

# Town of Otsego Zoning Board of Appeals

Minutes (Unapproved) – March 21, 2017

## REGULAR MEETING

The monthly Town of Otsego Zoning Board of Appeals (ZBA) meeting was held on this date at the Town Office Building in Fly Creek, NY (there was no meeting in February, due to no agenda items). Chairman Greg Crowell called the meeting to order at 7:02 PM and led the Pledge of Allegiance.

Roll call was taken by Secretary Bill Deane. All Board members were present: Crowell, Tony Scalici (Vice-Chairman), Christopher Voulo, John Tedesco, and Dean Robinson. Town Attorney Michelle Kennedy, Zoning Enforcement Officer Ed Hobbie, and Town Board member Carina Franck were also present.

Chairman Crowell asked if anyone had a potential conflict with tonight's applicants. No one reported any conflict.

The Board reviewed the minutes of January 17, e-mailed to the members. Voulo moved to approve the minutes as written. Tedesco seconded the motion and it was approved, 5-0.

Deane noted that the January public hearing notice addressed to Addison Bissell had been returned to sender. The only other correspondence received was related to tonight's application. The Board moved on to that application.

## APPLICATION

### 17.01 – Chase, Hastings & Hall (Tooher & Barone, LLC) – Appeal of Zoning Enforcement Officer non-action re: Blackbird Hollow, LLC – 6855 State Highway 80 (#69.44-1-5.00)

Chairman Crowell reminded everyone that this was not a public hearing. He said that there appeared to be an issue involving jurisdiction of this application. He invited the applicants' representative to address this issue.

Meave Tooher, attorney for Tooher & Barone, LLC, spoke on behalf of applicants Chase, Hastings, and Hall. She said they were appealing the determination by Zoning Enforcement Officer (ZEO) Ed Hobbie. The applicants asked the ZEO numerous times by letter to issue a "stop-work" order on the Blackbird Hollow project, due to alleged violations regarding their site plan approved by the Town Planning Board in 2014. They are entitled to a decision. Their last letter said that they would construe no response as a denial of their request, and they are thus appealing this "denial."

Tooher claimed that there are many issues with the approved site plan. She said there were ZBA variances which were required but not obtained. Tooher said there was no zoning permit ever issued by the ZEO, as required by *Land Use Law* 7.02(a)(3). She said there are multiple uses in the site plan, which is not allowed. There have been multiple proposed changes to the site plan since 2014, confusing the issue. Tooher noted that the County building permit had expired on March 1.

Tony Scalici objected to Tooher's repeated use of the pronoun "you," when she was referring to the Town, not the ZBA. Scalici said the ZBA is not an enforcement body. He said that the expansion of the property's use variance perhaps should have come to the ZBA, but it did not; the only relevant decisions have been issued by the Planning Board and ZEO. Chairman Crowell noted that those decisions were made in 2014.

Tooher said that the applicants were not challenging the 2014 decision, but the ZEO's failure to make a determination based on their complaints. Christopher Voulo asked how long the ZEO has to respond to a request like this. The Town laws, specifically the ZEO's duties described in *Land Use Law* 7.01(c)(5), do not address this.

Town Attorney Michelle Kennedy said the applicants were asking the ZEO to overrule a former ZEO's judgment, three years after the fact, an unreasonable request. She cited New York State Court of Appeals cases which she thinks are relevant to this one: *Loparco v. Napierala* (2012), *Swantz v. Village of Cobleskill* (2006), and *Palm Management v. Goldstein* (2007). Kennedy said that some Town laws contradict each other, and any ambiguity in the laws must be determined in favor of the applicant, Blackbird Hollow.

Chairman Crowell called a brief recess at 7:46. He reopened the meeting at 7:51.

Tooher summarized the applicants' request, which she said was extensively-documented in the papers they submitted and which were e-mailed to the members prior to the meeting. She respectfully disagreed that the ZEO does not have the authority to stop this project. They want an interpretation on the ZEO's refusal to issue a "stop-work" order, and for the ZEO to be directed to issue one.

Chairman Crowell asked for a response from the representatives for Blackbord Hollow. Jeff Baker, attorney for Young/Sommer, said he was representing Blackbird Hollow. He said he believes the ZBA has no jurisdiction on this case, as itemized in the letter and exhibits he submitted. Baker said the applicants had 30 days to file an Article 78, disputing the Planning Board's 2014 determination, and did not do so. He said the applicants were trying to construct an argument to circumvent the statute of limitations. The 2016 applications, with proposed modifications to the site plan, were withdrawn. Baker said the County had reissued a building permit today. He said that a zoning permit is not needed after a site plan approved and a special permit is issued. Baker said that, even if the ZBA agreed that the ZEO's failure to respond by the applicants' November 7, 2016 deadline is construed as a denial, they did not file a ZBA application timely. He noted that some of the alleged failures involved County and Department of Environmental Conservation regulations, over which the ZBA has no jurisdiction (both the County and DEC were notified as part of coordinated review in 2014). Baker asked the ZBA to rule that they do not have jurisdiction over this case, that there is no determination to challenge, and that there is no interpretation to be made.

Tooher said that there had been substantial changes to the 2014 site plan. She said that the *Land Use Law* says that a zoning permit is required. Tooher said that she would need time to respond to other things brought up tonight.

Attorney Kennedy said that an Article 78 filed in 2014 would have been the applicants' best strategy. She believes the current application is untimely, based on the court cases she cited earlier.

Chairman Crowell said that the Planning Board may have overlooked things, but the site plan was approved three years ago. Per Town Law 267(a)(5), an appeal must be filed within 60 days. Crowell said the Board should consider whether this appeal is even based on a decision, and, if so, whether they have jurisdiction.

Voulo said he didn't think the ZBA had the authority to overrule a decision made by the ZEO in 2014. Kennedy said doing so would set a dangerous precedent, putting any approval in question indefinitely. Dean Robinson said he agreed, assuming there were no substantial changes to the site plan approved in 2014.

With input from Attorney Kennedy, Crowell, Scalici, and Robinson, Voulo moved to determine that this application is not under the ZBA's jurisdiction. Voulo said the application is time-barred, based on New York State appellate cases *Loparco v. Napierala* (2012), *Swantz v. Village of Cobleskill* (2006), and *Palm Management v. Goldstein* (2007); and would be an over-reach of the ZBA's authority, setting a dangerous precedent that any Planning Board approval can be overturned without a statute of limitations.

John Tedesco seconded the motion, and it was approved, 5-0. A roll call vote was taken, and Crowell, Scalici, Voulo, Tedesco, and Robinson each voted "aye."

#### **OTHER BUSINESS**

Zoning Enforcement Officer Hobbie gave no report.

Chairman Crowell discussed training opportunities available to the Board members, to help them meet their annual training requirements. He also said that Town Supervisor Meg Kiernan had told him of her plan to have monthly, one-hour meetings to discuss potential revisions to the *Land Use Law*. She would like to have two members of the ZBA present at each meeting.

With no further business, at 8:39 Chairman Crowell adjourned the meeting.

Respectfully submitted,  
Bill Deane, Secretary