



Town of Abington

500 GLINIEWICZ WAY
ABINGTON, MA 02351

ZONING BOARD OF APPEALS 781-982-2100

Minutes

February 12, 2015

Cotter Room

7:00 p.m.

Members Present: James Haney, Chairman, Lisa Bezanson, John Shepard, Sean Reynolds, Marshall Adams, Building Inspector/Zoning Enforcement Officer
Absent: William Mullen

Minutes - December 11, 2014 - motion to approve made by Mr. Shepard, seconded by Mr. Reynolds, unanimous. January 8, 2015 - motion to approve made by Mrs. Bezanson, seconded by Mr. Shepard, unanimous.

7:00 p.m. **Petition of George Cataldo for Beata Swierczynski, 8 Circuit Street, Hanover, for a finding to raze existing building which has been deemed unsafe and rebuild on the same existing footprint at 220 Randolph Street, under Massachusetts General Laws Ch. 40A Sec. 6. The property is located on Assessors Plan 52, Plot 201, in the R-30 Zone.** Voting members: Lisa Bezanson, John Shepard, Sean Reynolds.

Sewer advisory - appears to have no bearing on the sewer system. Mr. Cataldo - property had been demo'd by previous owner. Engineer deemed property to be unsafe. They would like to put up the same footprint. Existing structure had been gutted, just a shell when it was purchased. Building Inspector - it's pre-existing non-conforming. He would be allowed to rebuild one wall at a time, take down all but one wall and rebuild structure, but not a good way to build. Rather than try and work around that, he suggested Mr. Cataldo come before board for a finding. This would allow for a better structure and would be more cost effective as well. Mr. Shepard - they bought the house knowing it was in this condition? Mr. Cataldo - knew it was gutted, but didn't know it was structurally damaged. They are going to rebuild and sell it. Mr. Shepard - asked Building Inspector if it could be built by right? Mr. Adams - not if it is torn down. He would be putting himself at risk if he tore it down voluntarily. Makes more sense to be able to take it down and rebuild.

Opened to floor:

Mary Trabucco, 230 Randolph Street - concerned with property line as far as driveway. They wanted to make sure they weren't going to expand driveway. Were they going to go up another story? Yes. Is Mr. Cataldo doing all the work himself? Doing most of the work himself, but would sub out electrical, plumber, heating. He is fully insured. Neighbors are pleased that this is being done.

Board felt this made for a better project than doing it piecemeal. Motion by Mr. Reynolds to approve, seconded by Mr. Shepard, unanimous.

7:00 The dimensional variance that is the subject of litigation in David M. Hall v. John Wieliczki, et al., Land Court C.A. No. 14 MISC 487308-KFS, has been remanded to the Town of Abington Zoning Board of Appeals pursuant to the Land Court's January 13, 2015 remand order. The remand public hearing will be held on Thursday, February 12, 2015, 7:00 p.m., at the Town Offices, 500 Gliniewicz Way, Abington, and will be based on the original petition of John Wieliczki, Jean Bumpus, Peter Wells & Paul Wieliczki, 5 Dale Street, for: a variance to create two residential house lots requiring relief from the minimum lot width on Lots 1 and 2, 5 Dale Street, under Abington Zoning By-Laws Sec. 175-29. The property is located on Assessors Plan 64, Plot 6, in the R-30 Zone. Voting members: James Haney, Lisa Bezanson, John Shepard. Sewer advisory - has no bearing on this project.

Mr. Haney explained procedures for remand by the court. This hearing is by a Court Order dated January 13, 2015 remanding it to the ZBA, in litigation known as Hall v. Zoning Board of Appeals and Wieliczki, Land Court 14 MISC 487308-KFS. The Plaintiff David Hall, who resides at 29 Dale Street, appealed from the lot width variance granted by the ZBA for 5 Dale Street.

The members present at the original public hearing, James Haney, Lisa Bezanson and John Shepard, have reviewed the record from the original public hearing and are the voting members tonight.

On September 11, 2014, the Board voted to grant the petition for dimensional variance relief for a variance, pursuant to GL c.40A, Sec. 10 and Abington Zoning By-Laws 175-82(3), to create two residential house lots requiring relief from the minimum lot width on Lots 1 and 2, 5 Dale Street, under Abington Zoning By-Law 157-29, with Lot 1 to have a lot width of 70 feet and Lot 2 to have a lot width of 95 feet.

The Board will discuss its reasoning for granting the variance and make additional findings made on the testimony and evidence already presented to the Board at the August 14, 2014 and September 11, 2014 hearings. At this point the hearing will be opened to the floor for comment. No additional substantive testimony will be taken. It will be closed back to the Board for a final vote.

Points to cover:

Findings not requiring further discussion, but will be entered onto the record and voted on:

1. The Property is located at 5 Dale Street, Abington, MA and is shown on Assessors Plan 64, Plot 6.
2. The Property has a single-family residence and a commercial landscaping business located on it.
3. The Property is located in the R-30 Zoning District.
4. Pursuant to Zoning By-Law 175-29, the following dimensional requirements apply to the R-30 Zoning District:

- Minimum lot area: 30,000 square feet
- Minimum lot width: 110 feet
- Minimum continuous lot frontage: 110 feet
- Minimum front yard setback: 35 feet
- Minimum rear yard setback: 30 feet
- Minimum side yard setback: 20 feet
- Maximum building height: 35 feet
- Maximum lot coverage of 25%.

5. The Property is dimensionally conforming and has approximately 117,500 square feet of area (i.e. 2.7 acres) and 665.13 feet of frontage and a lot width of 165 feet.

6. The petitioners applied for variance relief from the minimum lot width requirement, pursuant to Zoning By-Law 175-29, to allow the Property to be divided into two buildable lots, one lot with 70 feet of lot width and one with 95 feet of lot width.

Findings requiring further discussion by the Board:

7. The proposed two lots would/would not conform as to all dimensional requirements, except lot width.

8. A large portion of the Property is/is not a resource area under the Wetlands Protection Act.

9. The Shumatuscacant River runs/does not run at the rear of the Property.

10. The Property is/is not irregularly shaped with sharp angles.

11. The Property is/is not significantly larger than other properties located in its vicinity on Dale Street and Beaver Lane.

12. The ZBA finds that there are/are not conditions and circumstances relating to soil conditions, shape and topography of the Property especially affecting the Property for which the Variance is sought, but not affecting generally the R-30 Zoning District.

13. The ZBA finds that a literal enforcement of the provisions of the Zoning By-Laws would involve/would not involve substantial hardship, financial or otherwise, to the petitioners. Specifically, the ZBA findings will be based on evidence presented that will be discussed.

14. The ZBA finds that the relief sought will/will not be desirable and without substantial detriment to the public good. Specifically, the ZBA findings will be based on the evidence presented that will be discussed.

15. The ZBA finds that the relief sought may/may not be given without nullifying or substantially derogating from the intent or purpose of the Zoning By-Laws. The ZBA finds based on the evidence presented that the proposed lot width variance is relatively minor, and, in all other respects, the proposed subdivision complies with the Zoning By-Laws.

Findings by Board upon discussion - original plans referred to:

16. The proposed two lots would conform as to all dimensional requirements, except lot width.

17. A large portion of the Property is a resource area under the Wetlands Protection Act.

18. The Shumatuscacant River runs at the rear of the Property.

19. The Property is irregularly shaped with sharp angles.

20. The Property, as it is undivided, is significantly larger than other properties located in its vicinity on Dale Street and Beaver Lane.

21. The ZBA finds that there are conditions and circumstances relating to soil conditions, shape and topography of the Property especially affecting the Property for which the Variance is sought, but not affecting generally the R-30 Zoning District. Specifically, the ZBA finds based on the evidence presented that the Property has the following distinguishing conditions:

- Wetlands and river area to the rear of the property are not buildable;
- The rear frontage is listed on a paper street and is not accessible;
- The lot is an irregular shape, and there is acreage sufficient to subdivide the property;

22. The ZBA finds that literal enforcement of the provisions of the Zoning By-Laws would involve substantial hardship, financial or otherwise, to the petitioners. This is based on the aforementioned wetlands to the rear, frontage on a paper street and the irregular shape of the lot. Mr. Reynolds - as to hardship, a large portion of the lot would be unbuildable. The Board's intent was to make the two lots residential, so it wouldn't revert back to what it was being used for (landscaping company).

23. The ZBA finds that the relief sought will be desirable and without substantial detriment to the public good. Specifically, the ZBA finds based on the evidence presented that the property may be divided, by right, with an irregularly drawn front lot line. The relief allows a more aesthetic lot frontage for both lots. It will eliminate the landscaping company, and give people a much more defined property line.

24. The Board finds that the relief sought may be given without nullifying nor substantially derogating from the intent or purpose of the Zoning By-Laws. The ZBA finds based on the evidence presented that the proposed lot width variance is relatively minor, and, in all other respects, the proposed subdivision complies with the Zoning By-Laws. Mr. Reynolds - considered relief relatively minor, and granted after full participation of neighbors to insure that it was appropriate in securing the residential use.

The following conditions will also be listed with the decision:

- The approval was granted for the plan marked A from the record of the original hearing, and the plan marked B is for reference, but does not require relief. Plan A is the plan showing the allowed variance; plan B is the plan showing the irregularly drawn lot lines.

- Approval is conditioned on the newly created Lots 1 and 2 not being used for any purpose that is not allowed as of right under the Zoning By-Laws, commercial or otherwise.
- The existing single-family dwelling is to be removed and it shall be removed as a condition of approval hereunder and any new dwelling erected on either new lot shall conform to all applicable setback requirements.

Hearing was opened to the floor for comments. There were none, and it was brought back to table for a vote.

Motion by Mr. Reynolds to adopt the findings, both deliberated and undeliberated, based on the Land Court's remand order of January 13, 2015, with above conditions, seconded by Mr. Shepard. No vote taken. Motion retaken due to Mr. Reynolds not being a voting member. Motion by Mrs. Bezanson to adopt the findings discussed and noted together with the above conditions approved on the Land Court's remand order of January 13, 2015, seconded by Mr. Shepard, unanimous.

7:25 p.m. The petition of Bob and Tracey Derbes, 22 Adley Drive, Abington, for: an appeal pursuant to MGL Ch. 40A, Sec. 8 and 15, of the Building Commissioner/Zoning Enforcement Officer's inaction regarding 12 Warner Road. The property is located on Assessors Plan 44, Plot 65, in the R-30 Zone. Voting members: Lisa Bezanson, John Shepard, Sean Reynolds.

Sewer advisory - appears to have no bearing on the sewer system. Mr. Haney asked the applicant if the hearing had been noticed. It was in the newspaper, but no notice was sent to the abutters. Atty. Thomas Callahan - didn't think it was required; this is not a hearing for a variance or special permit. They are asking the board to hear an appeal without sticking his client with more fees that he doesn't think are required. Mr. Haney - he is asking for a hearing. Mr. Haney confirmed with town counsel that hearings have to be noticed - an abutters list, and was not told there were exceptions. Atty. Callahan disagreed. His client hasn't done anything wrong and is not asking for relief for herself. Mr. Haney - not his goal to make this more onerous or more costly.

Mr. Haney - as far as a hearing on the merits of the building commissioner's decision, he was not sure of the authority of what the board can grant without it being a public hearing. It was his understanding that when it was asked for, an investigation was opened. Atty. Callahan - the statute doesn't call for an investigation; it calls for a hearing by bylaw with this board or the Board of Selectmen. Atty. Callahan knows that at least two of the selectmen never saw the request. They met with Mr. LaFond and didn't know if he had seen any of the prior correspondence and he had written two letters. This case has been more than unusual in just a short time. Mr. Haney - couldn't speak to that. What he understands from building commissioner is that when the issue was raised, Mr. Adams was given the authority to investigate the matter and determine whether he was going to issue a letter or not. At that point, he issued a letter. They are appealing the decision of that letter. Atty. Callahan - no, they are here to appeal the second letter, that there was insufficient information. Mrs. Derbes - there was never any engineering done to make sure that what was done was working. The letter was sent telling them to fix the water problem basically and stop sending the water onto her property, but

he didn't survey it, didn't check on it to see if it was working properly, didn't make sure it was a large enough system to hold the amount of water that was coming through. The letter got sent so that acknowledges to her that there was a problem, but now he's not doing anything further. The system that was put in was tiny and water that comes through in the magnitude and velocity on to her property is enormous. Then he told her he was not going to act on it. Atty. Callahan - there is a long history.

Mr. Haney - to re-open this, to go forward with this, it has to be publicly noticed. Atty. Callahan - they aren't reopening anything. Mr. Haney - the decision letter had been turned in. Atty. Callahan - asking for an appeal of the Building Inspector's decision, which is not the same as a variance or special permit. His client isn't in the wrong shouldn't have to incur more cost. Under the threat of counsel that the board wouldn't schedule anything, he published it in the newspaper. Mr. Haney - it is still defective as far as public notice law. Mr. Reynolds - enforcement usually comes under the executive. It is in the ZBA by-law, will be checked to see if this should go before the BOS. Atty. Callahan disagreed that it was an executive function. Mr. Shepard - AZBL Ch. 175-80 says it goes before the BOS.

Mr. Haney - Mr. Adams' investigation showed that there was the likelihood that both properties are over the square footage for lot surface coverage, an issue with the amount of fill brought in to the area, but couldn't get information. Mr. Adams - hasn't refused to do anything. He saw a problem and told 12 Warner Rd. to make some repairs, which they did, but unfortunately it wasn't engineered, which was ill advised on their part, but it's not for him to tell them what to do. Since then, he's heard that the system hasn't performed, but doesn't have evidence to that effect. Has asked for evidence that it isn't working, but doesn't have proof of that. Mrs. Derbes showed him a video of the water flowing. Mr. Adams - it was horrible, and it was insufficient evidence to support her claim. Atty. Callahan - wanted to give a history. Mr. Haney - no. Mr. Adams - they are here in an attempt to appeal his decision to issue an enforcement order based on the information that he was given, which is insufficient evidence. Mr. Haney - what evidence would he need to make a determination? Mr. Adams - he would be looking for ...

Mr. Haney - proposing three things. Can both properties certify they both comply with lot surface area coverage? Mr. Adams - they could attempt to get it surveyed if they chose to. Mr. Haney - the question was raised that there may be an issue with surface area of both properties. Mr. Adams - lot coverage could exacerbate the problem, but is not sure that is the case. Mr. Haney - it would require someone coming in and determining that there was adequate or inadequate surface coverage. Atty. Callahan - Mr. Adams is trying to avoid the issue at hand, by saying it is his client's property that is causing her own problem. It is obvious to anybody who has looked at this property that yards and yards of fill have been brought in to 12 Warner Rd. without a permit.

Mr. Adams - correspondence from counsel in January 8th correspondence states that this does not satisfy statutory requirements of an appeal to ZBA under MGL 40A Sec. 7,8,13-15. Mrs. Derbes - can she show the video? Mr. Haney - no. Mr. Haney asked what evidence would be needed to make a decision. Mr. Adams - a professional report needs to be supplied. There is a misconception between Mrs. Derbes and himself that any water from somebody's property has to be the water that is causing damage. Mr. Haney - if work was done and it's causing a problem,

he understands that. If they put in yards of fill without permits or engineering, that's a problem. If they have excessive surface area coverage causing runoff, that's a problem. If there is a question of Mrs. Derbes' property having excess lot surface coverage, that's a problem. Mr. Haney is trying to identify the little building blocks right now. To get the facts, it would involve an engineer making a professional determination. They would have to show a plan and authorization to bring in materials. They would need a determination as to whether the coverage is right or not; a determination that the drainage system that was ordered is adequate or inadequate. We have to get those parts and he is not an engineer.

Atty. Callahan - Mr. Adams has been hostile to his client's position from the beginning. When they met with Mr. Adams and Mr. LaFond, Mr. Adams called his client's request "hand holding". He expected them to go to the neighbors first, which they did, but he also admits the neighbors can't stand his client. So there is no communication between the neighbors. He found the original subdivision plans and Tracy has photos before this. There were no permits for 12 Warner Rd. other than a permit for in-law apartment. Mrs. Derbes - they needed a variance for that because they were going over the impervious surface by 117 feet. Mr. Adams - they wanted to exceed the size of the apartment, not the impervious surface. Atty. Callahan - he has the original application which is for special permit and variance because it was in the FPWPD.

Mr. Haney - the question that came up is question of large landscaping or fill that they put in. Atty. Callahan - it is substantial - there is a basketball court, pool, has been put on it, which changed the topography. Everything came down into a swale. Now things are pooling. The trigger of this was the storm in the spring. He (Mr. Adams) issued an order to fix it, and by October it was evident that it was not going to work. They had a meeting in November with Mr. LaFond to keep it from going to court. In December there was more rain, with flooding through her yard and into the house. They are in the floodplain and displaced flood storage capacity which is going to go someplace else. They had a representation that they spoke to a local attorney who supposedly was representing 12 Warner, and found out later that he's not representing them. Mr. Haney - didn't want to go down that hearsay road. Atty. Callahan - they aren't creating problems here for the neighbor, but Mr. Adams has been saying to his client that she get it surveyed, she do this and that. The amount of fill that was brought on can't be figured out by his client; she can't go on the other property. His client isn't causing problems for 12 Warner Rd.

Mrs. Derbes - water was pouring into her yard; Mr. Adams refused to come out and look at it while it was raining. In the beginning, he came out and said he could see the problem, that it was wrong, and it was the town's problem to fix it. He could make them tear up the whole back yard if he wanted, according to Mrs. Derbes. As soon as the local attorney got involved, everything changed. Mr. Haney - not getting into that. Mrs. Derbes - if the water is pouring in, that's illegal, they can't just take the water from their property and drain it into the Derbes's yard. Mr. Haney - they understand there is an issue and are trying to find that issue. Mrs. Derbes - she doesn't care if they have 12 basketball courts, just don't pour the water into her yard. Mr. Haney - if they did what they did legally and in compliance with the laws, they still can't dump extra water in the Derbes's yard. Atty. Callahan - there is no retaining wall out there, and there should be. Whoever they hired, just dumped the stuff, packed it down so they could get a basketball court. It wasn't designed with any thought to proper drainage or detention. They aren't asking

for it to be returned to the previous grade. They want a proper retaining wall and proper detention and drainage put in. Mrs. Derbes showed several photos, not to be considered part of the record. Fill and boulders have been brought in and it slopes and drains into her yard.

Atty. Callahan - because of the impervious surface, they need to have some system where the water goes into the system, retaining it for a time, and gradually releases so that it mimics the natural... This is all going into a swale eventually. Mrs. Derbes - their only form of drainage is to slope it in to her yard. Mr. Haney - the purpose of this request is to see if Marshall is going to investigate this and issue or change his determination. They aren't weighing the merits of the issue. Mrs. Derbes - showed photos - it is lined with rocks, and they decided it is sloped too severely, going down in steps, then they came in and put more boulders up and more fill in to try to make it level. Water is streaming into her yard. It is sloped towards her yard. The whole design was to drain it into her yard. The Derbes's offered to split the cost of a retention wall. Mr. Reynolds - asked for a photo to submit to Mr. Adams to take into consideration for what they are looking for. Mr. Haney - the enforcement would be for a party not present or notified. Mr. Reynolds - they are trying to facilitate and get her the relief she is seeking. Yelling and screaming isn't going to do it. Atty. Callahan - the board needs to make a finding that there was a violation by bringing in this fill. Burden of proof and cost is being shifted on to his client. He doesn't want to see that happening as a result of further investigation. Mrs. Derbes - she is concerned that along basketball court by the drainage there are electrical wires that go along the drainage that she is concerned about. It is a mess.

Mr. Reynolds - motion to table? Mr. Haney - it's definitely tabled, it isn't officially opened. Mr. Adams - wants an engineer's report that says the neighbors are causing Mrs. Derbes's problems. Mrs. Derbes - she can see the water coming onto her property. Mr. Adams - isn't asking what they can see; he wants a report from an engineer. He is not an engineer; that is all that would solve the problem. There is never going to be satisfaction here, no matter what happens in his opinion. Atty. Callahan - to put the burden on his client is not fair. It is obvious to anyone that yards and yards of fill were brought in, in violation of bylaws without a permit. You can see the water pouring out. The installation is collapsing. Mrs. Derbes - when it rains, it looks like three garden hoses pouring in; it is a by-law violation as well as state violation. Water pours in to her yard. She could fill gallons and gallons of water. They put in a tank, but it is so small it doesn't come close to holding any of the water. It was overflowing halfway through the day and it rained for another twelve hours. She shouldn't have to pay for engineer because someone filled illegally.

Atty. Callahan - they have been asking for the intervention of the BOS or ZBA since last June. For some reason people have not seen those letters. Mr. Haney - he saw something about nine months ago, and at that point it went to Mr. Adams. Statute doesn't call for an immediate violation letter. You have to investigate to determine whether there is a violation. Atty. Callahan - the statute issues a time limit; there doesn't seem to be any impetus to bring the neighbor involved and get the neighbor to do what is right. The neighbor admittedly hates his client, so they aren't going to work it out on their own, so they have to ask the ZBA to get this resolved. His client can't go on with this situation. It is obvious it was done wrong. Mrs. Derbes - they are expecting her to pay an engineer to go out there as well as paying an attorney? She has photos of it going into her lot. Atty. Callahan - the natural berm was filled in; they

understand the way the topography was before the subdivision was built. Water would collect in the berm. It is beyond that now. Water that would have been collected on that side of the berm is now being pushed onto Mrs. Derbes's side because that half of the swale has been filled in. You don't have to be an engineer to figure this out. If you fill the swale, water is going to go somewhere else. They have photos to show that. Water problems didn't happen before; they are happening now. Burden should be shifted onto 12 Warner. There doesn't seem to be any effort to have the neighbor comply.

Mr. Adams - they disagree with interpretation of bylaws; it says it can't cause a problem. Mrs. Derbes - according to state law they can't put their water on her property. Atty. Callahan - they aren't asking for return to what it was, but proper detention and drainage system and retaining wall, so runoff is at preconstruction conditions. Mr. Adams - needs a design professional to assess problem and what needs to be done to correct it. Who has to prove burden of responsibility? Atty. Callahan - Mr. Adams is refusing to correct the bylaw violation, so it's up to the board to issue an order to get it corrected. Mr. Adams - they are appealing his inaction, but the appeal wasn't properly noticed. He has talked to Mrs. Derbes about what is needed - a design professional to tell him what's going on. He tried to handle it, and it didn't work. Doesn't think Mrs. Derbes will be happy regardless of what happens. He won't act without design professional. Mrs. Derbes - they don't have the right to put water on her property; she just wants water to stop. If Mr. Adams had come down when it had rained, he would have seen the problem for himself, that the system had failed. Feels it is a safety issue. Rocks are loose on 2'-3' wall with 6' fence on top, because dirt washes away when the water comes through.

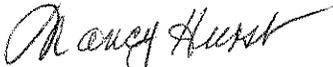
Mr. Haney - would like other party allegedly causing this to be here. Mrs. Derbes - is Mr. Adams going to act on erosion? Next meeting is March 12th. Mr. Haney would not be present for that meeting. Mr. Reynolds - they could go to small claims court to go after 12 Warner. Atty. Callahan - they have been trying to avoid that. Mr. Reynolds - if they get that study, and it proves everything, that is their evidence. Mr. Reynolds - if it's going to go to court, it is. Atty. Callahan - it would be terrible for that to happen, with everyone spending a lot of time and money because people don't do their jobs. He has been through this process with this town, and his clients were vindicated, but it was a long, expensive and painful process they shouldn't have had to go through. Mr. Haney - wasn't going to take evidence with a defective notice for hearing. Atty. Callahan - March 12th isn't going to work. April is too late, requested a meeting other than regular date. Mr. Haney - the board meets the second Thursday of the month, and he's not available in March. They can file an action with the court if it comes to that. Atty. Callahan - this is the perfect place to resolve this. They aren't going to get anywhere with another investigation. Mrs. Derbes - didn't think Marshall is going to enforce any of it. She would like to get this fixed without going to court. Mr. Haney wouldn't order the Building Inspector to act on the Zoning Bylaws or state laws that are being violated? Mr. Haney - the Building Inspector has investigated and made a determination. The board will discuss with Marshall what can be done; he has asked to have some engineering done. Mrs. Derbes - would the town like to pay for it? He told her it was the town's responsibility to fix this when he first went out there. Mr. Adams - denied that he said that. Mr. Haney - he's not going to get into back and forth. They would like this resolved without court like Mrs. Derbes. The board will look at the original record of the property, make estimate on surface coverage and act from there. Mr. Haney is not going to tell Mr. Adams to issue a violation order against the other property. Mr. Adams - if the

board ordered him to enforce, and 12 comes in to appeal that order, they would ask on what basis. They would ultimately still be looking at a design professional to make a decision as to who is correct. Was his order to issue them to put up a wall and a retention basin and whatever else they want, would he be justified in ordering them to do that. They are still looking at a design professional to find out what did indeed happen. That is why he hasn't gone further, not a call he can make. He tried, and it failed. Twelve put in a system, but unfortunately they put in extensive system and it wasn't engineered. Mr. Haney - go back to them (12) and ask them to provide Mr. Adams with engineering that is certified and adequate to handle the problem. Mr. Adams will consider it. Mr. Haney is not discounting the problem, just where is the burden of proof. Atty. Callahan - there are two open and obvious violations of the bylaws, and he is refusing to stand up to 12 Warner Road. They are choosing the rights of one citizen over another citizen. Solution to the problem needs to be engineered. If it's designed for the 50 year storm, 100 year storm, it should work.

Mr. Haney - will discuss a letter to 12 Warner Road with town counsel to draft a letter requesting an engineer's certification that whatever they did was adequate. If they don't comply within a certain number of days, they are in violation. Mr. Adams - they have proved to Mr. Haney that there is a problem? Mr. Haney - *they* believe there is a problem. Motions are tabled until we get correspondence from counsel to 12 Warner. Mr. Haney will contact counsel. Mrs. Derbes requested that they be copied on correspondence.

Meeting closed at 8:35 p.m.

Respectfully submitted,


Nancy Hurst