you an update on what is happening as we approach the October date.

Mr. Wright indicated that, the Board would be moving on to approving the minutes but before that, asked if there were any further questions or comments from the parties and directed the question to Board of Selectmen's Counsel. Attorney Bennett stated that, he did not have any comments at this time. Attorney Panciocco commented that, she would get in touch with the gentleman that did the title work and see what information he may have with regard to the Probate and would get back to the Board or Ms. Royce. Attorney Keith thanked everyone for their time. Mr. Wright thanked everyone for their time as well and informed the abutters to stay tuned and get in touch with Ms. Royce if they had any questions.

At this time, Mr. Wright informed the Board members and Ms. Royce to stay on the line for approval of the minutes and that everyone else was free to go. At this time, Attorney Keith, Attorney Bennett, and Attorney Panciocco exited the conference call.

Minutes

Mr. Wright asked to take up the minutes of August 25, 2020.

Mr. DiPietro made a motion to accept the minutes of August 25, 2020 as written, seconded by Mr. Vieira.

Mr. Wright conducted a roll call vote to approve the meeting minutes for August 25, 2020.

Mr. Vieira voted to approve the minutes, Mr. Carroll voted to approve the minutes, Mr. Stuart voted to approve the minutes, Mr. DiPietro voted to approve the minutes, Mr. Matte voted to approve the minutes, and, Mr. Wright also voted to approve the minutes. A vote was taken and, all were in favor and the motion passed.

New Business/Other Business

Mr. Wright asked Ms. Royce for the number of cases before them next month with the Tabled case tonight. Ms. Royce went through the three (3) cases proposed for next month. One case was noted to be incomplete and was suggested that they go before the Planning Board prior to coming to the Zoning Board of Adjustment. Ms. Royce so noted the suggestion and stated that she would notify the applicant.

Mr. Wright asked the Board members if they had any questions. None were noted. Mr. Wright asked for a motion to adjourn.

Adjourn

Mr. Vieira made a motion to adjourn, seconded by Mr. Carroll.

Mr. Matte voted to adjourn, Mr. Carroll voted to adjourn, Mr. Vieira voted to adjourn, Mr. Stuart voted to adjourn, Mr. DiPietro voted to adjourn, and Mr. Wright also voted to adjourn. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 7.52 p.m.

Mr. Wright again thanked Ms. Royce and Mrs. Rouleau-Cote for putting this all together and being there to support the Board in making this process smoother. At this time, the meeting ended.

The Zoning Board of Adjustment will not be holding a meeting during the month of July and the next scheduled meeting would be for October 27, 2020 at 7:00 pm. Due to Governor Sununu's Emergency Order #12 on March 23rd, all meetings will be held via teleconference until further notice.