

# BRADLEY, BURNETT, KINYON, FERNALD & GREEN

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
50 WASHINGTON STREET  
P. O. BOX 666  
KEENE, NEW HAMPSHIRE 03431-0666  
(603) 352-2030

HOMER S. BRADLEY, JR.  
RAND S. BURNETT  
GARY J. KINYON  
BETH R. FERNALD  
DOUGLAS F. GREEN  
---  
SUSAN B. CAY

FAX  
(603) 357-9334

E-MAIL  
bfernald@bbklawyers.com

June 1, 2005

DIRECT DIAL  
(603) 352-2295 EXT 109

Zoning Board of Adjustment  
Town of Wilton  
Main Street  
P.O. Box 83  
Wilton, New Hampshire 03086

RE: Request for Rehearing  
Case #4/19/05-1  
Lot C-128-1 and Lot C-128-2  
Chalet Susse International, Inc.

Dear Board Members:

As you know, I represent Chalet Susse International, Inc. in connection with a Subdivision Application presented to Wilton Planning Board in February, 2004. I am writing to request a rehearing of your May 10, 2005 Decision in Case #4/19/05-1. The rehearing is requested for the following reasons:

1. Midway through the public hearing on this Appeal, the ZBA consulted with legal counsel, having explained that a legal consultation was necessary for the Board to better understand the extent of ZBA authority. However, the ZBA consulted not with independent legal counsel, but with an attorney who previously represented the Planning Board in Superior Court with respect to this exact same subdivision approval dispute.

The ZBA sits in a judicial capacity when hearing an appeal of a Planning Board decision. The two opposing sides in this dispute are the Wilton Planning Board and Chalet Susse. The Wilton Planning Board would certainly have objected had the ZBA decided to consult privately with Chalet Susse's attorney before continuing a public hearing. The ZBA Decision is tainted due to the participation of the Planning Board's attorney. See *Winslow v. Holderness Planning Board*, 125 N.H. 262 (1984).

2. This case should also be reheard because the decision is legally incorrect. The Zoning Board of Adjustment decided that the Planning Board correctly interpreted Section 6.3 of the Wilton Zoning Ordinance. The decision was based on your conclusion that the Planning Board has the authority to decide whether reduced frontage lots do not "better serve the neighborhood." The Planning Board does have that authority; the problem is, that was not the issue before this Board.

The question is not whether the Planning Board has the right to deny reduced frontage lots, the question is whether the Planning Board can deny reduced frontage lots based on concern about a wetlands crossing and other wetlands-related concerns. While the Planning Board has the right to interpret the Zoning Ordinance, the interpretation has to be reasonable.

In this case, the Planning Board was required to reasonably interpret the standard "better serves the neighborhood." A reasonable interpretation of that zoning standard would consider the impact of this subdivision on the neighbors, including such things as views and traffic. Boards typically judge impact on the neighborhood by considering whether any of the neighbors show up at Planning Board hearings or communicate any complaints.

The Planning Board did not conduct this analysis. Instead, it interpreted "better serves the neighborhood" as including wetlands impact. The impact of a subdivision on wetlands has nothing to do with whether it "better serves the neighborhood." Moreover, even if wetlands impact were related to whether a subdivision better serves the neighborhood, the Planning Board had no information whatsoever that these lots pose any concern or problem with respect to wetlands.

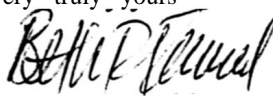
The engineer hired by the Planning Board found no problem, and there was no testimony at any of the Planning Board hearings on this subdivision that the subdivision posed any concern or problem for the wetlands. Although the Planning Board member who attended ZBA hearings in this Appeal stated more than once that the Planning Board denial of this subdivision approval was not based on wetlands, there is no question that a concern about wetlands is the basis of the Planning Board Decision.

3. Finally, it appears that, although the Planning Board has approved many reduced frontage lot subdivisions, the Chalet Susse subdivision is the only one in which the Planning Board considered whether the plan "better serves the neighborhood." In

Town of Wilton  
Zoning Board of Adjustment  
June 1, 2005  
Page 3

singling out Chalet Susse and requiring it to meet a vague test that no other similarly situated applicant had to meet, the Planning Board acted illegally.

Very truly yours-"

A handwritten signature in black ink, appearing to read "Beth R. Fernald". The signature is written in a cursive style with some loops and flourishes.

Beth R. Fernald

BRF/mjc

cc: Chalet Susse International, Inc.  
Monadnock Survey, Inc.