

Town of Bakersfield Zoning Board of Adjustment Hearing
McSweeney Appeal Request of Hathaway Building Permit
Wednesday, September 21, 2022
6:00pm

Zoning Board of Adjustment Members in Attendance: Melanie Riddle (chair), Heather Jewett, Maura Horne

Persons attending: Heather Kelly, Laura Hathaway, Ron Hathaway, Chad Bonanni (Hathaway's attorney), Connie McSweeney, Ralph McSweeney, Tami Brennan, John West, Brenda Churchill (Bakersfield Zoning Administrator), Michael Gawne (Town of Bakersfield Attorney), Chip McSweeney,

The Hearing was called to order at 6:03 by Brenda Churchill by introducing herself as the Bakersfield Town Zoning Administrator and said that this was her first Zoning Board of Adjustment Hearing and explained that while she is part of the Hearing, she is not part of the Zoning Board of Adjustment. She explained that this Hearing was to hear the appeal of her approval of the Hathaway Building Permit, that the ZBA has the paperwork regarding the request of a Hearing, the original approved document of the Hathaway's Building permit and the final approval by the Select Board of the Driveway permit.

Michael Gawne explained that he represented the Town of Bakersfield and the ZBA. He said that he is not here to represent Brenda as she is a statutory party to this appeal, so if he represents her, he does not represent the ZBA and the ZBA is relying on him to give it legal advice as to the Appeal Application and the Evidence presented.

Melanie Riddle introduced herself and noted that as this is the first meeting of the ZBA, that they do not yet have a chair. Maura Horne and Heather Jewett introduced themselves and Melanie said that she would entertain nominations for chair. Maura nominated Melanie, Heather seconded it, and Melanie accepted and agreed to be chair.

Melanie called for introduction of the participating parties. Chad Bonanni introduced himself as the Hathaway's attorney. Melanie said they would hear from the Hathaway's first to bring them up to speed on events.

Mike Gawne asked the board when they would like him to weigh in and how they would like him to weigh in. He said they could listen to the evidence and then consider things in deliberative session, or they could consider things in open session if they liked but they were entitled to go into deliberative session. If they would like him to comment on any time during the appeal, he would be happy to do that and he is prepared to do so, whether they want him to do that at the get-go, or whether they would like him to wait until deliberative session, that was up to them. Melanie asked if Mike could be part of their deliberative

session and he said he could, and that Brenda has said that they might want Mike to prepare the proposed the decision that they will make. Mike said that as the Appellant's, the McSweeney's would go first, that they would be sworn in to tell the truth about the facts they present, they do not need to swear that they will tell the truth about the law, that Mike is there to tell the ZBA what they need to consider and what they do not need to consider when it comes to the law. Then after the McSweeney's are done, Mr. Bonanni will be allowed to ask them questions. He is allowed to raise objections as to what the McSweeney's may be saying. Mike said that the rules of evidence are relatively relaxed while the rules of evidence are those that apply to a civil proceeding and the general exception is that you will be allowed to testify on things that would be excluded under the rules of evidence if it was something upon which the reasonable person would rely in the conduct of their own affairs, so that may swallow up a lot of objections such as foundation, hearsay, other types of things of which the ZBA may say that is admissible under that particular exception under the general rules of evidence.

The McSweeney's were called to the front table and the microphone and were sworn in. Connie said that the two things written on their appeal were the building permit and the drainage. She said they were basically looking for assurance that the set-back was met, and a survey was done by them and that they also have a survey that is being done. Ralph said that they were trying to get more facts because there were some interesting...Mike stopped them and asked them both if they swore to tell the truth, the whole truth, and nothing but the truth, so help you God, and asked if both of them would so say and they both said they did.

Ralph and Connie said...Things were done in a un-normal fashion that we could start with. We know we followed the town's procedures on what to do, and things got done really quick and nothing was followed that I could tell. And I had three or four conversations with Ron just to tell him that this is what I had to go through.

Mike asked clarification as to who Ron was and Ralph said it was Ron Hathaway.

Ralph and Connie continued...I welcomed him to the mountain and the neighborhood basically and I said this is what we did, did you do this, and he said I don't know, and I said, well, this is what I had to do, and I told him that you should check with the town and get their advice as to what you should do. That was my first or second conversation with him. Just the first thing out of my mouth was welcome, to welcome him like everybody else on the mountain. So as things progressed, things were just getting done very fast and we did not get to do things fast ourselves, which was fine, I don't care how fast he got to do it, but things were getting knocked down, and the area was getting cleared and I thought great, he's got good help here and it's getting done quick. As time goes on I find out that there is this drainage right down towards my land and I said I don't know if this should be happening that way, I just...It seemed unnatural...and there was this pipe showing and I said yea, that's draining

right toward my property and I look a little further back and he's got a nice little ditch in the back heading toward my property again so I didn't think that was very nice of my neighbor to do but I kind of ignored it for a little while, just let him do his thing...well, we didn't ignore it, we just assumed that he was doing what he was permitted to do by the town...I had no idea, I wasn't trying to check up on him, I had no reason to. As time goes on, I had another conversation with him, he even welcomed me to some of the wood. I said that I didn't really need any that I have plenty of wood. We just had a few nice conversations I thought we were fine, as time goes on...but he never came to us about anything that he was doing if it involved out land too...or our border, boundary...which was not really defined as known, because he ended up having a survey done. So that's the next part, the survey, the drainage is one thing, the ditch and the drainage was sent right towards my direction, could have been handled a little better but I didn't know any different, I still don't, I just know it's not natural flow of wastewater and or natural drainage, it's just unnatural to send it to your neighbors, it should have been toward the road or something, the ditch or something...it just didn't seem right, so that's the drainage issue that I have, mainly. I'm sure there is something that should be done a little differently, I don't know, I'm trying to check with my notes to see if I'm trying to cover everything too...We just kind of wish that there had been more communication from him about everything...I mean, I've approached him every time, he's never talked to me, he's never come to see me...We have tried. I thank everyone for this evening so we can open up the communication, it's good to see everybody here including them and maybe we can get some resolution... Back to the building permit, I'm thankful for the opportunity to open up communication... I don't know if I need to show the pictures.

Mike said if you want the ZBA to see the pictures you can show them to the ZBA and leave them with the ZBA and Mr. Bonanni should look at the pictures.

Ralph said that he really should have copies of his own. He said, I'm standing on my own land when I took these pictures. There is one in the front and one in the back, at different angles. This is the ditch in the back yard. The pictures really don't do it justice, they are hard to see.

Mike said that if there is anything they want the ZBA to see, it will be lost at least temporarily, if not permanently.

The ZBA asked if the picture was the brook.

Ralph, yes, that's a distance picture of the brook in the back.

Mike...these will be labeled McSweeney #1, McSweeney #2, etc., so that we can keep track.

The ZBA and McSweeney's discussed what they were seeing in the pictures.

McSweeney #1- taken from my land looking toward the new building, sideline of ditch, pipe goes underneath for drainage and don't know what else is for drainage.

McSweeney #2- sideline in question

#1 and #2 pictures from different angles

McSweeney #3- backyard and cleared area, shows the ditch better and closer. Shows the pin from the survey of Mike Gervais, to the right of the pin is Riley's property (on the other side of Ron), left of the pin is Ron's.

The monument is on the property line next to the pin that Gervais put there.

McSweeney #4- in the distance, the poster that Riley put up once they assumed that Ron was on their land.

Heather asked if there was a reason why Riley didn't come tonight.

Laura Hathaway said that he doesn't have a problem with us.

The McSweeney's explained where their property was in the pictures to Mike Gawne and the ZBA. The ZBA asked the McSweeney's for a copy of the survey. They said that the survey they were having done has not been completed yet. The people who own the 206 acres behind them are having a survey done by Butt, so they have asked the same surveyor to survey their land as well.

Ron and Laura looked at the pictures as well and asked when they could speak. The ZBA said as soon as they are finished with the McSweeney's, then it would be their turn.

Heather asked what the significance of the monument was, and the McSweeney's said it was just part of the pin.

Mike said that there would most likely not be a preliminary conclusion tonight, and that it his understanding that you will be asking for an adjournment of the hearing after presenting your evidence and that the only thing that you will wish to present hereafter will be Mr. Anlow's survey, whether he will be in attendance or forego being present. Obviously, if there are questions that need to be answered by Mr. Anlow, and he is not here, you would be at a disadvantage.

Ralph said that he is not here. He does not have enough information to make any conclusion at this point. That is why we would want an extension to make this all...

Mike said that will be up to the board.

Ralph said we are dealing with a postage stamp, and he is going to have a much bigger picture which encompasses all these lands because he is doing a 209-acre plot plus our 20 acre plot...more or less...they will all be included.

Mike said this may be an opportune time for me to do a little bit of talking to the ZBA. There are two questions to the appeal and, right at the moment, we seem to be addressing the survey question. My understanding is that there is a

survey that was done by Michael Gervais and the appeal is whether or not a building permit should be issued and if you look at the application for the permit, it does show the setbacks that the house has from the boundary line and as a result, that the application meets the requirements that it shows enough set back from the sideline. If it turns out, and we don't have any evidence where the sideline may be, but that doesn't affect the application itself. The application itself says the structure was built 30 ft away from the sideline as depicted on the application. From that viewpoint, the approval of the application is proper. What the problem would be is that if the boundary line is in some other location than is depicted on the application. Then in that event, the building might have been constructed within the setback and would be an illegal encroachment, would be contrary to what is in the application and in the permit that is approved.

Heather said so we are not debating whether these guys built knowingly in the wrong area, they built in their due diligence, they built where they thought was legal, and they are saying that maybe not..

Mike said it doesn't matter what decision they may have made, but if it turns out that they may have built in the wrong place, the appropriate remedy available to the Zoning Administrator, or to a neighbor, is to investigate a complaint that comes in and would not be an appeal of a permit but would be an enforcement of a permit saying you built in the wrong place, the building may need to be moved out 30 ft from the boundary line. From that viewpoint, this portion of the appeal is inappropriate. That's my personal opinion and my legal opinion but that's up to you folks, the ZBA, how you want to handle something, you're allowed to make mistakes, you're allowed not to follow whatever advice I may give you, but in some point in time, there may come to Brenda or a zoning administrator, some evidence of a survey done by Len Amblo, and then there would be an investigation by the zoning administrator and she would ask the Hathaway's what evidence do you have that your boundary line is where you say it is. If there is a dispute as to the correct location of the boundary line, I think it's certainly possible, that Brenda, or whoever is the Zoning Administrator to say, Ok, you've convinced me or you haven't convinced me, then she's not convinced that there had been a violation then there would be a letter produced by the zoning administrator to the Hathaway's and to the complainant that says here is my decision and if you don't like my decision, then you can take an appeal from the decision that I make, whether it be to enforce for a violation or find no violation, to the ZBA, it would come to you eventually, and if the decision that you may make is unacceptable, then they would go to the Environmental Court. If you were to make this evening the decision that appeal number 1 about the boundary line, doesn't affect the permit because the permit application says that the boundary line is more than 30 feet away, based on that assumption in that format, but the McSweeney's could take that appeal to the ZBA. But if they say that they'll accept that decision that the application and the permit are correct and come

back with the complaint process saying that they have violated the terms of the permit. Mike told the ZBA that we can talk about it in Deliberative Session.

Connie said...that I just want to add that we have high respect for either surveyor, we're not coming down on any survey, we're just trying to see that it's right, because we're happy to get all the boundary lines down. We want to know too and we would not want to encroach on somebody else's land either. We just feel that such a large portion of the land is getting surveyed by Baker's and our parcel, that it may help and I'm understanding that the survey that Gervais did, he started from the top down and we're kind of wondering from the bottom up. We're happy to get it all squared away. I think everybody on the mountain would be happy to know.

Mike said that he would encourage Mr. Gervais and Mr. Amblo to speak with one another and to share surveys to see if the two of them can reconcile.

Connie said, Sure, she does not know that there is any discord at this point. I'm just saying that as far as our comfort level and looking at the set back that is required. We do know that an old pin was moved in this survey, that we always thought was our pin, we were told, and my husband can follow through with that one.

Ralph said that for the time that we have owned the land up there...

Mike asked how long they had owned the land.

Ralph said 9 years.

Mike asked how it was improved at this point...Is there a house there.

Ralph said we went through the process of getting a road access permit and we staked out the area where we wanted to put the camp.

Mike asked if this was something they did at the advice of a surveyor.

Ralph said they did it through the advice of the town and the steps that we were supposed to follow to get a building permit.

Mike said that wasn't his question. His question is that when you laid out the pins to mark your property, you personally did that or that was already done.

Ralph said they were already there, from a previous survey before we bought the land. We know it's quite valid.

Connie asked if he was talking about the camp or the land.

Mike said the land. He said that hopefully when they built it was at least 30 ft away.

Ralph said it was a big difference when you have 400 feet of road frontage, you don't have to worry about it, but when you've got 120 feet, you ought to know where you're going before you start building, in my opinion. That's just my opinion. So as to the building permit, we kept waiting for it come up on a sign by the road, and there was already a building there, thought that was kind of backwards.

Mike said, we agree.

Ralph said, so I kept watching for that permit to come up and it did, so that's why we decided to do the appeal, that's when I knew I had to do something,

also a sign came up saying For Sale and I thought Geez...I don't want this to go on to the next person and have him assume everything else is going to go that way too.

Mike said, I would like to take the time to make a couple comments just so that you may have the opportunity to respond to what I may be saying, to reference the second point of the appeal, the drainage, I don't believe the Bakersfield Town By-Laws deals with drainage whatsoever. That's not to say you don't have a remedy, it's just not a remedy that goes before the zoning board of adjustment, in my opinion. The law provides that your neighbor is not supposed to change the natural flow of water either in quality or quantity, now if they have changed the natural flow of water, you may have a cause of action against them, but it's not here. You would have to go to, probably an attorney, to help you go through the civil division if you have a problem with the drainage as it's now developed.

Ralph said, now developed....

Mike said, you don't control ditches.

Ralph said, this is a permit process, and a permit issued before excavating and buildings have been made, and they are already there.

Mike said, we would be happy to listen to the argument if there was something in the zoning ordinance that says that you need a permit, then I will stand corrected.

Connie said, so no one on the board comes together to help us, with the Hathaway's, think of some solution to remedy the problem? Or a safeguard in the sale of this property?

Mike said, that's not the function of the ZBA to act as a mediator. Certainly, we would encourage you and the Hathaway's to see if you could resolve the problems between one another. Mr. Bonanni is a well-known attorney. He knows how expensive litigation can be and certainly the Hathaway's understand that they have a lot to risk for something that is going on so I would tend to think that they would want to reach a resolution that works for them and works for you, otherwise you may be spending tens of thousands of dollars, as may you, fighting in court over a couple years or more.

Connie said, thank you, I do hope something will come of it.

Mike said, Once we get done with the hearing, you will have the opportunity to meet with Mr. Bonanni and the Hathaway's and if it turns out that you need to postpone that because you need more information or whatever, or want to have some legal representation, I would just tell you that settlement discussions are not admissible in a court of law, so if you're trying to resolve the dispute between you and the Hathaway's, what you say today, in connection with settlement discussions, would not be something that would be admissible in a court of law and I assume that Mr. Bonanni would confirm that.

Connie said, Thank you.

Melanie said, no...it's about Earth Resource Construction, and I'm assuming nothing was sold...

Mike said, like to sell gravel...

Melanie said, to sell it...that would be the only time that the By-laws, that I have found, from my experience, and my previous experience in another town, typically state anything.

Mike said it was certainly not in my experience with having represented many municipalities, that you would typically get involved with where a ditch was going to go on a property, it's one of those things, whether we should or we shouldn't.

Mike asked the McSweeney's if they had anything else they would like to say.

Ralph said, I've got all of these pictures of different things and it's all about the survey.

Mike said, let me ask a question, and I'm not sure what the Zoning Board of Adjustment will be, but you would like to get this continued for October so that Len Amblo can do what he needs to do to...

Ralph said, absolutely.

Mike said, so that's something the board will consider in the deliberative session as to whether or not there will be an adjournment, and they may do that before we actually adjourn. They may kick everybody out of the room so they can discuss it but if there is something that needs to be decided before we adjourn to see if there will be a postponement.

Ralph said, from what I can tell, the survey does not match the deed.

Mike asked, do you have a copy of the deed?

Ralph said, I have a copy of the survey.

Mike asked, you have a copy of the Gervais survey?

Ralph said, yes.

Mike said, Is that with you?

Ralph said, I had to blow them up and take pictures of them but yes.

Mike said, but they're not put together yet?

Ralph said, they are very small.

Mike said, the Hathaway's may have a copy. Chad, is that something you have?

Ralph said, we kept asking, have you had it done? Have you had it done? But...

Chad Bonanni brought up a copy of the survey to the front table.

Mike held it up and showed the McSweeney's and said, this is what you took a picture of?

Ralph said, yes.

Mike said, this is what you would like to have the board consider...

Ralph said, yes.

Mike said, even though it was presented by Chad. Is that fine with you, Chad?

Chad said, yes.

Mike said, ok, should I mark this as Hathaway A?

Chad said, yes.

Mike marked it.

Ralph said, the amount of footage, they don't match up on the survey done by Gervais.

Mike asked, do you have a copy of the deed?

Ralph said, yes.

Mike said, Chad, were you planning on presenting a copy of the deed as well?

Chad said, yes.

Mike said, ok.

Ralph said, I don't know if it's up to date.

Mike said, let us look and see what it is.

Ralph brought up the deed to Mike Gawne.

Mike said, no, this is your deed. It says Larry McSweeney...

Ralph said, no, there has been some confusion about the McSweeney's that owned the land prior to Ron buying it. They used to border us.

Mike said, so this is a different McSweeney. The Hathaway's purchased land from McSweeney?

Ralph said, yes.

Mike said, this is like your brother or cousin?

Ralph said, no, a cousin third removed, whatever...

Mike said, Chad, do you know if this is in the chain of title to your client's property?

Chad came up to look at the deed.

Chad said, ...determining the location of the boundary.

Mike said, I think we can consider it, but I think it's unlikely that it's going to influence our decision because we have a survey, and we may have a map that shows that there is an inconsistency, we may have a sketch that appears on this deed that may be inconsistent, but that's not something that the ZBA has the ability to say which is right and which is wrong, that would be my guess.

Connie got up and took the sketch or survey up to the ZBA to show them closer and Mike and Chad talked at the other end of the table...

Mike held up another deed and said, ok, we got a better deed.

Mike held up a deed, and said, this is a copy of a portion of the deed from William and Sarah McSweeney to the Hathaway's that does give a metes and bounds description, so we'll mark your deed as McSweeney 5?

Mike took the deed over to the ZBA and asked if they had seen the deed.

Melanie said, no.

Mike said, where did the deed go?

Ralph took the deed that he had brought up to the ZBA.

Melanie asked, is this your deed?

Ralph said, no, it's the prior owner.

Mike said, it's what's in the land records and this little sketch is pasted right on the deed.

After talking with the ZBA about exhibit numbers....

Mike said, this is going to be McSweeney #8.

Heather asked, how far off are they? If it's 30 feet, how close are they to that?

Connie said, we don't know, we thought someone would check...

Mike said, that's not something the zoning board does.

Connie said, who measures?

Mike said, well, you and they do. We don't present the evidence, we hear the evidence, we don't produce the evidence.

Connie said, you don't do that?

Mike said, the Zoning administrator might do that the ZBA certainly does not do that, and the zoning administrator won't do that absent some sort of request, the appeal was on the issuance of the permit, not on the compliance on the construction and the permit, so let's say that nothing has been built, they get a permit, they go out and build it now, you say gosh they built it right on the boundary line, too close..

Ralph said, that's not the way it happened for me...

Mike said, ok, I'm saying that's what the procedure should have been, you get a permit, then they build, and then the building isn't built where it's supposed to be, that's a violation, not an appeal of the permit, the permit is still valid because it shows that it meets the 30 ft set back, as constructed, it violates the permit, but you don't even know that, to tell the truth, I think is what you are saying. You're waiting for Amblo to tell you.

Connie said, yes, but we would have never gone on his land to measure the distance.

Mike said, Len Amblo can do that I believe. And if he can't, I'm assuming that the Hathaway's would say, yes, you could do that because otherwise, it makes...

Connie said, this is where the communication would have been wonderful because we could have talked with them and, but...

Mike said, one of the problems you have is that you don't have an attorney helping you with this, so you're coming in...

Ralph said, the letter said to appear. So here I am.

Mike said, the ZBA is probably very sympathetic to your plight because they have not had an attorney helping them make decisions previously for a number of years so what happens tonight may be a much more formal process because I'm here then it would be if they were just going it alone. Ok, so in addition the zoning administrator has handed me the tax map. I'll mark it Zoning Administrator tax map for purposes of identification.

Ralph said, Is that a legal document for the town.

Mike said, no, it's not a survey.

Ralph said, I was going to say.

Mike said, it's not a survey, it's just a question...if you were the zoning administrator trying to figure out what the property looks like without the benefit of a survey the zoning administrator would probably look at this. It is not a survey and tax maps always say this is not to be used for purposes of describing the property. It's just a handy tool, the only tool a Zoning administrator may have in some instances.

Connie asked, might we have the chance to return with a lawyer?

Melanie said, you can make that request if we adjourn to come back.

Connie said, I request it. We request it.

Mike said, absolutely, if you consult an attorney, we are expensive but it's probably cheaper than not getting a decision that...you come into this and you fought unaware.

Ralph said, well I was asked to appear and I brought what information I thought was pertinent to this meeting, and a lawyer was not suggested. We did

contact one and you only get so much time, you guys just don't show up when you snap your fingers.

Mike said, we certainly understand. If you reasonably need more time...

Connie said, we do, they were tied up.

Mike said, but I don't think it's an unlimited request. You need to get Len to do something quickly.

Ralph said, that's just as hard as getting you guys to get something quickly.

When there's leaves on a tree, it's kind of hard for surveyor, they have some nice new equipment nowadays but it's still not infallible, on top of that they use radio signal, leaves on a tree can prevent some of that but he is waiting and ready to get this done. We know it's a job that has to be done. Yea, I'm afraid I'm just going to shorted, all this extra land here is pushing my way.

Mike said, you don't need to worry about that here. This meeting is not going to establish who owns what.

Ralph said, Oh, ok.

Mike said, that's not what the board has the authority to do.

Ralph said, that's why we want more information.

Mike said, but again, my real suggestion is, I sort of told you that the basis of your appeal are not issues that the ZBA can consider at this point in time, but that's not to say that you can't come back once Len Amblo has finished his survey work and if it turns out, that according to Len Amblo, the cottage as built, is too close to the boundary line. And I hope for the Hathaway's sake and for everybody's sake, that it's not. And same thing as the drainage, that's not something, I think, that the Zoning Board is going to say that there is grounds for an appeal at this point.

Connie said, alright.

Ralph said, it's not very nice.

Mike said, Mr. Bonanni might have some questions for you.

Ralph and Connie said, sure, whatever you like.

Chad said, so you don't own the property as a primary residence, do you?

Connie said, it's all camps up there.

Chad asked, so you pursued this because there wasn't any communication.

Connie said, no, that's not why we pursued this, we didn't think the drainage toward us was very nice and the unsureness of the cabin's location to where the boundary line might actually be.

Chad said, so you don't know if this is too close the boundary line...

Ralph said, we don't know where the boundary line is.

Chad said, so you don't know the distance...

Connie said, we didn't measure it, we thought it was something they did. Who tells us that it is? Hathaway's?

Ralph said, we had to put up little flags and have the town come and approve where we were going to put our camp, and if the camps already built, then I know that didn't happen.

Chad said, and you don't know as your sitting here today, if there is a violation of a setback.

Ralph said, I assume, and I'm saying I assume, that it is not correct because the boundary lines have been in question ever since the rebar have been removed from the roadside.

Chad said, are you saying that the Hathaway's moved the boundary markers?

Ralph said, let me say it this way, I'm a deer hunter and I put camera up on my property to see where the deer are going, you'd be surprised the pictures I've got.

Chad said, so are you saying that you have pic...

Connie said, we don't know.

Ralph said, did I say that? You're implying...

Connie said, we don't know.

Ralph said, we don't know.

Chad said, are you saying the Hathaway's moved the boundary stake.

Connie said, we do not know what happened to either of them actually.

Ralph said, I will show you a picture that I will legitimately let you see.

Ralph gave a picture to Chad.

Ralph pointed at the picture and said, right here is where that chain should be and here (picking up another picture) is where it was and here...(looking through his papers) let me find the right one, somebody tried to hide it with a rock, and everything is getting painted up there as a matter of fact, no wonder the surveyors can't figure shit out, everybody keeps going up there painting.

Chad said, so let me ask you this, Mr. McSweeney, what zoning regulation does the permit not comply with?

Connie said, we just wanted the assurance that it is in fact what it should be.

That's what we're looking for because we don't know.

Chad said, but you're not saying that the permit itself violates the bylaws....

Ralph said, we don't know until our surveyor is done.

Connie said, that's what we're looking for.

Chad said, and are you looking for the ZBA to determine the location of the boundary line?

Ralph said, I'm not looking for them to do it, I'm looking for a surveyor that is hired by us to verify that this is the correct location.

Chad said, I'm sorry, I don't think I got an answer to my other question, does the permit application, or the permit itself violate, or is in non-compliant, does the permit itself violate any regulation that you can identify?

Ralph said, I'm not a lawyer, I don't have all those

Connie said, we trust in the town...

Ralph said, we trust in what the town is doing.

Connie said, however the permit came about...he has the right to get one just like we have the right to get one.

Ralph said, that's right, I have no reason to stop Ron from doing it. I said it to begin with when we started, I welcomed the guy, and I still welcome the guy, even though he's done all this, I'm more than happy for him to be our neighbor. We just want it done right.

Connie said, we're just trying to verify it and make sure things are done right.

Chad said, you don't have any reason to question that Brenda Churchill should not have issued the permit?

Ralph said, I thought I answered that question. I know the rules I followed, I stated, I told Ron what I did. I did not see that he did the same thing that I did so I don't know how he got his permit.

Mike said, he got his permit because he eventually filed for a permit...he applied for a permit last fall but was told that he could not be issued a permit until he received a Road access permit, the permit application is not complete until he had a road access permit, which he received some time in June of this year, then the application was complete and could be granted. The Road access permit was issued on 7/19.

Ralph said, yes, I remember following that.

Connie said, ok, thank you.

Mike said, so it's not the usual process because normally you don't build without a permit, and you built without a permit.....in violation saying you built without a permit,.....so they made a mistake, sin now but go sin no more...so hopefully they will not come in with another application for something else after.....

Chad said, although they did apply back in September.

Connie said, it's just hard for us to see when we did it all the right way but that's neither here nor there.

Ralph said, it's kind of hard to follow.

Mike said, I hope you understand that Brenda only has two eyes, Bakersfield has a lot of roads, a lot of

Connie said...Oh, trust me, I tried to read through the zoning pamphlet...wow...I appreciate knowing all that stuff, so thank you for all of that.

Ralph said, we have a copy, read it several times, the parts we thought we need to.

Connie said, well we, again, we are not really denying him a building at all, we just are saying we want to know it's right, that's all.

Ralph said, no, we are not denying anything.

Connie and Ralph said, we are here to find out what that is.

Mike said, (not audible via the mic)

Chad had no more questions.

McSweeney's leave the table and the Hathaway's were called forward.

Ron said, I'd like to start with the drainage problem.

Chad said, I think we need to swear them in.

Mike said, do you both swear to tell the truth, the whole truth, and nothing but the truth, so help you God.

Ron and Laura both said, yes.

Chad said, Ron, I don't want to steal your thunder, you want the ZBA to have some kind of understanding about the drainage?

Ron said, yes, that's completely, can I take a minute to show you on the map for a minute, it will take 5 minutes and then it will be all done.

Maura said, sure...to which map are you referring? The survey map? Yup.

Ron approached the table where the board was sitting with the McSweeney docs and pictures.

Ron said, no the map with drainage and the pipes sticking out...

Maura said, the pictures you mean?

Ron said, yea.

Mike said to the McSweeney's, if you folks want to look and see what he is pointing out come up here and look.

Ron pointed to the ditch in the picture

Mike said, you're looking at McSweeney #3.

Ron said, this ditch that you're looking at right here, that was put in years and years ago, I never put this drainage in here at all.

Ralph said, what's you do with the 30 loads of gravel you brought in, where'd that all go? That didn't help.....

Ron said, that went under my camp, that's where that went.

Chad said, at the risk of this evolving into a back and forth...attorney, can my clients have the table, and the appellants can ask questions afterward.

Mike asked the McSweeney's to hold their comments for a moment, until the Hathaway's were done.

Ron pointed to the picture and said, this right here, I didn't put that in.

Mike said, we are looking a McSweeney #3, for the purpose of the record, and the line, a black line if you will, crossing the back of the property, is a line that you did not put in.

Ron said, I did not put that in.

Maura said, that was the previous owner, ok...

Ron said, I did put this drainage in, the pipe comes right down through here, and there's another pipe that comes down through there, as soon as I got the letter from the town about this, I went up the next day with the excavator and took all this out, there are no pipes, the pipes are all laying on the ground behind the camp, it's all done.

Connie said, and nothing will be coming out of that...

Ron said, there will be no water going on your property from mine, except for right here, (pointing to the ditch in the picture), but that, I didn't put that in.

Mike said, that was there....

Ron said, that was there....it's been there....forever as far as I can see, but I (pointing to the pipes) did put this in, but when up the next day, when I got the letter from the town, and took this all out, went back here and took the pipe out, the only thing I left was the stone.

Chad said, while we're up here, can I just see the survey, I think it's Hathaway A, and Ron can you, I don't know if we want to draw on that, or if you can just point to where you constructed the camp with respect to the survey.

Mike said, if you want to draw on it, it's fine.

Ron said, oh, where the camp is? The camp is...

Chad said, make a little mark with a blue pen.

Ron said, the camp is right here, it's 250' in, or 260' feet in.

Chad asked, did you measure it from the road?

Ron said, yes.

Chad said, and that was 260?

Ron said, yes, right from here to here (pointing on the survey map)

Chad said, did you measure each side boundaries and what did you come up with?

Ron said, (pointing on the survey), this one here is 125 ft, this one here, where the camp is, is a 125 ft, this is 126 ft.

Chad said, did you measure the setback, where the camp was constructed to the boundary?

Ron said, yes.

Chad said, and what measurements did you come up with?

Ron said, the camp is right here, the pin is right here, I'm 35 ft from here to the pin in the front. On the back side, I'm 60 ft on the back.

Mike said, I'm confused to tell you the truth.

Ron said, well what happened to start this out, we were going to put the camp this way, ok, it's 20x24, it was too close to the boundary line, so instead of putting the camp here, I put the camp this way, so we gained all that, and I have a bigger driveway and all that there. But he's talking about the fill, I put the fill where the camp is, that was stone that I put there, because you're not going to put a foundation on topsoil, so you have to take the topsoil out and put the stone in.

Melanie said, so does that differ, because you measured and it wasn't enough, so you flipped...

Ron said, right.

Melanie said, so you did change from this original permit that you put in last September.

Ron said, right.

Mike said, so as built, this is incorrect, but you did build something, so I would suggest that you just give us another piece of paper, so it sort of says, it takes that drawing and reflects what you have.

Ron said, it's in the same spot, as far as the distance from here to here. I just took it, instead of going this way, and I put it this way.

Mike said, so you turned it at a right angle.

Ron said, right, so it would give me a bigger lawn and stuff like that.

Mike said, again, putting that as part of the record, as part of the zoning file that the house is built in a different configuration than on the applying permit application.

Chad asked, has this survey, exhibit A, been recorded?

Ron said, yes.

Chad said, it's recorded with the town?

Ron said, yes.

Ron said, we've had a lot of trouble with the pins, the pins were always moving, always moving.

Chad said, Ron and Laura, did either of you ever move pins?

Ron said, no, why would I move pins, I just got this surveyed, it cost me...

Laura said, no, not at all, we know....

Mike said, what about when the excavator came in, did the excavator not know where the pins were?

Ron said, no, because when I put the driveway in, the road is dead center of our property.

Mike said, my suggestion to both couples is that when the survey pins are set is that some notice be given to everybody so they can come and say, yea we agree on this location, or we don't. That works both ways, when Len Amblo says this is where the pins will be, let the Hathaway's know, and the Hathaway's can let you know that Mike Gervais says I think the pins should be set here so you can see. Resolve problems instead of let them fester.

Connie said, I know it's a lot to figure out and everyone's fine and...

Ron said, all I'd like to know is what are you gaining by all of this? What are you trying to get me for really....

Connie said, we're not trying to get you for anything.

Ralph said, I welcomed you the first day.

Ron said, and what'd I tell you the second day you come over to my place? You come in and said, did you get your permit for the driveway, and I said yes I did....do you remember what you told me?

Ralph said, I said.....(not audible)

Ron said, well somebody at the town said a guy came in and said you're building a driveway without a permit. And you said to me, I said, did you go down and rat me out? And you said, no,well I don't want to say.....

Mike said, that's something that Brenda requires, so if you don't have a permit, then Brenda can't issue a permit.

Ralph said, I warned you of what goes on

Melanie said, so I am confused about this timeline, if somebody....I understand when the road permit was issued June 27th, this was initially filed September of 2021...

Chad said, and there was no, I'm sorry about interrupting, is that your question, why....

Melanie said, I'm trying to understand.

Chad said, so we, so the Hathaway's submitted the application, and it wasn't acted upon, and there's actually another issue here, whether that's a deemed approved permit, what the Hathaway's have done, Did you submit another permit, you got your road certification, did you submit another permit for the as built or did you resubmit the old permit, that's a question....

Mike said, I think the answer is that the old application was held in advance in anticipation until the road access permit was granted, so the permit that was acted upon was the one right here, it was granted on....

Ron said, why we waited so long on the paperwork was because of the survey, it took so long to get that all done because they had nothing up there to work with, as you know up there is sketchy as far as all the land.

Laura said, (inaudible to the mic)

Ron said, it took a while to do the survey...

Mike said, it can be expensive.

Ron said, oh yea!

Ralph said, I remember telling you you should be careful because you might have your lot line going right through your camp and from what you originally put down, Ron, that line ended up right through your camp.

Ron said, right, right.

Ralph said, that's why I tried to warn you, I did not want that to happen to my neighbor, and I still don't.

Chad said, Laura, I don't want to leave you out of this, Why did you and Ron decide to build the camp?

Laura said, because we wanted our own space to get away.

Chad said, and what are your plans now with the property?

Laura said, It's to be sold....Ron....we both....I'm not well, this has dragged on way more than it should be. We never expected all this.....now we're in the position, people want to buy the property and nobody can buy it while this is all going on. (much of what Laura said could not be heard on the recording)

Mike said, we'll do what we can to expedite the process.

Laura said, thank you.

Chad asked the Hathaway's, is there anything else that you want this board to know?

Ron said, no, that's all I want to say.

Laura said, Thank you.

Heather asked if they could go into executive session.

Heather said, I move that we go into executive session.

Mike said, deliberative session.

Heather said, deliberative session.

Mike said, Brenda, is there anything you want to say the ZBA.

Brenda said, no.

Mike said, you understand if you don't say it now, you may not say it ever, or you may say it if the board decides to adjourn.

Brenda said, ok.

Mike said, got it.

Mike said, (addressing the Hathaway's and McSweeney's) if you want to hang around, we might make a decision tonight, if we don't make a decision tonight, it will be in writing, I will prepare something. (addressing the ZBA) I think that the question is do you want to adjourn to give the McSweeney's another opportunity to finish up with the survey but I think that you may want to have that go into deliberative discussion first (ZBA nodded their heads) and then we'll come back out of that deliberative session with the decision, yes, we're going to adjourn or no, we're not going to adjourn. Ok? So, I suppose you can just close the doors and close your ears because you're not supposed to hear what we talk about.

The ZBA went into Deliberative session at 7:18pm.

The ZBA exited Deliberative session at 7:30pm.

Mike said, coming out of deliberative session, and I think the board would like me to speak as to what they are planning to do for this evening. First, we are going to adjourn the hearing to a specific date in October and hopefully they are going to make that date right now.

Heather said, October 26 at 6pm.

Mike said, are you doing it a 6pm or did you want to do a site visit, in that case you would have to do it during the day.

Heather said, we do want a site visit.

Mike said, so it will be at 3pm followed immediately by the hearing?

Melanie said, no we can't do that, we all have jobs.

Heather said, can we do a different day?

Mike said, can you do that on Saturdays or Sundays?

Heather said, we can.

Mike said, we'll do a site visit on Saturday or Sunday and then it will be followed by the hearing on the 26th.

Heather said, the site visit on the 23rd at 3:00.

Heather said, we can really do it anytime, we don't have to wait for them, We can really do it anytime, right?

Melanie said, unless they want to be present.

Maura said, it has to be warned.

Heather said, Gotcha

Mike said, so the site visit will be the October 23rd at 3:00pm and the hearing will be October 26th at 6:00pm. Ok, the hearing will be adjourned until that time. There will be a site visit, the site visit is not merely an opportunity to take evidence, it's a time to point things out, here's a pin, here's the building, here's the distance to the building, to be no argument.

Heather said, no emotion, just this, this and this.

Mike said, have a tape measure to show here is where we think the line is, here is where the building is and hopefully everybody will agree with what they see.

Now there were two grounds to the appeal, and I think at this point the Zoning Board of Adjustment is of the opinion that the drainage issue has been resolved.

Melanie said, to be determined by the site visit.

Mike said, depending on what the site visit may show, so it's not yet fully resolved but that's the leaning that it's been resolved. With reference to the boundary line issue, the zoning board is aware that your appeal was unartfully drafted, on the other hand they don't want to waste this evening's meeting by saying come back and file an appeal or file a complaint with the zoning administrator and then we'll have another hearing. That's the reason for having a second hearing so you can get your complaint filed with Brenda, so Brenda can do her own work within the next few days so that we can warn this properly for the hearing on the revised complaint, if you will. We want to make sure that we follow the procedures to some degree but again, we're cognizant that you folks aren't attorneys, we're cognizant the board is not an attorney, Brenda's not an attorney, so we want to do this in a manner which is fair but still falls within the realm of what's legal. So chances are is that the hearing will be your opportunity to present the survey, now if it turns out that you cannot get a survey from Len Amblo, or somebody else, within that time period, you probably will have to request another continuance, but we do really suggest that you get something in writing from whomever, I contacted Len

Amblo, I contacted Peter Cross's office, Cross consulting engineers, Harvey Chafee, whoever, to say that none of these people can get something for you within the provisional period of time. And I would suggest whoever you get the survey work done, is that that person should speak to Mike Gervais so they can, instead of starting from square one, they will be basically starting from what Mike Gervais has said, and that surveyor can say, Mike Gervais did it the wrong way, or Mike Gervais is right on and save you a lot of time and a lot of money if you can have the survey work verified instead of starting all over. But again, we don't want to continue this indefinitely because it's unfair to the Hathaway's. I think you recognize that it would be unfair, they need to get on with their life too. So, if you could send something to Brenda either this evening, to say please consider out appeal to be a request for verification for, that they complied with the terms of the permit, and then Brenda can do what she needs to do with that. Is that clear to you, Brenda?

Brenda said, yep, may I ask Mr. Hathaway to provide us with an updated site plan?

Mike said, yes, please, that was something we asked earlier this evening, just as constructed, what it looks like.

Brenda said, with any dimensions that they have.

Mike said, and if you could get that to us sooner rather than later, it doesn't have to be this evening, but it would part of Brenda's due diligence for the Chad said, there's an appeal that the Hathaway's had submitted on the deemed approval, could we just combine that for the sake of economy?

Mike said, sure, let me just bring the Zoning board up to speed on that, under the statute, the zoning administrator is supposed to act within a certain period of time, by the date that he or she receives a complete permit application. The application was submitted in September 2021, and if that were a complete application, then Brenda or whoever was the zoning administrator at that time, should have acted on it either by saying denied or granted. Brenda consulted with me, and I think that Brenda made the right decision that the application was not complete because the road access permit is something that is required to complete the application.

Heather said, yes, it is.

Mike said, Chad, on behalf of the Hathaway's did file an appeal for that decision, but we put into abeyance because we said that because we have taken an appeal, that appeal can be withdrawn, but since someone has taken the appeal, if they want to move forward with that appeal, we could combine those at the hearing.

Melanie said, ok.

Heather said, that's fair.

Mike said, so I think someone on the board needs to make a motion to adjourn until the continuance.

Heather said, I make the motion to adjourn until the site visit on October 23, at 3:00pm., at the site,

Mike said, and adjourn the actual hearing until October 26, at 6:00pm, here, at the Town Clerk's office.

Heather said, yes.

Maura said, I second.

Melanie asked if there was any discussion.

Heather said, no...

The hearing adjourned at 7:40pm.

Hearing minutes recorded by Tami Brennan.