

TOWN OF AMENIA
ZONING BOARD OF APPEALS
FEBRUARY 8, 2006

PRESENT: Rudy Eschbach, Chairman
Norm Cayea
Katie Loughlin
Judy Velletri
David Rosenberg

Michael Hayes, Attorney

The meeting was called to order by Chairman Rudy Eschbach at 7:05 P.M. He and the Board introduced and welcomed the two new members of the Zoning Board of Appeals who were appointed.

ROLL CALL TAKEN

REGULAR MEETING:

FINDINGS OF FACT – KRAUS, BRUCE – CASE #2005E – HARDSHIP VARIANCE – BOG HOLLOW ROAD, WASSAIC, NY –

Spelling - change of the name Rebideau.

MOTION TO ACCEPT THE FACT AND FINDINGS OF BRUCE KRAUS HARDSHIP VARIANCE was made by David Rosenberg, seconded by Katie Loughlin.

VOTE TAKEN – ALL IN FAVOR

CROP PRODUCTION – CASE #2005F – AREA VARIANCE, ROUTE 343, AMENIA, NY

MOTION TO ACCEPT FACT AND FINDINGS FOR CROP PRODUCTIONS was made by Katie Loughlin, seconded by Judy Velletri.

VOTE TAKEN – ALL IN FAVOR Rudy Eschbach – Abstain

MONTY & JOANN LAROBADIER – RELIEF ON ROUTE 22, was made by Norm Cayea, seconded by David Rosenberg

VOTE TAKEN – ALL IN FAVOR – Katie Loughlin – Absent that meeting

DWY/MILL – VARIANCE, LAKE AMENIA ROAD, AMENIA, NEW YORK

MOTION TO ACCEPT FACT AND FINDINGS OF THE DWY/MILL VARIANCE was made by Norm Cayea, seconded by Judy Velletri.

VOTE TAKEN – ALL IN FAVOR - Katie Loughlin – Absent that meeting.

MOTION TO ACCEPT THE MINUTES OFR THE DECEMBER 14TH, 2005 MEETING was made by David Rosenberg, seconded by Judy Velletri.

VOTE TAKEN – ALL IN FAVOR

PUBLIC HEARING:

PATRICK NELLIGAN – APPEAL FROM ZONING OFFICER’S INTERPRETATION –
LOCATION: TOWN OF AMENIA 38 LAVELLE ROAD, AMENIA, NY – WATER DISTRICT
WELL #4 AND PUMPHOUSE.

The Public Hearing Notice was read

This case began October 22, 2005. Mr. Nelligan handed out a one-page synopsis. After being sworn in Mr. Nelligan stated that, this is not about the well, not about the hearing or the water district. It is about the town and how it does not oversee or review projects proposed by the water district. A site plan review is in order since it is a commercial operation. It is still under the local planning and zoning laws. If a neighbor has an issue, that should be part of the determinations of the Town Board or Planning Board to determine whether a project should go forward. There was no review of this case, no plan and no application. A well needed to be drilled and it was just put there with no concern about how it would affect the environment, the value of adjacent property, not being done properly without any review by any board. A DEC permit was issued by misrepresenting what the well was going to be. They said it was a replacement well not a new well. The Town needs to oversee and review these types of thing. What Mr. Nelligan wants is that this project be submitted for review either to the Planning Board under the Zoning and Planning Laws or the Town Board in the appropriate way as outlined in County of Monroe case.

Ms. Loughlin asked Mr. Nelligan what he would like to see. He stated over the last 2 years it has gone from this little building with a tiny fence around it to a totally clear cut disaster area that does not fit in with the adjacent property or the wetland it is in. As seen from the rail trail there is no screening from visual or sound from the generator and there is no plan in place for this.

Ms. Loughlin asked Mr. Nelligan if he had complained to the BOH or DEC about this, have they visited the site, have they reviewed it, and did they give permits for the water district to continue? Both the BOH and DEC gave permits originally for this project. Because it is a NYS agency, it is being appealed on the State level. Mr. Nelligan had problems with those permits. He stated that the BOH permit was given for a well in a flood plain (by their guidelines). He is here before the ZBA because of the local approval to enforce our local Zoning and Planning Laws. He feels that the water district is not exempt from the local Zoning and Planning ordinances, however the Town Attorney disagrees. He has no problem with the first well. The Town Board just let this happen. The negative impacts on his property are the propane tank, noisy generator with no screening, white plastic siding on building and chain link fence. Mr. Nelligan feels that this is a good well he just feels that this project should have been reviewed. With a proper review, most of the concerns will be addressed.

Theresa Thompson was concerned with the fact that she could see the site from her home and Tom LeJeune was concerned about the site and had asked about the screening plans.

Chairman Eschbach asked Mr. Gary Bonds of the water department about the situation. Mr. Bonds told the Board that a letter from the engineer, a hydrologist, John Mazaroni, had prepared the application and sent it to Department of Health and DEC. Because of the locations of septic systems in the area, the land was surveyed and that is where the well needed to be located. DEC has reviewed this site.

Chairman Eschbach has visited the site twice, walked the entire area with Nancy Brusie and Gary Bonds. He then asked Michael Hayes for his interpretation of the first of three determinations. What is the Water District and is it a separate legal entity? Under Articles 12 and 12A of the New York State Law, the town water district is not a separate entity. It is managed and operated by the Town Board. The water district was not exempt from BOH and DEC permits and was also not exempt from SEQR and the SEQR process was done with a negative impact finding on November 17, 2005. He further stated that as legal advisor the well project is a municipal function that is exempt from the Town's local zoning requirements, therefore, the Zoning Officers had made a correct decision that she did not stop all activities at the site. Chairman Eschbach felt Mr. Hayes had answered the other two questions in Mr. Nelligan's complaint.

Mr. Nelligan felt there was a conflict of interest. He felt that Mr. Hayes had not rendered an impartial decision since he was also attorney for the Town Board and the Zoning Administrator. Mr. Hayes stated that there was nothing wrong with him acting as attorney to several of the Town of Amenia Boards. That is practice with small towns.

Mr. Bonds would review the final plan for the site concerning cutting, screening, cleanup of site and plantings.

At 8:02 P.M., the ZBA went into Executive Session.

MOTION TO DENY THE RELIEF AS REQUESTED ON THE BASIS THAT ZBA DOES NOT HAVE JURISDICTION OVER THIS MATTER was made by Katie Loughlin, seconded by Judy Velletri.

VOTE TAKEN – ALL IN FAVOR

MOTION TO UPHOLD THE LETTER FROM NANCY BRUSIE DATED NOVEMBER 3, 2005 was made by Norm Cayea, seconded by Katie Loughlin.

VOTE TAKEN – ALL IN FAVOR

Chairman Eschbach declared the board was back in session at 8:16 P.M.

MOTION TO CLOSE THE MEETING AT 8:17 P.M. was made by Rudy Eschbach, seconded by Katie Loughlin.

Respectfully submitted,

Susan M. Metcalfe
Zoning Board of Appeals Secretary

The foregoing represents unapproved minutes of the Town of Amenia Zoning Board of Appeals from a meeting held on February 8, 2006 and are not to be construed as the final official minutes until so approved.

_____ Approved as read
_____ Approved with: deletions, corrections, and additions.