



Present: Chairman Dax
Charles Gerald
Ted Krolikowski
Tony Murad
Phyllis Stoller

Absent: Jeff Hattat
Jeannine Tonetti

I. Call to Order:

Chairman Dax called the regular meeting of the Zoning Board of Appeals to order at 7:32 pm.

II. Minutes Review:

Upon Review of the June 2010 minutes, a motion was made by Chairman Dax, seconded by Phyllis Stoller to approve them as submitted. The motion carried upon the following vote:

Chairman Dax	Aye
Charles Gerald	Abstained
Jeff Hattat	Absent
Ted Krolikowski	Aye
Tony Murad	Aye
Phyllis Stoller	Aye
Jeannine Tonetti	Absent

III. Application Review:

1. Case No. 10-049-: Robert Mittnight – TM# 7.-2-20.11 [Appeal]

Preliminary Review: Applicant is appealing ZEO's Order to Remedy Violation dated May 17, 2010 citing a violation of Article VI: Truck Terminal is not permitted

Chairman Dax asked Mr. Mittnight how this new appeal differs from the pending appeal from March. Mr. Mittnight stated that he received a new 'notice of violation' for a 'truck terminal' from the ZEO since the last appeal submitted in March.

Chairman Dax stated that in his opinion they are linked and that the Board could combine them or keep them separate. Chairman Dax stated that he would contact the ZEO to determine what motivated the new "notice of violation" given that there is a pending appeal.

Mr. Mittnight stated that he is amending his appeal and will submit it for the next meeting. Chairman Dax asked if Mr. Mittnight would then schedule a site visit with the Board. Mr. Mittnight said that he didn't know how to answer that question; he would like to wait and see. Chairman Dax asked Mr. Mittnight if he has noticed his abutters yet for his March appeal. Mr. Mittnight

stated that he has not. Chairman Dax stated that the Board has been patient and encouraged Mr. Mittnight to move forward.

Chairman Dax referenced an outstanding Court Order by Judge Donahue and stated that he would like to contact the Attorney for the Town in order to determine where the Town's enforcement action intersects with the subject of his appeal.

Joanna Smith [Advocate for Mr. Mittnight] stated that she and Mr. Mittnight have been proceeding under the advisement of Judge Patrick McGrath who is the successor of Judge Donahue. Chairman Dax asked if a written statement from Judge McGrath was available. Mr. Mittnight stated that he has a letter from him and will submit it.

Mr. Mittnight stated that Dean Herrick has inspected his property but when he phoned Mr. Herrick for his report he was told that Mr. Herrick was threatened by Town Officials to not get involved.

Robert Smith stated that they have been before the Town Board but they have said that this is not their problem it is a ZBA issue. We are here to address the current appeal to obtain an interpretation as to whether Mr. Mittnight is operating a truck terminal. Chairman Dax stated that we have not set a hearing yet because Mr. Mittnight has yet to notice his abutters. We have to follow the process.

Ms. Smith stated that abutters do not need to be noticed when applying for an interpretation. Chuck Geraldi stated that while he doesn't agree with it, it is still legally a part of the process to notice the abutters and hold a public hearing on an application for an appeal.

Chairman Dax stated that if the applicants want the ZBA to rule on the appeal the procedures must be followed.

Ms. Johnson stated that it has taken eight years to determine that Mr. Mittnight's shed are mobile homes. Chairman Dax stated that the appeal was made in March of this year. We are not discussing passed issues. The current appeal has two related issues. Whether there are mobile homes on the property and whether or not there is a truck terminal. The applicant must move forward and follow the procedure in order to obtain a ruling. The applicant has the option of withdrawing the appeal. However, while it is still pending we have to follow the process.

Phyllis Stoller stated that the applicant simply has to schedule a site visit and notice his abutters. Chuck Geraldi stated that noticing the abutters is the only outstanding requirement that needs to be met in order to schedule a public hearing. A site visit is by choice, not a requirement.

Chairman Dax stated that the Board had previously requested a site visit.

2. **Case No.: PB-2010-013: Fred Haley for Shirley Brent TM# 8.-2-41.1**

Preliminary Review on a Request for a Variance. The applicant wishes to subdivide the 5 acres where the cell tower is located. The application was reviewed by the Planning Board on June 16, 2010 where it was determined that without revisions to the submitted plan, a variance would be required because the access road is a Right of Way. The Planning Board recommended that the ZBA deny the request because the property can be subdivided legally without one.

Mr. Haley explained that the applicant would like to subdivide the cell tower with 5 acres. The property is currently being leased and the intent is to sell the leased portion of the property to the phone company. However, the potential new 5 acre lot would not have official access. The

access would be via the approved 20 ft. Right of Way that was approved by the Town Board during their approval of the Special Use Permit permitting the Cell Tower.

Chairman Dax noted that there are other options for subdividing the land. Mr. Haley stated that is true. However, the road was approved already by the Town Board.

Tony Murad suggested that 60 ft of road frontage can be obtained along the NE side of the property? He further noted that another option would be to widen the 20 ft Right of Way to 60 feet. Mr. Haley stated that we could do all sorts of things but we would be in violation of what the Town Board already approved during the Special Permit process. The lease, based on the Special Use Permit, would then have to be modified.

Chairman Dax stated that he would like to review the file relating to the Cell Tower application. As Chairman Dax reviewed the lease agreement he stated that it's possible that Ms. Brent does not have the right to proceed and that she may be misunderstanding the five year term agreement.

Chuck Geraldi moved to refer the matter to the local planning board for their recommendation and to schedule the public hearing for the August meeting. The motion was seconded by Chairman Dax and carried on the following vote:

Chairman Dax	Aye
Charles Geraldi	Aye
Jeff Hattat	Absent
Ted Krolikowski	Aye
Tony Murad	Aye
Phyllis Stoller	Aye
Jeannine Tonetti	Absent

IV. Adjournment

The meeting adjourned at 8:28 pm.

Respectfully submitted,

Cissy Hernandez
Planning/Zoning Clerk