

Cazenovia Zoning Board of Appeals

Meeting Minutes

June 23, 2014

Members present: Chris Fischer, Chairman; Louis Orbach; Gene Smith; Richard Sheridan

Members absent: David Silverman

Others present: John Langey; Robert Germain; Roger Cook; William Zupan; Thomas Fucillo; Peter Gianforte; Anne Redfern; Graham Egerton; Jason Emerson; Robert Cowan; Robert Ridler

C. Fischer called the meeting to order at 7:36 p.m.

Motion by C. Fischer, seconded by G. Smith, to approve the May meeting minutes was carried unanimously.

Crawford Farms, LLC – #14-920 – Special Use Permit – 5071 East Lake Road

C. Fischer explained this is a continuation of a public hearing that started last month. No one was present to represent the applicant. Mr. Fischer went on to say that at the last meeting the Board had posed questions regarding the two wetland areas that were on the property. The applicant had indicated that one

of the areas was now no longer considered a wetland according to the New York State Department of Environmental Conservation (DEC). The applicant was asked to provide the documentation for that claim which they did. Mr. Fischer summarized the information in that document stating the wetland in question might not be actively regulated by the DEC, however that area may still be subject to zoning requirements applicable to wetlands. The Board is awaiting additional delineation by the DEC on behalf of the applicant.

C. Fischer then asked if there was anyone present to speak for or against the application.

Peter Gianforte of 5652 East Lake Road said he believes this is a positive endeavor, adding that the Crawfords are "gentlemen" farmers. He was the only one present to speak at this time.

C. Fischer went on to say that at the last meeting the Board was unsure if the submitted plan was allowed under the current zoning code. The Board asked the applicant to reevaluate their plan to better meet those requirements or to wait for the applicant's inclusion in New York State's agricultural district.

Motion by C. Fischer, seconded by G. Smith, to adjourn the file for another month while Mr. Fischer ascertains where the applicant now stands in this process, was carried unanimously.

Owera Vineyards, LLC – #14-925 – Appeal – 5276 East Lake Road

C. Fischer explained this application is regarding an interpretation Roger Cook, the Cazenovia Code Enforcement Officer, made concerning operations at the vineyard.

Robert Germain asked if this was actually an appeal rather than an interpretation.

C. Fischer explained that because John Langey, the attorney for the Town, is representing Mr. Cook, the Town Board has appointed Germain & Germain, specifically Robert Germain, to represent the Town of Cazenovia regarding this appeal.

C. Fischer asked Mr. Germain the significance of the distinction between an "interpretation" versus an "appeal" for the Zoning Board's consideration.

R. Germain clarified that not only is this a question of interpretation, but the applicant is asking for an appeal of a determination Mr. Cook made April 22, 2014.

C. Fischer agreed with that explanation. He went on to discuss a letter submitted by J. Langey on June 23, 2014 which stated that the Town Code Enforcement Officer moves to request that the Zoning Board of Appeals dismiss the appeal as untimely since the same determination relative to the vineyard

was previously issued on September 6, 2013 and not appealed within 60 days of that first decision. Mr. Fischer explained that this is a legal threshold question and asked Thomas Fucillo, the attorney representing Owera Vineyards, LLC, if he had received this letter at the time the Board received it.

T. Fucillo answered that he too received it this evening.

C. Fischer suggested to Mr. Fucillo and the Board that time be given to both sides to digest the matter and brief the issue for the Board.

T. Fucillo appreciated the opportunity to do that.

C. Fischer said the next consideration was the scheduling of a public hearing for this appeal, and asked the applicant if he preferred to make an introduction of the appeal tonight or if he preferred to wait to present it in conjunction with the public hearing.

R. Germain interjected that before this goes to public hearing, it would be wise for the issue of the threshold matter to be resolved, believing if there is no standing, there would be no need for a public hearing. He went on to suggest that perhaps the Board would like to adjourn to an executive session since this is a legal question.

C. Fischer asked the Board if they would like to enter into an executive session to gain more information from a legal perspective regarding this matter. The members indicated they would like that.

T. Fucillo stated that scheduling the public hearing for the next meeting and then canceling it if necessary would be preferable to having to return a month later for the public hearing. He continued by saying that this is both an interpretation question and an appeal. He said that it is their position that in September of 2013 they received a notice of violation, which they responded to in detail, but since there was no fine or active enforcement at that time, no concrete injury was inflicted. It was not until the decision in April of 2014 which caused the vineyard to cancel an event and there was an economic impact, so he concluded that it was timely because that is when the 60 day statute of limitations should be initiated. He also stated that this issue is an important decision for his clients and hoped the Board would consider it based on its merits rather than on a technicality.

J. Langey responded that he agreed that the applicant should be given the opportunity to respond, however, the determination made by Mr. Cook in September of 2013 was "crystal clear" and the applicant's response to that decision was proof that the applicant was sufficiently informed. He repeated that he understands counsel's right to have adequate time to respond.

Motion by C. Fischer, seconded by G. Smith, to adjourn into executive session to discuss legal matters with their counsel to decide how to properly proceed was carried unanimously at 7:50pm.

Those in the audience as well as the Zoning Board of Appeals Secretary exited the room.

Motion by C. Fischer, seconded by G. Smith, to end the executive session and to resume the regular business session was carried unanimously at 8:23pm.

C. Fischer recounted that the Board met in executive session to endeavor to gain a better understanding of the legal questions before the Board concerning the threshold matter of the application. As he suggested before they entered into executive session, since this matter was presented just this evening, the Board felt it only fair to give both sides equal opportunity to submit material substantiating their views.

Motion by C. Fischer, seconded by G. Smith, instructing both parties to the appeal to submit any and all legal arguments, supporting documentation, and anything else of relevance to the Board in determining this threshold question by the end of business two weeks from tonight which will be July 7, 2014, was carried unanimously.

C. Fischer further explained it is unknown how the Board will determine that issue once both parties submit their arguments and the Board has reviewed them with counsel.

Therefore a motion was made by C. Fischer, seconded by G. Smith, to schedule the public hearing for the applicant's appeal at the Board's July 28, 2014 meeting, asking the Board's Secretary to publish notification in the newspaper, that Mr. Fucillo notify the neighbors within 500 feet of the property's outside boundaries, and that Mr. Cook install the appropriate signs all as required by the code, was carried unanimously.

C. Fischer asked Mr. Fucillo in light of where things now stand if he would like to make any opening statements or comments regarding the appeal at this meeting or if he would like to postpone doing so until the public hearing.

T. Fucillo expressed his desire to wait.

C. Fischer continued by stating there was a suggestion by the board that a work session would be appropriate allowing the board to review with counsel the submissions from both sides.

Motion by C. Fischer, seconded by G. Smith to schedule a work session meeting Monday, July 14, 2014 at 7:30pm, was carried unanimously.

R. Germain clarified that the public will not be invited to speak at the work session and if they were to attend, the Board would probably enter into executive session.

It was also clarified that Mr. Fucillo need not attend the work session.

C. Fischer stated that the goal of the work session is to digest what has been submitted and if further questions arise, additional information will be requested.

C. Fischer said that was the last item on the agenda.

Motion by C. Fischer, seconded by R. Sheridan, to close the meeting was carried unanimously at 8:29pm.

Zoning Board of Appeals Secretary - Sue Wightman - June 24, 2014