

# ZONING BOARD OF APPEALS

January 29, 2007

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 29, 2007, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Robert Dee	-	Member
	Paula Clair	-	Member
	Adam Rodd	-	Counsel
<b>ABSENT:</b>	Bill Flaherty	-	Member

**Vincent Cestone** - The first item we are going to do tonight is Jules Bass Appeal 811. Is the applicant here? Applicant Bass? Okay. Then we are going to on to the continuation of

**Kim Shewmaker** - Do you want me to put Bass on for the next meeting? When will that be?

**Vincent Cestone** - That's the question. We will put him on for the next meeting but I am not sure when the next meeting will be.

**Kim Shewmaker** - Okay

**Vincent Cestone** - We were supposed to be on for the 5<sup>th</sup>, but we may not. Okay continuation of the public hearing of David Weinpahl

**Robert Gaudio** - Hi

**Vincent Cestone** - You're on.

**Robert Gaudio** - I'm on. Good evening Mr. Chairman and members of the board. For the record Robert Gaudio with the law firm of Snyder and Snyder. We submitted a number of materials last month and I hope you have had an opportunity to take a look at it. I did submit earlier copies of those materials, additional copies as requested for the record and we submitted a couple of

additional maps that were discussed at the meeting that I didn't have copies of the night of the last meeting. We did receive the Village's legal opinion showing access over the old road with deeds. We also did since that last meeting receive a letter from the Board of Assessors, I am not sure if all the board members have a copy of that

**Vincent Cestone** - I saw it

**Robert Gaudio** - Basically stating that the old road was not owned previously and that there were no taxes were being paid on it. Which points to the fact that it was an old right of way and it was not \_\_\_\_\_ create a lot area sufficient to have a four lot subdivision. I submitted a letter to summarize some of our thoughts including the fact that it was conceded that there was an old road, somehow somehow by some magic it was relinquished and we were never told how. But the opposition \_\_\_\_\_ but at least the record before you shows that the old road did exist and it should be the developer's burden to prove otherwise. And then just to summarize our final point was that the cottages had been previously moved, and it is my understanding they were moved again today. Again under the code moving a nonconforming structure any place on the lot requires site plan approval including a public hearing whether you move them or move them back. Any movement of them requires that and then finally the Chairman at the end of our last meeting we submitted a map showing that the original plan was for a right of way for that back lot across the middle of the flat club grounds. We believe the new subdivision shows that thereby triggering both variances and the subdivision approval. We are not asking the board to decide on the old road. We are not asking the board to even tackle the planning board issues of drainage and everything else, we are just simply asking that the permits be put on hold and this matter be referred to the planning board to do what they do for subdivisions and site plans. Thank you.

**Vincent Cestone** - Anyone wish to speak on this? Mr. Zutt

**Mr. Zutt** - Good evening

**Vincent Cestone** - Good evening.

**Mr. Zutt** - At the last meeting I was embarrassed because I showed up with too few copies of this memo so I brought a couple of extras with me. I don't know who wound up short, but I will leave them both with clerk and she can get them to whoever needs them. I am also embarrassed to acknowledge a typographical error so for that I am going to give you all a copy of the replacement page. I let that one get by and I apologize for that. At the last meeting I handed out the somewhat lengthy memorandum which I eluded to a moment ago and I hope you all had a chance to read it. I just wondered if there were any questions concerning the memorandum from counsel or from the board?

**Vincent Cestone** - Anyone from the board have any questions on this?

**Lenny Lim** - No

**Mr. Zutt** - Specifically the memo I handed out

**Adam Rodd** - Not specific to the memo but I have some questions

**Mr. Zutt** - Okay. And the other thing right after the meeting, towards the end of the meeting Mr. Gaudio mentioned that fact that we had not actually provided the deed from the Alaverty Society. I did send that in the next day. Hopefully you had a chance to get a copy of that. Also a complete copy of the title policy for the property including the endorsement with respect to the old road which included \_\_\_\_\_ insurance against the exercise of any third party rights across the old road. It remains our position of course that the issues before you tonight have to do with two building permits issued to two lots neither of which is actually affected by the old road. So while there has been a great deal of discussion and argument about the legality or illegality of certain boundary line changes and so forth, the only issue before you tonight at least as presented is the legality of these two building permits and we believe in that respect alone this application should be denied and maybe another application for another day if the building permit is issued on the other lots which are affected by the old road. But we don't believe that issue is \_\_\_\_\_ here. There was also some discussion during the last meeting about the old cabins that have been stockpiled along the back of the property. I am sure you have all been there by now. And it has been argued by the applicant that the cabins are inappropriately and illegally placed there. In point of fact that the section that is referred to is 175.41 of your zoning code and that section applies to uses and structures that are devoted to a nonconforming use. These structures were once dwellings as part of a camp. They are not dwellings today nor are they intended to be dwellings. In fact, they have been physically moved as recently as this morning away from the property line so as to make sure there is sufficient distance set back from the property line which would be the case for an accessory structure. So we made sure that that much was taken care of.

**Adam Rodd** - Which property line are you referring to?

**Mr. Zutt** - Referring to I think the line to which they were most proximate was the northern property line. I think that was the line there were about four or five little old bungalows that had been stacked in the back right parallel to the old stone wall that defines the northern boundary of the old road and I believe unless I am mistaken, Mr. DeVido, those cabins have been physically pulled away from that boundary line. I think the minimum distance is 40 feet. And that has been taken care of.

**Adam Rodd** - Is that referring to what has been described as lot 29?

**Mr. Zutt** - Yes. Yes. That is correct. That is correct.

**Adam Rodd** - So it has been moved closer to Foundry

**Mr. Zutt** - Yes. Yes. I think the requirement is that they be at least 40 feet distance from nearest property line. I don't have the code right here with me but I think the requisite setback is 40 feet for an accessory structure. I think. And that was

**Lenny Lim** - Originally where did you move them exactly

**Mr. Zutt** - Mr. DeVido could you step up here please if you wouldn't mind. Can you indicate to the board where those bungalows have been relocated to.

**Alfred DeVido** - Basically there are three cabins in the place that they always were

**Vincent Cestone** - These here

**Alfred DeVido** - Namely this is Foundry Pond Road. There's one here and we had them stored here because we have building permits right now for these two lots this and this. This house is under construction. The septic fields right here and most of the cabins that we are storing were storing there sat on here. And there were a few in here some of which I demolished. It was an original nonconforming structure here with a large concrete block. I demolished that about two years ago. That was very close to the road. And in here there are some that are still, right, well, actually they are here. These two are still there. Five others we moved back and they are currently lined up here. Lined up in here clear of the septic field that we have to dig.

**Lenny Lim** - So two you left, five you moved

**Alfred DeVido** - Well we left three, there are two here and one here up on the hill that doesn't, here it is, it shows right here. This is the one right here. Several of them were beyond repair and here are two that we just left and the other five were in the way of the septic fields that I have to dig and we moved those. We stored them temporarily in other parts of the road and Harold just put a sling around them and moved them. They are very light. 10 by 5. It is part of the past charm of this site the cabins, and it is my intent was to redistribute them as part of the houses that I plan to build here. Just as outbuildings.

**Adam Rodd** - So those nonconforming buildings were moved to different parts of the property that you own? Correct?

**Alfred DeVido** - Well. No.

**Adam Rodd** - They were either moved or they weren't moved. They were either moved or they weren't moved.

**Alfred DeVido** - As I said two remain where they were over here. One remains where it is over here. There were others that were in here, you can see

**Adam Rodd** - That is in the septic fields right. You have building permits for here and here

**Alfred DeVido** - Right

**Lenny Lim** - So you would have to move these in order to build, so you moved probably three here. You would have to move three

**Alfred DeVido** - We demolished two

**Lenny Lim** - Right

**Alfred DeVido** - And moved one other. And then over here there were four all lined up and that was in the way of the

**Lenny Lim** - Septic. It shows that the septic overlays, so you are looking at least three here. So there are six total that were moved.

**Alfred DeVido** - Five

**Lenny Lim** - Five were moved

**Alfred DeVido** - Five were moved

**Adam Rodd** - To a different part of your property correct?

**Alfred DeVido** - Harold moved them to the road here because that was convenient. He just hauled them over there and put them there. Stored them there. Because we had to dig these

**Lenny Lim** - And your intention was to when you finished the homes was to scatter these around the property

**Alfred DeVido** - Yes

**Mr. Zutt** - But not as homes

**Alfred DeVido** - Just as outbuildings

**Lenny Lim** - They were called cabins, bungalows, they have been called a lot of different things

**Alfred DeVido** - They are 10 by 15 approximately, 10 by 12, there is no plumbing

**Lenny Lim** - Anybody ever sleep in them?

**Alfred DeVido** - Oh yeah Alaverdy camp used to sleep in them. They had a workable building here that they used as camp. They ate there, it was their living room and they also had a swimming pool across the street.

**Lenny Lim** - Can you answer the lawyer directly for his questions. Do you have questions Adam?

**Adam Rodd** - I don't know if I got a clear, there were at least five structures that you referred to as cabins or bungalows that were moved from one part of the property that we are talking about to another. Is that correct?

**Alfred DeVido** - That's correct

**Adam Rodd** – okay

**Alfred DeVido** - There are three that remained in addition to the five, there are three that remained where they were. So there is a total of eight.

**Adam Rodd** - Five were moved, three stayed where they were

**Robert Dee** - How many were there originally?

**Alfred DeVido** - 14

**Robert Dee** - the plan shows 10

**Lenny Lim** - Here is 11, 12, 13 they are all over the place

**Robert Dee** - This is your plan

**Lenny Lim** - I see at least 13

**Alfred DeVido** - There was also a toilet building, I don't know if it shows it here because I demolished some buildings early in the game before this plan was drawn.

**Robert Dee** - Okay

**Alfred DeVido** - There was a toilet building here. There was a clubhouse here with a kitchen. And then there were cabins

**Robert Dee** - Okay

**Alfred DeVido** - Scattered around in here. I think there were 12 or 14, I am not sure. I mean some of them were ready to collapse so I just had them demolished and removed.

**Robert Dee** - Okay

**Vincent Cestone** - Thank you

**Mr. Zutt** - Just two other points Mr. Chairman. With us tonight is attorney Kenneth Gould from Title Guarantee in as much as the Village of Cold Spring has asserted its rights to the property, that constitutes a claim under Mr. DeVido's title policy and since this board may entertain that claim, Mr. Gould is here to address

**Vincent Cestone** - Is this letter from your organization?

**Mr. Zutt** - So Mr. Gould is here this evening and he will speak to those issues for two reasons. One it is the Title Company's job; two, I maintain a continuing though very small legal relationship to the Village of Cold Spring at this point it consequently to advocate a position first to the Village it would be an ethical problem for me. So I am going to defer to Mr. Gould on that score and then once he is completed whatever he has to say, I have Mr. John Delano here who is actually the preparer of the plot plans that you have before you in connection with the building permit application

**Vincent Cestone** - And the relevance

**Mr. Zutt** - I'm sorry

**Vincent Cestone** - The relevance of that

**Mr. Zutt** - Well the, I think it responsive to the concerns that were expressed by this applicant regarding adequacy of drainage and there were a number of questions by the board. There was a question raised with regard to a notice of violation from the DEC at it was all put on the record at the last meeting

**Vincent Cestone** - That is not what they are asking us to interpret

**Mr. Zutt** - Well if the board is willing to concede that the drainage or adequacy or inadequacy is irrelevant to issues before it then Mr. Delano doesn't need to put that in. The other side did

**Vincent Cestone** - Well, I am not going to concede anything. But that is not before us the drainage. That would be a planning issue.

**Lenny Lim** - But what he is saying is that we brought it up here as an issue

**Mr. Zutt** - As a matter of fact that is correct Mr. Lim. The board brought it up and I think there were also comments from Mr. Gaudio as well or a number of other speakers who, it might have been his client, I can't recall now exactly who it was but someone eluded to the fact that the DEC issued a letter, not sure if it was a violation letter but a letter of some kind concerning drainage. And that was all put on the record. And it seems to me that we have an obligation to our client to make sure that is adequately addressed from our perspective as well.

**Vincent Cestone** - If you keep it short

**Mr. Zutt** - Very good. Thank you very much

**Vincent Cestone** - Just introduce yourself for the record

**Kenneth Gould** - Yes. My name is Kenneth J. Gould, Marcus Gould Sussman LLP in White Plains. And I apologize to the board because I just literally found out about this case on Friday when I wrote the letter and I am just learning. Basically I am here to ask for additional time to submit some more information. But in the meantime, I do want to hand to the board members a letter dated today from Glen Watson of Badey and Watson the surveyors in Town who had studied the maps and deeds in connection with the assertion that the old road is somehow the road that was being used by and deeded to the village of Cold Spring. Mr. Watson has had tentatively concluded and it is somewhat complicated he quotes from the various deeds that Mr. Supple's letter, which I believe you all have seen, is based on some inaccuracies and he quotes in them what those inaccuracies are and he states that in his opinion the old road that is identified in some of these documents is in fact another old road. It is about 8,000 feet away. It has to do with one of the other reservoirs. You really have to read the letter in order to understand what I am saying and I am not going to be able to, it is a difficult construction of a whole series of old deeds and surveys that he has put together. He had tentatively concluded that Mr. Supple is incorrect and inaccurate in his conclusions. And we respectfully request additional time to submit additional information to this board to support this conclusion. Just let me read to you from the last, second to last paragraph of this letter based on the fourth owner that the change of title to parcel 6 in the village deed liber 124 page 469 cannot be the basis for any right of way over the old road that crosses the DeVido property. So based on that, we certainly think it is a substantial \_\_\_\_\_ that there is a big question here about whether the old road that everybody is talking about is in fact the old road that the village has a right to and we request

**Vincent Cestone** - Have you seen this document? This is the actual original deed.

**Kenneth Gould** - The deed does not, according to Mr. Watson clearly identifies, it may state that but it may be that the village never acquired title to it. And I apologize for not being able to go into detail. Mr. Watson had explained that in some detail in his letter

**Vincent Cestone** - All right

**Kenneth Gould** - And we request the opportunity to submit some further information to this board at its next meeting with some overlays and surveys to show you what we are really talking about.

**Vincent Cestone** - How much time are you asking for?

**Kenneth Gould** - I don't know what the schedule is. I would think several weeks

**Vincent Cestone** - Our next meeting is on the 5<sup>th</sup> of next month. Which is next week

**Kenneth Gould** - I think we need more time than that.

**Vincent Cestone** - Monday the 12<sup>th</sup>, Monday the 19<sup>th</sup> is President's Day. Monday, the 26<sup>th</sup>

**Kenneth Gould** - That would be fine

**Robert Gaudio** - I will actually be out of town that day chairman

**Vincent Cestone** - Well would you want to do it the first meeting in March. Which would be March 5<sup>th</sup>.

**Robert Gaudio** - Sure. Understanding that when they are done if I would just have an opportunity to comment on it

**Vincent Cestone** - Absolutely

**Robert Gaudio** - March 5<sup>th</sup>. After we finish tonight, we will continue it on to March 5<sup>th</sup> which is a Monday.

**Kenneth Gould** - Thank you and again I apologize for not being fully educated to this matter. In fact I misunderstood the application in my letter requesting adjournment. I thought it was a subdivision application. Next time I will be a little bit more knowledgeable about the whole content

**Vincent Cestone** - That's okay

**Kenneth Gould** - Thank you very much

**Vincent Cestone** - All right

**John Delano** - Good evening John Delano from Badey and Watson.

**Vincent Cestone** - Yes

**John Delano** - I am available to the board if there are any questions concerning matters of drainage. I was unavailable for the last meeting

**Vincent Cestone** - I don't have any questions. Does the board have any questions

**Lenny Lim** - I believe it was brought up that there was going to be a minor difference in drainage 1.2 to 1.3 or something like that

**John Delano** - There was an analysis performed on the four lots back in 2004 that there would be a minor increase in storm water flows from the property after it was developed into four residential lots

**Lenny Lim** - From what to what

**John Delano** - From its current condition

**Lenny Lim** - No

**John Delano** - As far as the numbers?

**Lenny Lim** - Yes. I believe there were numbers last week.

**Robert Gaudio** - Not to interrupt but I think the key point of that was that the board had asked had recommended drainage ponds which now

**Vincent Cestone** - The planning board

**Robert Gaudio** - Their own report recommended drainage ponds which was part of the planning board process. Once they pulled it back from the planning board they went without the planning board review, there were no drainage ponds

**John Delano** - The report presented an increase in flow. The plan also offered some mitigation, storm water mitigation measures in the way of storm water

