

**Arundel Zoning Board of Appeals  
Minutes  
September 29, 2015**

**Members Present:** James Martemucci, John Webb, Norman Cloutier, Roger Scannell and David Berg

**Members Absent:** Raffaella Reimer

**Also Present:** Attorney Leah Rachin, James Nagle, Tad Redway, Ricky Dubois, Randy Dubois, Marcel Dubois, Sol Fedder, Rich Ganong, Bob Coon, Dan Dubois, Jon Der kinderin, Marty Cain, Tom Danylik, Ray Gonneville, Scott Lilly, Diane Robbins, Steve Katon and Wendy Lank, Recording Secretary

1. James Martemucci opened the meeting at 7:03 P.M. in the library of the Mildred L. Day School. Martemucci stated that with the members present that the Board had a quorum.
2. **Administrative Appeal Application – Dubois Livestock, Inc., Applicant; Randrick Trust, Owner – 191 Brimstone ; Map 19, Lot 1B, 5, 6, 6A, & 6B; Zoned R-4**

Martemucci asked who was there on behalf of the appellant. Sol Fedder stood and stated that he thought this was going to be a Public Hearing like they would have with the Planning Board. Fedder stated that he did believe he wasn't the only one who thought that.

Martemucci said he did not know what Fedder was talking about because this is how the Zoning Board of Appeals have been conducting hearings for the 11 years that he has been on the Board.

Fedder stated that all of a sudden they were informed this was a Public Hearing. Fedder said that he was informed of the Public Hearing last night when he attended the Selectmen's Meeting.

Martemucci asked Fedder if it was his feelings that the Zoning Board of Appeals was not following the Arundel Land Use Ordinance.

Fedder stated that Dubois Livestock, Inc. did not realize that they were supposed to present at tonight's meeting.

Martemucci stated that he had a notice of Public Hearing dated September 11, 2015 and asked Fedder if they had received it. Fedder stated that he did not receive such notice.

Fedder stated that the Town of Arundel has a procedure where they have a Public Hearing, that's when the public comes in and they give their opinion about the up and coming matter. Fedder thought that is what was going to happen. He stated that if he had known, he would have been prepared.

Martemucci asked Fedder what his relationship was to the applicant. Fedder replied that he was one of the officers and directors of the corporation. Martemucci asked if Fedder was one of the owner's and Fedder replied no. Martemucci asked if there was anyone else from Dubois present and Rick Dubois and Randy Dubois introduced themselves and their father, Marcel Dubois.

Martemucci asked Town Attorney, Leah Rachin how to proceed. Rachin referred to Section 10, Board of Appeals, in the Arundel Land Use Ordinance. 10.3.A states to hear and decide appeals. Also, 10.3.C.1 states, Appeals involving administration procedures or interpretation of this ordinance may be heard and decided by the Board of Appeals.

Rachin stated that she believes it is within the Chairman's discretion. Rachin went on to say that the Board has its procedure, it has governed itself the same way it has for at least the past 11 years. Rachin stated that it is her understanding that the applicants have been before this Board in the past and that the Board should make a determination to proceed as they would ordinary do.

Martemucci asked Fedder and the Dubois' if there were something within their written application they would like to supplement and feel it is not complete.

Fedder stated that usually he takes this opportunity to present. He stated that they had been before this Board one other time, two or three years ago. The whole idea of presenting a full and complete hearing is a potential to avoid having to go to court again.

Martemucci stated that the Board is here to listen to an appeal fairly, to hear and read what the applicant has to say and to see what other positions apply to comply with the Land Use Ordinance. The issue about whether or not it is going to court, we as a Board do not concern ourselves with. If the applicant wants to appeal the Board of Appeals decision, that is certainly their right.

Fedder stated that if they present argument that is sound and reasonable, as to half hazard and crappy, then the Board is going to have something to consider and to think about what our position facts actually are. Fedder stated that that is what they are concerned about.

Fedder stated after being asked by Martemucci, that they were not prepared for tonight and if they can have a continuation another time they would be more than happy to get ready and come back.

Diane Robbins who is an abutter asked to speak. Robbins stated that she received a Notice of Public Hearing and was very well aware why she was coming tonight. Robbins stated that she did not have the details of the meeting so she went to the Selectmen's Meeting the night before. Robbins stated that the applicants were also present at the Selectmen's Meeting of September 28, 2015 where the letter was discussed and it was clear that tonight's meeting was on an Administrative Appeal.

Martemucci stated that the Appeals Board was ready to proceed. He stated that he did not want to make a decision arbitrarily and asked if there was anyone on the Board that wanted to ask any questions or has an opinion if the Board should go forward or not.

John Webb stated before the Board makes that decision and before they leave tonight they need to address section 10.5.C.3 which reads, at any hearing, a party may be represented by agent or attorney. The hearing shall not be continued to other times except for good cause.

David Berg asked Martemucci if he could read for the record what the Notice of Public Hearing that was sent to the applicant and abutters says because he felt it was very clear. Martemucci read it out loud.

Martemucci again asked Fedder if they had received such notice and Fedder stated that it came to somebody and we did see it.

Berg asked Martemucci if the Board had confirmation that the applicants did receive the notice. Wendy Lank stated that she had called and spoke Cindy Dubois, Trustee and Cindy confirmed that she had received the notice.

Martemucci asked if the applicants had a copy of the packet they submitted to the ZBA and Fedder replied that they did not and the reason was because they thought that the meeting tonight was going to be a Public Hearing where people just voice their opinions. Fedder stated that the procedures from one Board to the next are not etched in stone and that is why they were here tonight.

Webb asked Fedder where it states in the Land Use Ordinance that the ZBA has the authority to hold a general meeting in order for people to come in and complain. Fedder stated he had no idea where it would be. Fedder stated that if the ZBA wanted to go ahead and have this hearing go ahead and have it. Martemucci asked the Dubois if they were ready to go ahead with the hearing. Fedder said no and that he felt that the ZBA was being extremely unfair. Fedder, the Dubois' and their friend rose and left the meeting voluntarily.

Martemucci asked Rachin if the Board can decide the appeal. Rachin referred to section 10.5.C.4 which reads, if a party does not attend a hearing and is not otherwise presented, its case will be deemed to have been withdrawn without prejudice to refile the appeal.

There was discussion amongst the Board.

Scott Lilly, an abutter asked the Board if the Town was looking to shut down the Dubois' operation.

Martemucci stated that the ZBA is only hears the appeal that was filed. The ZBA has nothing to do directly or indirectly with the question asked. Martemucci informed Lilly that the appeal concerns a reapplication for a permit and that is all.

Berg made the motion that the Board needing to consider Section 10.5.C.4 is in order. The parties left the hearing voluntarily and did not put on their case. Therefore the Zoning Board of Appeals has no choice than to deem the case withdrawn without prejudice and that Dubois Livestock Inc, was not prepared to go forward with the case. With a vote of 5-0, all were in favor.

3. **ADJOURNMENT**

Martemucci made motion to adjourn. Berg seconded with the vote being 5-0, all in favor.

Respectfully Submitted,

Wendy E. Lank  
Recording Secretary