

Minutes
Knowlton Township Zoning Board of Adjustment
Tuesday, August 1, 2017

The regular August meeting of the Knowlton Township Zoning Board of Adjustment was held on Tuesday, August 2, 2017. Chairman Tillman led the Board in the pledge of allegiance. Board Secretary Schemm announced that adequate notice of the meeting has been provided in accordance with the "Open Public Meetings Act" by publishing notice of all regularly scheduled meetings in the Official Newspapers as well as providing said schedule in the Municipal Clerk's Office.

Roll call: Present: Tillman, DeVincenzi, Schad, Wunschuh, O'Neill (Alt #2) and Melillo
Absent: Peck, Suggs, and McGuinness (Alt #1)
Also Present: Board Engineer Rodman and Board Attorney Thomas.

Approval of Minutes:

The June 6, 2017 minutes were distributed prior to the meeting. Ms. O'Neil made the motion to adopt the minutes. Motion seconded by Ms. Schad. Roll call vote: Melillo-Yes, Schad-Yes, Wunschuh-Yes, DeVincenzi-Yes, O'Neill-Yes, and Tillman-Yes.

The June 29, 2017 minutes were distributed prior to the meeting. Ms. Schad asked if she should recuse herself, as she recused herself from the Stone application. Board Attorney Thomas stated that she can recuse herself from that portion of the minutes.

Dr. Melillo made the motion to adopt the minutes. Motion seconded by Ms. DeVincenzi. Roll call vote: Melillo-Yes, Schad-Yes and Abstaining from the Stone portion of the minutes, Wunschuh-Yes, DeVincenzi-Yes, O'Neill-Abstain, and Tillman-Yes

Memorializing Resolution:

#ZB17-003 James H. Stone, Block 3, Lot 25.02

Mr. Wunschuh made the motion to adopt the Resolution. Motion seconded by Dr. Melillo. Roll call vote: Melillo-Yes, Schad-Abstain, Wunschuh-Yes, DeVincenzi-Yes, O'Neill-Abstain, and Tillman-Yes

#ZB17-002 Simpson Road Project, Block 14, Lots 1 & 2

Attorney Keiling noted that he had recommended two minor modifications, which were addressed by Board Attorney Thomas in his draft. Ms. O'Neill questioned who will be responsible for the light test. Board Attorney Thomas stated that the light test will be done by the Board Engineer.

Ms. Schad made the motion to adopt the Resolution. Motion seconded by Mr. Wunschuh. Roll call vote: Melillo-Yes, Schad-Yes, Wunschuh-Yes, DeVincenzi-Abstain, O'Neill-Abstain, and Tillman-Yes

Old Business:

#ZB17-004 Christina Gotty, Block 62, Lot 12

Steven Tombalakian, Esq. was present on behalf of Ms. Gotty. William Hinkes, Esq. was present on behalf of Mr. and Mrs. DeGroot. Attorney Hinkes stated that he would like to call Christina Gotty. Attorney Tombalakian stated a procedural objection. He stated that during an earlier conversation, Attorney Hinkes would not disclose or identify the topics that he intended to cover this evening, so he is now withdrawing his

authorization to have Ms. Gotty testify, as she was already available for cross examination, at the first hearing. He went on to state that after the last hearing, Mr. Hinkes filed two complaints against his client. After a brief discussion it was determined that Ms. Gotty would be available for limited questioning on the cease and desist subject matter. Board Attorney Thomas also addressed a verbal matter that occurred outside at the end of the last meeting. Attorney Tombalakian stated that he did bring that matter to the attention of his client and he expressed that the individual should refrain from acting inappropriately.

Ms. Gotty acknowledged that she was still under oath. Attorney Hinkes asked about the path that circles the garage. He went on to state that he had requested a copy of the Gotty survey be provided for this evening. Attorney Tombalakian stated the he does not have the survey and that the application should be limited to the cease and desist order and tree removal. He stated that Attorney Hinkes is trying to bring other matters before the Board. Board Attorney Thomas reviewed the Zoning Officer's letter and the matter before the Board. The following was submitted and marked as an Exhibit:

O-12 Photocopy of Survey

Attorney Hinkes questioned the tree removal and the gravel driveway. Ms. Gotty stated that she removed trees that were about to fall onto her garage and she described the gravel driveway. The scope of the matter/violations was then reviewed and discussed again. Ms. Gotty testified that she did not remove any trees upon receiving the cease and desist letter.

Jeanie DeGroot was sworn in and the following were submitted and marked as an Exhibit:

O-13 Photograph

O-14 Photograph

O-15 Photograph

O-16 Photograph

Ms. DeGroot described the photographs of her daughter's graduation party. She stated the barn/pole barn is clearly visible now and she described the equipment being brought in and out of the property. She stated that they contacted the Zoning Officer, when the trees were being removed, to get clarification on the prior approved variance and they did not get any response. She stated that work continued to be done around the barn and property after the cease and desist order was issued. Attorney Tombalakian asked if there were any comparison photographs taken to show the current conditions. Ms DeGroot stated that they did not take any photographs and she went on to describe the work that was done after the cease and desist order was issued. She commented on the tree removal and the use of the property. She stated that gravel was spread and slabs were laid. The following was submitted and marked as an Exhibit:

O-17 Email from May 17, 2017

Ms. DeGroot reviewed the email that was sent and the activity that was taking place on the property and she also described Exhibit O-8 and the tree removal and the effect on their view. She was questioned about the specific trees that were removed after the cease and desist order was issued.

Barbara Bartos was sworn in and she stated that they were present during the first hearing in 2003, where they voiced their concerns; however, she stated that they did not attend the 2nd hearing, where the approval was granted. She summarized the conversations had with Ms. Gotty where she stated that she would not be running a

business from her property. She went on to state her concerns over equipment coming and going, the crushed stone, the removal of trees, and the visibility of the outbuilding from their property. She also commented on the fence. Several Board Members had questions, which Ms. Bartos addressed. The following were submitted by Attorney Tombalakian and marked as Exhibits:

- A-17 Photograph
- A-18 Photograph
- A-19 Photograph
- A-20 Photograph
- A-21 Photograph

Attorney Tombalakian questioned Ms. Bartos on the submitted photographs of the Gotty property and the testimony that she provided this evening. Attorney Tombalakian provided another photograph, which was marked as an Exhibit:

- A-22 Photograph

Attorney Tombalakian continued to question Ms. Bartos on the condition of the property prior to the Ms. Gotty purchasing it. Attorney Hinkes stated Attorney Tombalakian has now opened the door, with his questions, pertaining to whether a business is being run from the property.

Jeanie DeGroot acknowledged that she was still under oath and she stated that there are daily commercial activities taking place at the property, where equipment is moved from the Gotty property, to other properties, to do work. The following were submitted and marked as an Exhibit:

- O-18 Photograph
- O-19 Photograph

Ms. DeGroot described the photographs and Attorney Tombalakian had several questions for Ms. DeGroot.

Paul Bartos was sworn in and he stated that he agrees with what his wife has stated this evening. He stated that he has photographs on his phone, which were marked as Exhibits:

- O-20 Photograph
- O-21 Photograph
- O-22 Photograph

Attorney Tombalakian objected as the photographs cannot be submitted and they are requesting that a decision be made this evening. Board Attorney Thomas stated that hard copies of the pictures will need to be submitted. Mr. Bartos described the photographs and the views. Attorney Tombalakian submitted the following, which was marked as an Exhibit:

- A-23 Aerial Photograph, copyright 2010

Attorney Tombalakian had several questions for Mr. Bartos in regards to Exhibit A-23 and the trees that were removed.

Tyler Thurgood was sworn in and he stated that he would like to read his mother's letter. Board Attorney Thomas stated that a letter cannot be cross examined and he stated that Mr. Thurgood could make his own statement if he wishes. Mr. Thurgood went on to make a statement in favor of the Applicant. John Cusack questioned whether Thurgood has seen any invoices in regards to Mr. Finch's employment by Ms. Gotty.

Barbara Connolly was sworn in and she made a statement in favor of the Applicant.

Joseph Rossi, Knowlton Zoning Officer, made a statement recommending that this matter be resolved and he reviewed again what had transpired, which was discussed. He stated that he has received three RICE notices in regards to this matter. Attorney Hinkes reviewed the conversation that was had, where it was agreed, that the Board should deal with this matter.

With there being nothing further to present, the hearing was closed to the public.

Attorney Hinkes asked that the Board review the matter and make the same judgment call as to what is best for the neighborhood. He asked that the Board consider whether the 2004 Resolution protects the neighborhood from the visibility of the structure. He thanked the Board for their time.

Attorney Tombalakian reviewed the submitted appeal challenging the cease and desist order pertaining to the removal of the trees. He stated that Ms. Gotty has followed the rules. He went on to state that the Zoning Officer was forced to issue the cease and desist order and that the adopted Resolution has no condition on tree removal or buffer areas. He stated a condition is not implied or extrapolated and there is a Township Ordinance on the books that deals with conservation easements. He stated that there is nothing recorded in the title and no condition in the adopted Resolution. He stated that there were some trees removed to install the fence and some of the trees were diseased. He stated that the real issue is, that there was an assumption, that there would be a business be running out of the building. He stated that it is not a crime to utilize a building for hobbies. He stated that the Zoning Officer issued the cease and desist order under duress. He asked the Board to consider the facts and circumstances and release the property from the burden of the cease and desist order as Ms. Gotty is being denied the use of her property.

Board Attorney Thomas reviewed the issues and the Resolution adopted in 2004. He also reviewed the minutes. He stated that the Board can state that there is no specific condition in regards to the removal of trees or the Board can focus on the reasoning/rational and findings of fact, in the granting of the "D" variance. He reviewed that the Board will have to make a determination/decision based on the testimony provided and whether a violation took place and if the cease and desist was issued improperly. Ms. Schad stated that she was on the Board when the variance was granted and she stated that she does not believe that the Board would have granted the variance if they knew what was to happen. The matter continued to be discussed at great length.

The Board then took a brief recess to allow the Attorneys an opportunity to speak with their clients. The meeting resumed at 10:11 p.m.

Attorney Tombalakian stated that there is nothing to report.

Board Attorney Thomas reviewed the options available to the Board, which the Board reviewed and discussed at great length.

Dr. Melillo made the motion to rescind the cease and desist order as there is no tree removal condition in the Resolution. Motion seconded by Mr. Wunschuh. Roll call vote: Melillo-Yes, Wunschuh-Yes, DeVincenzi-Yes, Schad-No, and Tillman-No. Not eligible to vote on the matter as she did not hear all of the testimony: O'Neill-Abstaining.

Approval of Vouchers:

Ms. Shad made the motion to approve the vouchers. Motion seconded by Dr. Melillo. Roll call vote: Melillo-Yes, Wunschuh-Yes, DeVincenzi-Yes, Schad-Yes, O'Neill-Yes, and Tillman-Yes

Adjournment:

In a motion made and seconded the meeting adjourned at 10:36 p.m.

Respectfully Submitted:

Alfia Schemm
Board Secretary
09/27/17