

**Town of Cumberland
Board of Adjustment and Appeals
Minutes of Meeting
Thursday, February 11, 2010**

I. Call to Order:

The meeting was called to order at 7:06 p.m.

II. Roll Call:

Present: Adrian Kendall, Vice Chair, Mike Martin, David Joyce, Andrew Black, Ron Copp, Christian Lewis

Absent: R. Scott Wyman, Board Chair, Matt Manahan

Staff: Bill Longley, Code Enforcement Officer, Pam Bosarge, Board Clerk

Mr. Kendall introduced the Board.

Mr. Kendall welcomed the applicants and gave an overview of the rules of procedures for the meeting.

Mr. Kendall restated his disclosure as at previous meetings that his law firm was adverse in a case with the Bisbing's. He was not involved in the process, and at the last meetings the Bisbing's felt comfortable with Mr. Kendall participating.

The Bisbing's and Board concluded there were no conflicts with Mr. Kendall.

III. Hearings and Presentations:

1. Reconsideration of Interpretation Appeal: Susan and Spence Bisbing of 2 Spruce Lane, request reconsideration of the Board of Appeals decision of January 14, 2010 to not hear their interpretation appeal regarding the decision of the Code Officer to take no action in regards to an existing home occupation at 21 Foreside Road, Tax Assessor Map U01, Lot 26 in the Low Density Residential district.

Mr. Longley stated he has provided additional materials to the applicants, to the subject property owner at 21 Foreside Road and the Board.

The three documents are:

1. An e-mail from the Town Attorney dated 1/26/2010 which gives an overview of the meeting procedure for the reconsideration.
2. A letter from the Bisbing's attorney, David Hirshon asking for reconsideration by the Board.
3. A letter dated February 1, 2010 from Attorney Richard Olsen representing the owners at 21 Foreside Road.
4. Town Attorney's letter dated February 4, 2010 as to procedure if the request for reconsideration is granted.

The Board reviewed the material.

DRAFT

Mr. Kendall stated procedurally the decision for reconsideration has to come from a motion to reconsider from a prevailing vote member. Mr. Kendall read Mr. Cole's letter into the record as follows:

Bill: This email is intended to confirm my advice regarding the above matter. (Bisbing Reconsideration). Specifically the relevant statute requires a request for reconsideration within 10 days of the Board decision - see 30-A M RSA 2691 (3) (F) - and the Board must act within 45 days of its prior decision. Since the Bisbing's request was timely filed, the Board must take it up within the 45 day window - however, since it is reconsideration, for the Board to actually reopen the matter, one of the members on the prevailing side must be willing to make the motion. Therefore, the matter should be placed on the Board's agenda, the Chair should ask for a motion to reconsider and if none of the 5 members who voted this matter down is willing to make a motion to reconsider, the matter is dead. If a motion is made by the proper Board member (and seconded by any member), then the Board can reopen the hearing or simply reopen their deliberations, and vote again. Since the Board might reopen the hearing all parties to the original appeal must be notified of the meeting at which the possible reconsideration will be heard.

Mr. Kendall stated three of the five prevailing Board members from the last meeting are present: Andrew Black, Dave Joyce, and Ron Copp.

Mr. Kendall asked Mr. Black, Mr. Joyce, and Mr. Copp if they were going to make a motion for reconsideration. Mr. Black, Joyce, and Copp all stated no they were not going to make a motion.

Mr. Kendall stated on that basis the matter is concluded and the request is denied.

IV. Administrative Matters:

1. Minutes of January 14, 2010. The draft minutes were deferred to the next meeting.

V. Adjournment:

Mr. Black moved to adjourn.

Mr. Joyce seconded.

VOTE: Unanimous

The meeting was adjourned at 7:18

A TRUE COPY ATTEST:

Adrian Kendall, Board Vice-Chair

Pam Bosarge, Board Clerk