

# Cazenovia Zoning Board of Appeals

## Meeting Minutes

### July 28, 2014

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

Members absent:

Others present: John Langey; Robert Germain; Roger Cook; Scott Grimm; Thomas Kinslow; Thomas Fuscillo; Nancy Muserlian; Jorn Clement; Donald McPherson; Brian Keeler; Bryan Wendel; Michael Palmer; Anne Ferguson; Linda Siracuse; Anne Redfern; Graham Egerton; Jason Emerson

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C. Fischer called the meeting to order at 7:34 p.m.

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Motion by G. Smith, seconded by R. Sheridan, to approve the June meeting minutes was carried unanimously.

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*Tuscarora Properties, LLC – #14-935 – Appeal – 3780 Rippleton Road*

C. Fischer explained that this was the initial appearance for the appeal for a determination that Codes Enforcement Officer Roger Cook made. He asked Scott Grimm, the applicant, to summarize his application explaining that a public hearing would follow at a later date.

S. Grimm recounted that he had purchased the property from Bud Sunderman in May of 2013 . It is a 9 1/2 acre farm from which he currently runs a home occupation business. He is a distributor of table tennis tables, and a dealer for other game tables like billiards, shuffle boards, as well as grills. He went on to say they did some structural renovating of the existing barn, adding vinyl siding and a loading dock. He mentioned renovations that are being done in the main house and the farm house, clarifying there are two houses, a barn and a detached garage on the parcel. He also stated that they got a sign permit to erect a sign near the road naming the property. He then spoke about the traffic stating there is typically one truck per day, occasionally up to two or three, and then two per week in the winter, since it is seasonal business. The Home Occupation permit is in his name. The business is MISC Inc. The property was purchased by Tuscarora Properties LLC. He said when the loading dock was installed on the barn, wing walls were part of the construction, which created the ideal place for a sheltered play area. In October of 2013 they put a ping-pong table there and installed lights for night play. In addition to that, they mounted a sign on the barn, facing the road, that listed the address and read "Office/Show Room 10:00AM - 5:00PM" with an arrow indicating where to drive. In May of 2014 he received a letter from R. Cook citing him for a lighted sign that was not down cast nor night compliant, an improper additional sign on the building, and improper outdoor storage. He said they plan to get goose neck lights to shine down. He said he covered a portion of the sign on the barn to only show the address and the arrow, however, he would like permission to post all the information he originally had displayed. His main appeal addresses the issue of the outdoor ping-pong table. Because this area is protected from the wind on three sides, he repeated that this is the ideal place for him to locate a personal patio area for his enjoyment and the enjoyment of his neighbors.

C. Fischer asked about the installation of gravel or concrete.

S. Grimm said they graded the outdoor ping pong area and they have gravel currently, but they had not decided upon the permanent surface because they were cited before they could finish the project. He had also wanted to have a billiard table, foosball table , and a grill in addition to the ping-pong table in the play area. He felt the interpretation was unfair because it restricts the placement of his personal recreation space on his property because of his particular business.

C. Fischer asked if there had been a permit for the installation of the sign.

It was clarified that there were two signs on the property. The roadside announcement sign was permitted, but not lit according to Town code. No permit was issued for the barn sign, which he considered an address sign.

S. Grimm also mentioned that his son plans to sell produce raised on the property as well.

C. Fischer asked Mr. Cook to explain to the Board his reasoning for issuing the violations.

R. Cook said the lights on the announcement sign shown well beyond the sign, not meeting the night sky ordinance; neither were the lights on the barn illuminating the ping-pong table night sky compliant. He then quoted from the Home Occupation Code 165-61 (5) which states that, "There shall be no exterior alteration of the structure, or exterior display, or exterior storage, or other visible evidence of the operation of the home occupation." Mr. Cook stated that, because of the type of sales in which Mr. Grimm engages, in his opinion, the display of a ping-pong table appears to be advertising as an "exterior display." He said the sign on the barn gives "visible evidence" that a business is being operated at the location as well. He asserted that Mr. Grimm is fully compliant at this time, and that Mr. Grimm addressed the issues speedily.

C. Fischer explained the usual handling of appeals. The appeal is initially heard, then a date is set for the public hearing, which is noticed three separate ways, and in this instance Madison County is contacted for input. He said he would like to schedule the public hearing during the August 25, 2014 meeting, expecting a response by the Madison County Planning Department by that time.

S. Grimm expressed his inability to attend the August meeting, and said he is simply requesting a game table.

C. Fischer stressed that the Board must follow the appeal procedure. He told Mr. Grimm he could submit something in writing for the August meeting, or they could schedule the public hearing for the September meeting.

J. Langey advised that Mr. Grimm have someone to represent him at the August meeting if he was not going to appear in person.

C. Fischer understood that time is always an issue and sympathized, but emphasized the need to follow procedure.

S. Grimm asked if he could state his reasons for his appeal or if he needed to wait until the next meeting.

C. Fischer welcomed his comments.

S. Grimm stated the Home Occupation is in one name and the violation is in another. He believes that because people driving by do not know what he sells, and because he does not have a sign advertising what he sells, having a ping-pong table visible from the road does not inform them of his business. He used other examples that he felt substantiated the reasoning behind his argument, asking if he sold seed could he not have a lawn, or if he sold lights, could he not have a lit yard.

J. Langey answered that it is "form over function," stating that the wares of his trade cannot be displayed according to the Town Code.

S. Grimm declared that he likes what he does. He likes playing ping-pong. He feels he is being penalized by not being allowed to have a table for his own use because he sells them.

J. Langey asked about his wanting to add a pool table and a grill in the same area.

S. Grimm said that particular area is the best location on his property, so that is where he wants to locate his patio with those items.

When asked about the visibility from the road, Mr. Grimm admitted it was visible, thinking the distance was perhaps 100 feet from the road, and 500 feet from the neighbors. He repeated that he understands the reasoning behind not being able to advertise the business details of his home occupation, but feels denying his personal use of his recreation area is excessive.

D. Silverman explained that he understands Mr. Grimm's enjoyment of his employ, but he would hate to see his yard become a showroom. He said he would be more understanding of a single table for family use.

S. Grimm reaffirmed that he uses his ping-pong table for socializing within his neighborhood.

G. Smith suggested a fence be erected so that Mr. Grimm can leave the area for his recreational use, but obscure the visibility from the road.

S. Grimm argued his table is not advertising unless he has a sign that states he sells them. He asked if he would be allowed to have a car in his driveway if he sold cars.

C. Fischer explained that his analogies were not accurate because the types of businesses he was using for examples do not operate as home occupations.

S. Grimm said he is in favor of zoning laws and he would not want to have anything he himself would not want to live near, but he wants the laws to be fair and consistently enforced.

D. Silverman repeated the suggestion that some fencing or landscaping would be a solution to be considered, buffering the visibility from the road.

S. Grimm said he had intended to do some landscaping.

C. Fischer asked about his statement that the table had been left outside over the winter.

S. Grimm said it is a stationary table, meant to be permanently mounted.

C. Fischer again expressed his desire to schedule this for a public hearing, asking the applicant if he would rather schedule for September since Mr. Grimm expressed that he would be away during the August meeting.

S. Grimm assented that September would be better than August.

Motion by C. Fischer, seconded by R. Sheridan, to schedule the public hearing for the appeal for the September meeting was carried unanimously. He explained Madison County's response would be sent to the applicant at the same time that it is sent to the Town. Mr. Fischer requested that a copy of the home occupation application and sign permit be added to the file for future reference.

R. Cook repeated that Mr. Grimm is in full compliance currently, and that they had talked in length about the home occupation before Mr. Grimm purchased the property.

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

Tom Kinslow stated that he came to update the Board on the progress thus far regarding this application and some complex issues that were raised. Regarding the State/County agricultural district certification, he said the best they can hope for would be an October approval which would postpone their project until December. They have built in the winter before and do not want to repeat the experience. The second issue was the wetlands. He said he had been in contact with Julie Rimbault with the United States Army Corp of Engineers (USACE), stating the USACE does not require set-backs from the wetlands in the northern region of the site, explaining that the hydrology has changed in that portion. They are awaiting delineation of the wetlands in the southern portion of the property. The New York State Department of Environmental Conservation (DEC) would also like to flag the lower wetlands, stating their contact there is Kristen (Kate) Kornak. He explained that the DEC has a 100 foot setback requirement, but repeated that the USACE does not.

C. Fischer interjected that only the riding trail is being proposed near the wetland area.

T. Kinslow went on to explain the trail is a dirt trail and called it a "nice segue into the swale." He went on to explain that if they were to disturb more than an acre, they would be required to file a Storm Water Pollution Prevention Plan (SWPPP). The barn and the shed areas, the only structural interruptions of land, are less than an acre. The paddock areas and the trail area are going to be prepared with stump grinders and brush clearing, which is not considered heavy machinery, and a minimal disturbance according to the DEC.

The last item of concern is the usable pastureland interpretation. He said they have searched the area for the paddock sizes of other horse farms, and they have not found any that are as large as those being stipulated. He asserted that the paddocks the applicant proposes are larger than most existing in the area. They have pictures of the paddocks they own in Durhamville that are the size they are proposing for this project, and they contend that those paddocks have grass and are not "manure mud pits," which he said is unhealthy for the animals. He said they would like the private stable interpretation to be more in line, stating it was about density, not a specific prescription that a horse must occupy an acre and a half. He believes the current interpretation suggests a free-range paddock, which he stated is dangerous, particularly for breeding horses. He also stated that the tillable land is desirable for the owner to preserve for crops rather than dedicating it all to pastureland. He said what they, he and Albert Crawford, would like to do is to return to the next meeting with legal representation to discuss the interpretation of usable pastureland. At that time they will also submit information from the USACE and the DEC regarding the

delineation of the wetlands, as well as any progress they may make regarding the agricultural district certification.

It was clarified that the interpretation in question is regarding the terminology in the Cazenovia Town Code 165-82.

J. Langey read from the code 165-61 entitled "Definitions" which states, "For the purposes of required pastureland, a pasture is open land which is suitable for and devoted to grazing, with no buildings, wells, septic systems or improvement," under the definition of "Stable, Private." He advised the applicant when they do an interpretation application, focus on that definition when framing their question. He also explained that they would need to do a separate application for the interpretation, that it would require its own public hearing, and that there is a whole procedure to be followed for this in addition to the special permit procedure for being approved for a private stable. He explained a ruling for the interpretation will be permanently applied to the term "pastureland."

C. Fischer said the Board fully understands the issue, but feels the meaning of the zoning code is sufficiently clear as it currently reads. He went on to say he believes the Board is in favor of the project but within the confines of the zoning code.

T. Kinslow repeated that as one views the beautiful horse farms in the area, no one has these free-range paddocks. They all have regular-sized paddocks, stating the horses need to be herded. The owners are desiring to be another one of those horse farms. He again referred to the condition and size of the paddocks at the Crawfords' existing horse farm in Durhamville.

J. Langey asked if inspecting the existing paddocks in Durhamville would aid the Board in its determination.

C. Fischer asked Mr. Kinslow to provide the address for the Durhamville stable.

T. Kinslow expressed his desire for them to visit, stating the health and care of the horses has always been a priority for Crawford Farms.

G. Smith said that it is not only a matter of health for the animals, but a consideration for the property and the neighboring properties.

J. Langey asked if a manure management plan had been submitted.

T. Kinslow said that it has been articulated to the Board verbally.

J. Langey recommended that he prepare a written plan or the next meeting.

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*Walsh, Joe & Julie – #14-933 – Special Use Permit – 4855 Ridge Road*

C. Fischer explained that this would have been the applicants' first time before the Board. He said they are endeavoring to establish a private stable, to add a building, and some pasture area. He further explained that Mr. Walsh notified them that the North American Land Trust has restrictive covenants which run with the land, and Mr. Walsh is awaiting documentation that his project is in compliance with those covenants. Mr. Walsh has asked the Board to adjourn the file until next month to allow time for that.

C. Fischer advised the Board to review the application to make sure everything is in order to expedite the process at the next meeting.

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

C. Fischer explained the appeal is regarding an interpretation Roger Cook, the Cazenovia Code Enforcement Officer, made concerning operations at the vineyard. He explained this appeal was before the Board last month and was scheduled for a public hearing this month, remarking that the public hearing has been properly noticed. He explained that he would like the applicant to present first, followed by the respondent's reply. The applicant would then have an opportunity for rebuttal, followed by time for public comment. Thomas Fuscillo from Menter, Rudlin & Trivelpiece, P.C. was present to represent the applicant.

T. Fuscillo addressed the issue of timeliness of the appeal first, asserting they fully responded to the Notice of Violation dated September 6, 2013 in their letter dated September 12, 2013 to Roger Cook. At that time, they believed they were "clearing up a mistake that Mr. Cook was making," regarding activities that were inside the tent or outside at the patio/pergola area using the same arguments then that they were now making. He said there was no response from the Town, never any findings, no agreements nor disagreements with their position, and no resolution of the issue whatsoever. He said the statute of limitations does not begin until there is a "concrete injury" inflicted or a final decision is reached. He repeated there was no enforcement or follow-up from the Town, no fine assessed, and therefore no injury inflicted at the time. On the other hand, Mr. Cook did inflict an injury upon Owera April 22, 2014, because at that time, he caused the cancelation of an important event. The interpretation of the code in April was appealed within 60 days, and they believe that request was timely. He submitted that this is an important issue, stating it is important to Owera, and asked that the Board decide the appeal on the merits of the issue, and not upon a technicality, with respect to the actual substance of the matter.

C. Fischer asked, for the record, that Ower state their position for the reason a formal appeal of the initial September 2013 violation was not filed.

T. Fuscillo asserted that Ower assumed the matter had been settled at the time since their detailed submittal to Mr. Cook was never disputed, stating the lack of a fine, follow-up, and tickets led them to this conclusion. He went on to say Mr. Cook's response was a surprise when Nancy Muserlian contacted him out of caution regarding the JCC event in April.

C. Fischer asked if the vineyard canceled any events after the notice of violation in September of 2013.

T. Fuscillo said the vineyard canceled a number of weddings in an attempt to work with the Town and the neighbors over the noise issues, but not in response to the hours of operation violation they had received. He further explained the JCC event was initially canceled, but was eventually rescheduled for a Sunday.

C. Fischer asked if the Board had any questions regarding the waiver issue before they proceed to the substantive part of the appeal.

L. Orbach asked if he understood correctly that the crux of their argument was the absence of injury that negates the waiver issue.

T. Fuscillo repeated the statute of limitations needs some finite point of beginning, normally a definitive injury or an obvious final determination, neither of which was apparent in September of 2013.

C. Fischer said at one point the vineyard initiated to build an event center, an actual building, and asked if he recalled the date that plan was submitted.

T. Fuscillo did not know that date, but said they do intend to resubmit a plan for the building. He did recall that it had been held in abeyance because an appeal was made to the Zoning Board of Appeals of Mr. Cook's determination that it was a farm operation under Ag & Markets law, but he did not have the specifics.

C. Fischer was trying to determine the timeframe when the initial application was filed for the permanent building.

R. Germain stated it was December of 2013.

There were no more questions for Mr. Fuscillo regarding the waiver issue.

C. Fischer asked him to continue on the merits.

As stated in the appeal application, T. Fuscillo said the first argument is that the hours of operation were not an enforceable condition of any site plan approval. In the resolution of the Planning Board dated June 7, 2012 which authorized the construction of the non-permanent tent structure, it did not list hours of operations as a condition of the construction. He informed the Board that the hours of operation were part of the recitals of the resolution, which he explained was a recitation of the factual background and the basis of things previously decided.



G. Smith asked if one without a background in law were to read this document, would they not believe that the hours stated therein would be the expected hours of operation.

T. Fuscillo replied that it was his experience, as one having represented both sides of municipal agencies, that generally if an issue is important to a planning board, they will not simply repeat the applicant's intent in the resolution, but they make the issue a condition of approval. He further explained that what the applicant may at first intend can change, whereas the *conditions* of a resolution remain mandatory.

C. Fischer asked what the position was now regarding the hours of operation.

T. Fuscillo responded that to put this entire issue behind them, the intention is to build a state-of-the-art, noise-dampening building as a replacement for the tent.

C. Fischer clarified that once the building is built then the requirements of hours is rendered unnecessary based on the other language of the resolution.

T. Fuscillo affirmed that statement, repeating that it resolves the dispute over "inside" versus "outside."

C. Fischer asked what their position was, pending approval of this prospective building, regarding hours of operation.

T. Fuscillo stated that it defies logic, based on the components of this particular tent structure, which includes a wooden floor system, its attachment to a permanent entrance building, a heating, ventilation, and air-conditioning (HVAC) system, and other features, to conclude that being in it is the same as being outside.

G. Smith stated that the tent is disassembled several months a year.

T. Fuscillo affirmed that it is.

G. Smith asked who removes a structure several months a year and then reassembles it.

T. Fuscillo conceded a permanent structure is not assembled and disassembled, but a structure can be, and the Cazenovia law does not specify a "permanent structure." It says a "structure."

G. Smith said in his reading of the code and in the definition found in the dictionary, he does not see the implication of a tent being considered "inside."

T. Fuscillo cited Madison County's Planning Department's determination that the tent should be considered "inside."

L. Orbach asked if Mr. Fuscillo was hinging his argument on whether the tent structure is considered inside or outside versus its hinging on the definition of a structure. He further stated that the definition of structure includes items such as signs, pools, fences, dams, and gasoline pumps, so defining a tent as a structure does not prove that it is inside.

T. Fuscillo referred to the definition of "Outdoor Storage" in the Town code as something that is not within a structure which he believes clearly implies being in a structure would be considered inside. He said the county agrees with that interpretation, and the dictionary defines outside as "open air." He said being in the tent is not being in "open air." He said the elimination of noise within the tent could be argued, but there is no rational disagreement that if one is inside that structure (the tent), one is not outside.

D. Silverman said the facility is magnificent, that he first visited recently, but the tent, nice as it is, is not a building.

T. Fuscillo agreed that it is not a building, but it is a structure by the Town's definition of a structure. He again listed features such as the floor; the sub-ceiling; the chandeliers; and HVAC.

D. Silverman asked how the hours of operation became part of the original application.

T. Fuscillo supposed the Board asked the applicant what the hours of operation would be and then recorded his answer.

D. Silverman asked since the applicant submitted those hours of operation, should the applicant not be held to those hours.

T. Fuscillo answered that it is not uncommon for businesses to adjust their hours of operation, stating these times were set forth at the outset of the application process, before there was a tent or a tasting room, repeating that nowhere in the resolution does it indicate that the hours of operation are a mandatory condition of approval.

D. Silverman said this is a business operating in a primarily residential neighborhood.

T. Fuscillo assented that many other farm operations function in residential areas as well. He repeated that the Town Code has no specific definition of "inside" or "outside" and the dispute centers on whether the vineyard was having an inside activity or an outside activity. He reiterated that the County opined that it was inside. He then referred again to the Town's definition of "Outside Storage," as an analogy.

C. Fischer asked if the primary issue is hours and the structure issue is secondary. He reasoned that it should be the reverse, stating the question of whether the tent is a structure should be primary, because if it is, the question of hours need not be discussed.

T. Fuscillo agreed the issue of inside versus outside hinges on the issue of "structure."

C. Fischer asked when the tent first was introduced as part of the site plan review before the Planning Board, wondering if it was part of the plan before the Board at the time the January 5, 2012 resolution was passed.

T. Fuscillo understood the confusion about the tent's inclusion in the plan, but could only affirm that the tent was part of the June 7, 2012 resolution.

C. Fischer asked if the plan including the tent was before the Planning Board when the hours of operation were set.

T. Fuscillo answered that the hours of operation were set at the first approval and were recited through subsequent approvals, thinking the first approval was in 2009 or 2010.

L. Orbach asked if the hours ever appeared in the resolution section of previous approvals.

T. Fuscillo said the hours have always appeared in the recitals/findings section.

C. Fischer asked for Mr. Fuscillo's response to the argument that the vineyard has agreed to the hours specified and propagated repeatedly to the New York State Liquor Authority in its December 26, 2013 correspondence, and to other people at other times.

T. Fuscillo asserted that the vineyard, in an attempt to cooperate with the neighbors and to receive their liquor license, offered to comply with those hours, however, since they were not granted the license, he felt it was not fair to "hold them to that."

G. Smith said that the letter does not indicate anywhere that the hours of operation are conditioned upon receipt of the liquor license.

T. Fuscillo replied that it seems like a common sense assumption to him.

G. Smith indicated that would not be his usual practice nor his natural assumption.

T. Fuscillo conceded that Mr. Smith does not like his position, but asked that the right legal decision be made.

L. Orbach questioned the wording in the same letter to Chairman Rosen of the Liquor Authority which stated, "In accordance with the approved site plan, Oweria Vineyards is entitled to conduct outside operations from 11:00 am to 5:00 pm Sundays through Thursdays and from 11:00 am to 10:00 pm on Fridays and Saturdays and indoor operations at any time," wondering what the firm was indicating by stating the hours were in accordance with the approved site plan.

T. Fuscillo said John P. Sidd, the writer of the letter, was indicating what was stated in the resolution, and if the question is whether that is a lawful mandate as part of that resolution, he conceded that Mr. Sidd did not raise that question in his letter. He repeated the primary argument is a question of "inside" versus "outside."

C. Fischer asked if anyone else had a question for Mr. Fuscillo. None did, so he asked Mr. Langey to present.

J. Langey addressed the waiver/statute of limitations issue first, saying they felt the determination Mr. Cook had made was clear, quoting from Mr. Cook's Notice of Violation - Order to Remedy (NOV) in which the body of the letter lists the specific violations with an order to "Cease and desist from conducting wedding receptions and other events outside the approved hours contained in your land use

permits. The tent area is not an indoor facility and does not mitigate the excessive sound and noise from your events." He said the fact that the owners hired a very good law firm to respond in a very strong letter disagreeing with Mr. Cook and his determination was evidence of the owners' comprehension of the situation. He asserted an appeal to the Zoning Board of Appeals at that time was what should have been done on behalf of the owners. He went on to say the statement at the end of the NOV, "Please note that the above-referenced violations must be corrected immediately upon receipt of this Notice and the Town may institute appropriate legal action against you," indicated that the owners had a lot at stake at the time.

L. Orbach asked if the Codes Enforcement Officer had made a faulty interpretation, and if the initial interpretation is not appealed, is it the Town's position that subsequent violations can be issued based on the same faulty interpretation "until the end of time," because the right to appeal had been waived after the first violation.

J. Langey said if a timely appeal had been made, within the 60 day timeframe, all the violations of that particular interpretation would be reviewed simultaneously by the Zoning Board of Appeals.

D. Silverman asked about the weddings that were canceled after the NOV, assuming the cancelations were a reaction to the cease and desist in the Town's NOV.

J. Langey affirmed that the Vineyards did take action.

L. Orbach asked if the NOV was not only an order but also a determination.

J. Langey asserted that it was because the NOV expressed exactly how they had run afoul of the prior resolution.

L. Orbach asked for clarification that there were two separate items which could have been appealed.

J. Langey agreed that there were two separate items that the Vineyard not only had the right, but the obligation to appeal.

As far as the substantive aspect of the appeal, J. Langey said the applicant desires a ruling that allows them to have no time restraints on events as long as the events occur within the "plastic tent." He said in theory they can have amplified music, such as Van Halen, until 2 am, 3 am or 4 am according to their argument that it would be "indoors." His first point was that there are the historical rulings from the Planning Board. He explained that there were five to seven approvals on this piece of property. He said it started as a gentleman's farm, then it was decided that they would grow grapes, followed by the plan to squeeze grapes and make wine. He said at some point buildings began to "pop up." He said that was when the conditions about holding things inside after 5 pm on week nights and 10 pm on weekends developed in response to concern over the deleterious effects, such as sound and noise, from their operation. At the time the idea of moving events indoors was created, indoors was intended to be a "real" building, a "real" structure that could hold sound. At the time the tent was erected, he said the applicant never mentioned that wedding bands would play until 11 pm or 12 am. However each time the Board approved these things, the hours of operations were included. When the tent came in, the Planning Board

never assumed that the outdoor activities would be pulled inside that structure and be considered "inside" activities. He said that defies common sense.

He went on to say the letter to the State Liquor Authority speaks for itself.

He said regarding the "indoor/outdoor" issue, the intent of the resolutions is clear upon inspection that "indoor" meant within the stick-built buildings.

The last item he wanted to highlight was on the map prepared by EDR on behalf of the Vineyards, dated April 24, 2012, on which the tent is denoted and the dimensions are labeled. EDR, hired by the owners, wrote on the map, "tent area for outdoor functions." He said the tent was associated with "outdoor" functions. He said that was another indication that when the applicant was making his presentation, the band was not going to be moved inside the tent and that would solve all the issues.

L. Orbach asked if the map was submitted to the Planning Board by the applicant.

J. Langey affirmed it was and it was dated prior to the approval of the tent. The map is part of the Town's file for the applicant. He stated that the goal is to work with the applicant to come to a resolution "so everyone can live nicely out there," and he does not believe moving everything inside a "plastic tent" is the way to achieve that goal. He said that is not the kind of "indoors" the Planning Board was talking about when they discussed the issues of this application. They meant inside a real building.

C. Fischer asked if there were any additional questions for Mr. Langey. Since there were none, Mr. Fischer asked Mr. Fuscillo if he would like to rebut.

T. Fuscillo said Mr. Langey was attempting to distort his argument. He said no one tried to have rock bands perform in the tent until 2 am. He said the Town has approvals, the approvals have specific language, and the Board's job is to interpret that language. He repeated the hours of operation have nothing to do with whether this is a building or a tent, rather they are based on "indoors" and "outdoors." He claimed that is the interpretation the Board must address, which was part of the resolution right from the beginning. He said Mr. Langey made it sound like, because they were going to build a tent, these hours of operation appeared to address the tent issues.

J. Langey interjected that he actually stated the opposite, that the hours of operation were placed when stick-built buildings were on the plan, before the tent was even considered.

T. Fuscillo argued that the issue remains, regardless of the materials, stick-built or otherwise, that the question is whether the tent structure is "inside" or "outside," repeating that in every one of the approvals, as the project changed, the resolutions remained the same.

G. Smith asked Mr. Fuscillo if the map, which is their document, states "tent area for outdoor functions," is it not clear that the tent is for outside operations.

T. Fuscillo replied that he was unsure why the map was so labeled.

G. Smith commented that it was probably their intention.

T. Fuscillo, upon receiving a copy of the map, stated there is a pergola and a veranda in that tent area, near the actual tent, which would clearly be "outside" operations. He continued by stating those areas are not within the tent itself. He reiterated that the patio is outside and it is near the tent.

L. Orbach asked if T. Fuscillo was stating that there are actually two separate spaces on the drawing labeled "tent area."

T. Fuscillo affirmed that he was, repeating there is a patio area associated with the tent.

J. Langey stated his position is it should state "patio area" if that was the case.

G. Smith asserted that it says, "tent area," not "structure area."

T. Fuscillo responded that he feels the structure issue is contrived, and he doubted he could convince Mr. Smith otherwise.

G. Smith expressed his disagreement.

C. Fischer asked if Mrs. Muserlian felt permission was granted in the site plan to operate after hours in the tent and she was allowed to have the JCC event as originally planned, why did she contact Mr. Cook in April.

Nancy Muserlian was seated in the audience and said she could answer that. She stated a local person had called the JCC and expressed doubt that their event could be held at the vineyard, so out of concern the event would be "shut down" after it was underway, she contacted Mr. Cook. She said Mr. Hunter was the one who called the JCC, and the JCC in turn called her.

C. Fischer asked if there were any other questions for Mr. Fuscillo.

J. Langey then addressed the opinion set forth in the GML from the Madison County Planning Board stating their recommendation was based on the information they had been given, but had they known the history of the changing plan, his scenario and Roger Cook's scenario, he asserts they would not have had the same opinion. He said he presented this information to NYS Ag & Markets and was told Ag & Markets would not deem the tent to be an "indoor" facility according to his scenario.

T. Fuscillo responded that the Madison County Planning Board was interpreting the resolution and the Town Code, stating it does not matter what Ag & Markets determines is "indoors" or "outdoors," it matters what the Town of Cazenovia determines is "indoors" or "outdoors."

J. Langey agreed interpretations must be made based on the information provided.

C. Fischer said if there were no further questions he would like to move on. For the benefit of the Board, since both Mr. Fuscillo and Mr. Langey referenced the GML Recommendation from the Madison County Planning Board which was received July 24, 2014, and because of its length, he summarized that the GML Recommendation stated: the hours of operation are set in the resolution, and that it is Madison County's opinion that the tent is an "indoor" structure. He said the remainder of the letter was arguably

irrelevant to the topic at hand. He then opened the meeting to the public hearing, stating he wanted to make it perfectly clear that the issues before the Board are: 1) is the tent an "indoor" structure, and 2) are the hours in the resolution binding upon the vineyard's outdoor operations. He continued by saying these issues are not noise, lighting, or an event center that may or may not be proposed in the future. He asked that all public comments be limited to the two issues currently before the Board.

To start the public hearing C. Fischer read a letter dated July 24, 2014 from Diane Ryan, the Deputy Director of Community Action Partnership (CAP), in which she expressed gratitude to Oweria Winery for a successful and generously underwritten fund raiser in 2013, and her concern that this decision before the Board may prevent CAP from duplicating the event in September of 2014, stating their event "was quiet and over at 8 pm," and that their event "is not the only (event) that will be affected by these decisions."

C. Fischer then asked if there was anyone in the audience who would like to speak for or against the appeal.

Jorn Clement, a neighbor residing at 5210 East Lake Road, was the first to speak, stating that if the hours of operation in the resolution are not upheld, then none of the other resolutions issued by the Town would be binding. He also stated that according to Wikipedia's definition of a "tent", the tent structure would be considered outdoors, "comparing it to a parking lot and a field."

Donald McPherson from 5257 Oweria Point Drive supported the determination the Codes Enforcement Officer made that the tent is not a structure. Mr. McPherson is a licensed professional engineer.

Brian Keeler of 5237 East Lake Road reasoned that the description of a "structure" as it was defined in some of the letters regarding this appeal as "something made up of a number of parts that are held or put together in a particular way," (American Heritage Dictionary - Second College Edition) would qualify a ball point pen as a "structure." He asserted that the applicant's own sound engineer, speaking before the Planning Board, affirmed that the tent is not a structure, and did not even attempt to attenuate the sound from that source because it was "just a tent." He said the hours of operation were set when the tasting room was erected, which the neighbors welcomed. He went on to state that the sole reason weddings were canceled was due to the inability of the winery to acquire a liquor license and the winery's inability to provide services their customers required. Regarding the definition of "outside storage," he commented that outside storage does not make noise. He also said the letter from Ms. Ryan had no bearing on the discussion for this appeal, that the generosity of the applicant is not in question.

Bryan Wendel from 5271 East Lake Road rhetorically asked who initially decided if the tent was indoors or outdoors. He answered Oweria did, and that was the reason weddings there continued until 11 pm. He also stated that it was clear from the beginning that the Planning Board was extremely concerned about the hours of operation and the impact those hours have on the neighborhood. He said the reason those hours were written and the reason those hours should be upheld stems from that concern and impact.

C. Fischer asked if there was anyone else desiring to speak. Since there was not, the motion by C. Fischer, seconded by G. Smith to close the public hearing, was carried unanimously.

C. Fischer said both Mr. Fuscillo and Mr. Langey have pointed out that the Town made a motion to dismiss the appeal on a preliminary waiver issue. He said the Zoning Board of Appeals reserves decision and will make a determination on the threshold issue as part of a larger determination regarding all the pending issues. He said the Board anticipates making that decision at its August meeting.

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That was the last item on the agenda.

Motion by C. Fischer, seconded by G. Smith, to close the meeting at 9:25 pm was carried unanimously.

Zoning Board of Appeals Secretary - Sue Wightman - July 29, 2014