

Town of Bakersfield Continuation of Zoning Board of Adjustment Hearing  
McSweeney/Hathaway  
Wednesday, October 26, 2022  
6:00pm

Called to order by Melanie Riddle at 6:00pm.

Attendees: ZBA members: Melanie Riddle, Maura Horne, Heather Jewett  
Others present: Ralph McSweeney, Connie McSweeney, Mike Gawne,  
(Bakersfield Town Attorney) Ron Hathaway, John West, Tami Brennan

Michael Gawne introduced himself as the attorney that is helping the Zoning Board of Adjustment with their conduct regarding this appeal. Mike said that what I indicated before the meeting started is that I had spoken with Brenda on Monday to find out whether or not there was going to be a hearing today. My understanding is that the three board members and Brenda, met on Sunday at the subject property to see what they could see. Heather said that she was not able to make it because her car said no way. Mike noted that Heather would rely upon what the other people would say. Mike said that they looked at things and based on the Gervais survey, which is marked in the field to some degree, they had measured the distance between the boundary line and the structure, the camp that is built on that property, and it met the guidelines and setbacks required, based on that survey. Mike said that the information that Brenda had, right or wrong, was that there had been an agreement between the surveyors, Mike Gervais of Barnard and Gervais Land Surveyors, and Len Amblo of Button Land Surveyors, had agreed that the Gervais survey is accurate. However, for us to understand that there is an agreement is different than an agreement in fact. Rather than relying on an understanding, It said that she needed to contact the appellants to find if that is their understanding. Mike said that he tried to contact the McSweeney's on Monday and he was unsuccessful. Mike said that Brenda then sent me a different telephone number on Tuesday, and I contacted Mr. McSweeney and he indicated that he is still waiting for Len Amblo to share with him and his wife whatever information may have been shared between Mike Gervais and Len Amblo.

Mike said that brings us to the Hearing and I did suggest to Mr. McSweeney that perhaps if Len Amblo could not attend the meeting in person, maybe he could share with the McSweeney's or the Zoning Board of Adjustment what his current opinion was of the proper location of the boundary line. I think that turns it over to Mr. McSweeney.

Ralph McSweeney said, alright first on the list, I actually finally got to talk to the surveyor...

Mike asked the ZBA if they wanted to have all those testifying to be sworn in. Mike had Ralph and Connie McSweeney and Ron Hathaway raise their right hands and asked them if they swore to tell the truth, the whole truth and only the truth, so help me God. And they all said that they did.

Ralph said that he finally got to talk to him, that he talked to him for about an hour during work today and we had a conversation of what his findings were and he was trying to get something to put together before I could come to this meeting, I mean it was like he didn't have much time to do this before this date but he did get something to us so it's at least something preliminary and some factual things that are notable for the Zoning Board and for everybody basically. I was on the phone until 4:30 and rushed to get here. I don't know how you got any other communications that there was any agreement because I was still in conversation with him, and he was there last night trying to make heads or tails of the discrepancies that are up there. Mainly the one I think I want to start with first is that I was up there on the 16<sup>th</sup>, I don't get to go up there as much as I would like to. The 16<sup>th</sup> of October and from where the pin was that Gervais put in, it had been moved again. I was like, are you kidding me. I took a picture of it if anybody is interested, because on the 16<sup>th</sup>, I'm going, why did they move it.

Connie said, without communication.

Ralph said, without any body knowing about it as far as I'm concerned. I thought I'd get a phone call saying we finally decided to move it back to where it belongs, or where you think it belongs, or anything, but I didn't hear anything. So, now that Lenny has been there, he verified that somebody had moved it again. I didn't know why, and he doesn't know why but he marked it, and he has it in his legal files or his GPS and that was just yesterday and today when he was there.

Connie said, that where it was moved, it was moved back to where it initially was in all the years that we've owned the land.

Ralph said, pretty close. So, he was there just checking things out, not just there, that was just one of the places. Ralph said, that I can't believe that this has been done, I don't know why. So, I'd have to believe that when you went up there on Sunday, from the 16<sup>th</sup> when it was moved again, to when you were there, it had to be in a different location again, not to the survey that was done by Mr. Gervais. That still bothers me, and I can't understand why. I have pictures of the after and before, if you're interested. I know you guys have already done your work and stuff.

Maura asked, the pin that you're referring to, just so we know, are you talking about the one that's going up the hill or the one that's before that, if you're going up Belvidere Mtn road, you have the one pin.

Connie said, the first one.

Ralph said, it would be our shared pin more or less.

Connie said that something did happen to the other side.

Ralph said, on the other side they have been all painted. The pins are no longer painted with nice bright colors. Somebody has marked all the trees up and those were the original markers and now they are all black and brown. I don't know why they did that.

The board asked for the pictures...Ralph said here is the one that the excavator moved. Ralph searched through the pictures and said because of his talk with Lenny, his pictures got scrambled.

Connie said, it was a rush.

Ralph said, let me try to get the right ones.

Heather said, am I to understand that we're still waiting on a survey because I don't think that we need to look at pictures if we are waiting on a survey.

Ralph said the lot lines keep changing. I mean the pins keep changing, I don't know how anybody could make anything accurate. I wish somebody would leave them alone, I don't know what's going on, unfortunately.

Heather said, do you understand what I'm asking. I'm asking that if there is still an issue going on with the boundary line dispute and we're still waiting for an official survey, do we just postpone again and not bother looking at the pictures as this point.

Ralph said sure.

Melanie said she would not be available next month.

Mike said, ...(things that were inaudible).

Mike asked if Mr. Amblo said when he would get things done. Will he have them done by next month.

Ralph said that he said he's going to be able to do it. What I've got is some preliminary stuff that says not for recording because he's not finished. He's showing some discrepancies. He and Mike Gervais could probably hash some of these things out. Or even Ron and we could hash some of these things out. It's just....

Connie said, there is no communication.

Heather asked if they could move to go to executive....

Mike was inaudible in most of his response. He asked, to discuss things with me.

Heather said, yes.

Heather said, I'm moving to take a break.

The board took a break to discuss in closed meeting at 6:15pm.

The board resumed at 6:25pm.

Mike said that what they discussed in the quasi-judicial closed meeting, as I mentioned last month, is that, based on the application depicting the boundary as it was depicted, there is no violation of the set back requirements. What the issue is, is whether or not the boundary line was correctly depicted. If it turns out that the boundary line is incorrectly depicted, it's not an appeal on the permit, it's a violation that they built the structure based on land that they don't own. The board did go out on Sunday, as what was mentioned, and from what the board can tell, is that the boundary line as depicted is consistent with the application that was filed. If you had the information this evening, maybe, just maybe the board would say, ok, we will consider what you have because we are open to being persuaded, but based on what the recommendation that I made to the board last month is that there is nothing wrong with the application. You're filing an appeal based on the application of the building permit, and it is consistent with what is on the building permit. I will take a small digression, my understanding is that the original building permit had the building configured one way and it's been turned 45 degrees or 90 degrees,

which means it's not consistent with the building permit, nonetheless it meets the requirements and there is nothing in the Bakersfield zoning by-laws that states that your building has to be oriented this way or that way, so even if that were a violation, it's a pretty technical one and it's one that is easily cured by the Hathaway's just filing an amended application showing this is what it looks like. Typically, how that would be handled would be you would file an application for a certificate of compliance and the zoning administrator goes out and looks at it and says yes, you complied with the zoning ordinance, but you didn't technically comply with what you filed. But it's still not a violation so you wouldn't be able to go in and say you are now violating for not building, we would say that you need to file something that reflects that it is different today than what was presented originally. What the result would be would be your appeal would be dismissed, and I don't know what the Hathaway's appeal is still pending I guess, and they would want to meet with their attorney to see if they will want to go forward with their own appeal, but once Len Amblo finishes his work, you've got 15 years from the date the building was constructed to file a complaint saying that the boundary line is not correctly depicted. So, you still have plenty of remedy. The remedy isn't here. My recommendation to you, you would have to consult your own attorney to go anywhere from here, but if Len were to say that he does not agree, there would be two surveyors both coming in and saying two things, presumably, and this board is not set up for determining boundary line disputes so you would go to the Civil Division and get a decision there, and once you got a decision from the Civil Division, then you would file a complaint with the zoning administrator at that time, and the zoning administrator would investigate, would look at the decision that was issued by the Civil Division, and would be able to say yes, there is a violation or no, there is not a violation and if you didn't like the decision then you can come to the zoning board of adjustment taking an appeal of the zoning administrator's decision, whatever that may be. That doesn't really resolve Mr. Hathaway's problems because he's trying to sell the property. He needs to resolve the underlying issue, where the boundary line is. That is not something that the zoning board can resolve at this point. That explanation, more or less summarizes what we discussed.

Connie asked, just to clarify, you as the ZBA, do you deal with the discrepancies of the surveyors or the actual boundary lines.

Mike said, they could, but it's unlikely that if they have two competing surveys, that this board, none of these people are surveyors, they are not familiar with the rules for surveying, and you've got two surveyors saying this and that.

Connie said, we're not either.

Mike said, If Len Amblo and Mike Gervais were to agree, I would hope that that would resolve the issue, whether in your favor, or in favor of the Hathaway's, one way or the other. If they don't agree, then a recommendation to you is to go to the Civil Division. You can file an appeal here if you want to, You can file a complaint with the zoning administrator and she will investigate but her investigation will probably say, I don't know, you haven't presented enough proof for me to say there is a violation, so she would issue a decision and that

decision would say that you have 15 days in which to take an appeal of her decision and if you don't take an appeal from her decision than that appeal is forever...you can't do anything thereafter, it is final.

The decision that we're making this evening, because it's on the application, it's final vis-a-vis the application, but it's not final vis-a-vis the zoning regulations. Connie said, so it just lingers until we do something about it.

Mike said, hopefully, Len Amblo is doing something about it in short order and once he does it in short order, something will happen. I understand that the Hathaway's are interested in selling this property and they may have it under contract, and they won't be able to sell it, at least I don't think they'd be able to sell it until this issue has been resolved. So, I think that you're in the (inaudible) seat, if you will.

Connie said, Well, we have the preliminary from him just finishing up.

Mike said, you may want to share that with Mr. Hathaway, but right at the moment, with Len Amblo not here to show what his findings are, I don't think it's going to make a difference from this board's viewpoint.

Ralph said, I don't think it makes a difference if he's here or not either. I didn't want to waste his time either. I discussed it with him. Your job is your job, I know.

Mike said, If Len Amblo's position is that he disagrees with Gervais's survey, chances are very good, that we would say that the appeal is dismissed, not because Len Amblo is wrong and Mike Gervais is right, or the opposites of those two statements.

Ralph said, they've worked together before, they know what it's about. They know people don't want to go...they want to get it solved. They work together.

Connie said, and we just know where the markers were before, and Lenny was up there, a couple years back.

Mike said, he'll find them.

Ralph said, he's got all that information and he was trying to hash it out today just so I could come here but it didn't do any good. It's ok. It is what it is.

Mike said, you will get a written decision and you will have the right to take an appeal from that decision within 30 days from when it's entered into the records here, that may not happen until next month's meeting.

Heather said, so he can't sell until the 30 days has transpired between the appeal of this? So, you're talking, possibly January?

Ron said, if he's the good neighbor that he says he is, I don't even know why we're here. I can't possibly just sit here and be stopped like this. I just can't. I don't know what he thinks he's trying to do but this is wrong. Ever since I got here, for a year and a half, the stake on his side has been moved every time.

Mike Gervais put it in, the next day, I went up with Mike Gervais and you can call him and ask him, the stake was moved in one day.

Mike said, I appreciate what you're saying.

Ron said, I have had enough.

Mike said, I'm trying to answer the ZBA's question. Technically, you can sell to anybody for anything, it's just the person who is buying it will be taking it subject to the possibility that there is a zoning violation, and I think that if it

were not disclosed by the Hathaway's that there is a possible zoning violation of a boundary line disagreement, is that if the buyer gets involved in the dispute with the McSweeney's, saying you don't own the property, you have to move your house to make sure it meets the setback requirements, the buyer would then be joining the Hathaway's into the law suit, so I think from the practical viewpoint, as opposed to the legal viewpoint, is that they need to get this resolved.

Ron said, I've been asking him for a year, what does he want? How far on his property did he say I was. He tried to get me to have my camp moved because I was on his property. I've had enough of the perfect neighbor that he says he is. He isn't the perfect neighbor. Why would I want to sell.

Mike said, that's not something....

Ron said, if he wants to take this as far as he wants to take it, I'm going to take it with him, but I've had enough of him.

Connie said, does he have the chance to come up here and talk too today.

Tami said, I would love that because I don't have him on the mic.

Mike said, we do not have him on the mic. So why don't you folks, do you have anything else that you want to say before we let Mr. Hathaway speak.

Is there anything else you would like to say, Mr. and Mrs. McSweeney?

Ralph said, I don't like accusations coming from my neighbor. I welcomed him from the first day.

Ron said something inaudible.

Ralph said, no he didn't. He lies, oh he lies so much.

Mr. Hathaway was inaudible on the mic in the background.

Mike said, Mr. Hathaway, you need to stop. Mr. Hathaway, either you need to stop, or you need to leave.

Connie said, we are very willing to talk about this with you and with some other people there so we can settle this.

Mike said that his suggestion is that you let Mr. Hathaway's attorney participate in that decision. Is there anything else that you want to say before Mr. Hathaway has his opportunity.

Ralph said, no let him have his say because he's just....hopefully it will be the truth.

Connie said, I'm sorry, we don't like all this either.

Ron said, then why is the pin always moved. You are the only ones that are complaining up there. You come in here out of 4 people. It's cost me a lot of money for nothing.

Mike said, the floor is yours, I won't interrupt.

Ron asked, you want me to start from the beginning?

Mike said, I want you to say whatever you want to say.

Ron said, well ever since I got there, from the beginning, we've had trouble with pins, only on the right side, they were always being moved, front to back, all the time, or they just come up missing. The town says you have to get it surveyed, so I got it surveyed and all that. While Mike's putting the pins in that night, I went back up in the morning to talk to him and he asked me, did you move the pin? I said why would I move a pin that's costing me \$6000.00.

Somebody had moved that pin. Ok, down front where he's talking about, the pin is moved again. But I don't know who moved the pin, it's been moved so many times, I don't know how he knows where his property is because he doesn't have a survey. He says, He knows, He knows, He knows, well anybody can say they know. It cost me \$6000.00 to let you know where my property is. It hasn't cost him a nickle. Just like the lawyer. That costs me a lot of money just to have him here. For nothing. He says he's such a perfect neighbor, he's told you a hundred times, well the second time, he came into my place, the first time, he said you put that driveway in without a permit. That was on a Saturday. So, Monday morning I came down here and talked to the girls and I said, I need a permit for the driveway. Yes, you do. So, I went through the process with that. And he came up the following weekend and says I hate to see you put that camp where you're going to put it because you're on my property. I said how can I be on your property. And I told him just get out of here, I don't want you here, just get out, your trouble. Everything we do is wrong. We do this wrong. We do everything wrong. We brought too much fill in he claims. What business is that of his, how much fill I put in. None. He's just been a pain in the ass. He really has. He just...I don't know...I could go on and on all night.

Mike said, I was afraid you could.

Ron said, well I could. If somebody was kicking you around like that for no reason. I don't even know him. I don't even like him, period. I think he's just trouble.

Heather said, can I just say something? It really makes my heart hurt to hear neighbors fighting like this. And I get it. I want you guys to try to work something out. I know you're angry. I know you're angry and I get it. I understand both sides. Just if this was the last time that you were alive would you want to be remembered like this? And that's how I look at things. If this was my last day on earth, is this how I want people to remember my interaction with other people. Just make it work amongst yourselves and if I were you, I would put trail cams on all those points because it sounds like somebody's messing with both of you. So, I would put trail cams. We have them at our house because we had the same issue. We had the same issue with pins being moved so we put trail cams up.

Mike said they should put in a concrete monument which is better than putting an iron rod or rebar in.

Ron said, but you shouldn't have to do that. His easy way out is to say you're on your own, good luck, and I'll sell it and get out. That was our home that we dreamed of, right there. I said we're out in the middle of nowhere, nobody is going to bug us and in walks him. And he has been negativity from day one, so I finally told him to just get off my property. I don't want you on my property. I would never be his friend. Never. I don't want a thing to do with him because he's trouble. But all I want is the permission to sell my property to get away from my perfect neighbor.

Mike said, you do understand that we don't give or withhold permission for you to sell your property.

Ron said, I know, but he just wounds me up so much, you know, the rest of the people, I talk to them, they talk to me all the time and stuff, but he....what really happened is he wanted to buy that. He tried to buy it out from under me, this is how it started, he tried to buy it out from under me, but Mike McSweeney, and he claims they are not related, but they are, said to me...I said how come you never sold it to the neighbors; this is a small piece of property. He said I don't like my neighbor, that's why I'm selling it.

Connie said, now Ron....

Ron said, I'll bet he'd be here five minutes and he'd verify what I just said.

Mike said, you should talk to the board, don't talk to one another. Ok...you do that outside of the board hearing if you want to talk to one another. Don't talk to one another, you'll have opportunities to that at the appropriate place but not here.

Ron said, and he should have had his paperwork ready. I played by the rules all the way. I messed up when I put that road in without a permit. I messed up. Then they...I should have had a culvert. I didn't realize that permits were everything you possibly do now, and he'd been right on me.

Mike asked, is there anything else you'd like to say, Mr. Hathaway.

Maura said, anything else that is pertinent.

Ron said, I would just like him to come forward and say what he wants. How far am I on his property.

Mike said, our suggestion to you is to have your attorney, Chad Bonnini, contact the McSweeney's and see if they can...the McSweeney's need to finish off their work with Len Amblo, and I think they said that he can get this done before Thanksgiving.

Ron said, well look how long I wait.

Mike said, that's my suggestion. They get their work done and you see if you can get Chad to meet with them, with or without the surveyors. The surveyors may say they agree, great. But in any case, I think the McSweeney's are in agreement with whatever survey is set forth, ok? You'll need to approach them.

Connie asked, does the town take on any changes with the boundary lines.

He's submitted his survey and we have ours, who sets that in stone.

Mike said, it's set in stone by the court. The only people that can make the final decision is the court. If they make a decision that you don't like, you can take it to Environmental Court. If they make a decision that you don't like there, you can make an appeal to Vermont Supreme Court. And that's the final step, unless you are able to find some sort of federal law or something like this, but that's not going to happen, but the ZBA is not going to be your final answer.

Connie said, ok, I guess I'm saying also, say we do talk with him and his lawyer and together we come up with something, whatever it is, how is that finalized?

Mike said, you have an agreement, you put it in the land records. You hereby agree that the following line, the boundary line.

Connie said, so that's recorded.

Mike said, that's set forever, unless someone starts moving the pins.



Connie said, well, we just, you know, the hard thing was, it was for sale now and we don't want it to sell when things aren't clear, you know.

Heather said, if it does, it eventually comes back, like what you were saying, right?

Mike said, it definitely comes back.

Connie said, and it comes back on the new people that bought it, which is sad.

Mike said, they are the ones that now own the building that doesn't meet the setback requirements if Len Amblo's survey shows that it's in violation of the setbacks.

Heather said, that's why you hire a lawyer, and the lawyer goes through and sweeps through all the titles, and he has to sign something that says everything's clear.

Mike said, the lawyer won't find that. When he does the title search, we look through the permits that are on file, there may be something put in the Hathaway file about the decision that we're making that the attorney might see if he looks at it. If someone is looking at the Hathaway file today, they are going to see that there is an appeal and they will then, in a reasonable amount of time, they'll receive a decision, and that will go into the file and that will put the buyer on notice that there is a problem. Then once the boundary line agreement is reached between the Hathaway's and McSweeney's, knock on formica, then that agreement will go in the file as final.

Connie said, does the realtor have the responsibility to say that all correctly to the buyer.

Mike said, if the realtor knows about it and doesn't say anything to the buyer, he'll probably be a party to the .....(not audible)

Mike said, So, good enough, we'll get a written decision out in hopefully short order.

Connie said, ok thank you everyone.

Heather made the motion to adjourn, Maura seconded, and the motion carried with a vote of 3-0. The Hearing ended at 6:50pm.

Minutes recorded by Tami Brennan.