

MINUTES OF A SPECIAL MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, APRIL 28, 2011 AT 8:00 P.M. IN THE COURTROOM AT 169 MT. PLEASANT A VENUE, MAMARONECK, NEW YORK.

These are intended to be "Action Minutes" which primarily record the actions voted on by the Zoning Board at the special meeting held April 28, 2011. The full public record of this meeting is the audio/video recording made of this meeting and kept in the Zoning Board's Records.

**PRESENT:** Clark Neuringer, Chairman  
Barry Weprin, Vice Chairman  
Robin Kramer, Secretary  
Greg Sullivan, Board Member  
Dave Neufeld, Board Member  
Steve Silverberg, Counsel to Board

**ABSENT:** Rob Melillo, Deputy Building Inspector

Lisa Mango, Court Reporter, was present at the meeting to take the stenographic minutes, which will not be transcribed unless specifically requested.

**CALL TO ORDER**

The meeting was called to Order by Chairman Neuringer at 8:03 p.m. and he stated this is a special meeting regarding the LaRusso pigeon coop application and the Golub/SAPOA application before the Board. He noted that only two items were being considered at this meeting and that there would be no participation by the public as the hearings are closed. Chairman Neuringer went on to say that no information or questions should be submitted to the Board. The record is closed on both matters.

**1. Application #11-2011, DAVID LARUSSO, 1648 Mamaroneck Avenue**

Steven Silverberg, counsel to the ZBA, stated that the Board had asked him to submit findings which the Board had in their possession. Chairman Neuringer stated that he felt the issues had been narrowed down and the Board could begin by reviewing the findings Mr. Silverberg prepared.

Mr. Weprin stated that pigeons are not customary household pets. He stated that there was at one time a provision in the code and that provision was repealed. No one, Mr. Weprin continued, has demonstrated that there are other pigeon coops in Mamaroneck. He said that the health concerns are also an issue for him. Mr. Weprin went on to state that fifty pigeons is not a reasonable number. A reasonable number is probably less than fifty. He noted that the Board did not receive a lot of testimony as to what number is reasonable. He concluded by stating that the Board has to use common sense.

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Ms. Kramer concurred with Mr. Weprin in that pigeons are not customary household pets and that they have not been in the Village for years. Ms. Kramer stated that a reasonable number would vary based on the type of pet. She stated that she does not believe there is a particular number for every pet, but fifty seems too large a number for pigeons. If someone had one pigeon, Ms. Kramer stated, that would be like having another type of bird. Ms. Kramer went on to reference a recent case about chickens.

Chairman Neuringer stated that Ms. Kramer made a good point with respect to what is a household pet and the appropriate/reasonable number. Chairman Neuringer stated that he is more interested in the number of pigeons. Are ten or five pigeons reasonable, he asked? His concern is that at what point the Building Inspector has the discretion. The Building Inspector should apply what is written into the code. Chairman Neuringer stated that the Board heard testimony that the average number of pigeons is 100 or 150. Based on that, Chairman Neuringer stated, fifty seems like a much lower number. Chairman Neuringer stated that he has a concern that the Building Inspector made a determination that fifty is too many. Chairman Neuringer corrected himself by stating he did not mean the Building Inspector, but rather the Building Department. He stated that he was troubled by how these determinations were made and done on an arbitrary basis.

Mr. Neufeld stated that the issue of health and noise exists with all pets. On a technical side, Mr. Neufeld stated that there is nothing that suggests there are or there are not pigeon coops in the Village. He indicated that the Building Inspector stated his department does not keep track of them. Mr. Neufeld went on to say that initially this was permitted by the code and that he has no idea why it was changed. He asked if there was a presumption if part of the code was taken out, is it no longer legal. Mr. Neufeld said that there is an ambiguity of judging what is customary and feels that the code is not well written. Mr. Neufeld went on to say that he would not consider a pigeon a customary pet, but how does one decide what it is. Because it's new, does that make it not customary?

Mr. Sullivan stated that the code does not need to be changed. The Board needs to decide if the Building Inspector's determination was correct, he said. Many employees, Mr. Sullivan went on to say, are given discretion in matters pertaining to the Village such as police, code enforcement, etc. Mr. Sullivan said that with respect to custom, in 2011 it does not seem like the Village wants this and he does not have a problem with the code as it is written. Mr. Sullivan stated that he was not swayed by the applicant's claim that the pigeons are pets. Mr. Sullivan stated that the Board should not determine a number if it gets to that point. He went on to say that the original applicant described these pigeons as athletes, competitors, used for winning. Mr. Sullivan also stated that he did not believe the assertion that the non-performing pigeons are given to pet shops.

With respect to Mr. Neufeld's comment, Mr. Weprin stated that he felt the Board was given a list of owners with pigeon coops from the Building Department that were no longer active. Mr. Weprin also stated that he is tempted to designate a number in the resolution regarding the number of pigeons. If it were one pigeon, the Board might be looking at this differently, he said.

Ms. Kramer stated that no one on the Board feels this is a customary household pet. She went on to say that undefined words in the code can to be defined by a use of a dictionary and that the term customary is not ambiguous. Customary means common and pigeons are not common in

Mamaroneck. If this was a tiger, the Board would have no problem saying it is not customary, Ms. Kramer stated. She went on to say that animals that earn money could still be considered pets. Mr. Neufeld stated that this is a bird that gets trained to do something.

Chairman Neuringer stated that what the animal may or may not be used for is irrelevant. He stated that he knows a couple who have a Boa Constrictor as a pet. They believe it is a pet and care for it as if it were a pet, Chairman Neuringer said. He went on to say that there was a history of this type of bird in the Village, but today there are no pigeons.

Mr. Sullivan asked if the owner of household pets were required to live in the house where the pets are housed. He stated that Mr. LaRusso does not live in the Village of Mamaroneck. Mr. Weprin stated that he does not believe this is what the issue turns on.

Ms. Kramer stated that she does not think pigeons in 2011 in Mamaroneck are household pets. She also noted that the number of pigeons (50) will not be static. The number will change as pigeons are born and non-performing pigeons are disposed of. Mr. Weprin stated that the Board is not saying that 49 or 39 would be an acceptable number. Chairman Neuringer stated that the Board doesn't know what the appropriate number is, but neither does the Building Inspector.

Mr. Weprin moved to vote to approve the resolution (draft findings) prepared by counsel and Mr. Sullivan seconded the motion. Ms. Kramer made a suggestion to change the number to 40 or more. Mr. Neufeld had some suggestions to change paragraph four relating to pigeons. Ms. Kramer stated that the type of pigeon is important. Mr. Silverberg stated that the appeal specifies the number. Mr. Weprin stated that the critical mass of the birds does influence his decision. Mr. Silverberg read a suggested change to the language which Mr. Neufeld had a question on.

A motion to approve the findings (to deny the application) was made by Mr. Weprin for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Sullivan.

Ayes: Kramer, Neufeld, Weprin, Sullivan  
Nays: Neuringer

**2. Application #2I-2011, THE SHORE ACRES PROPERTY OWNERS ASSOCIATION AND BENNETT & CYNTHIA GOLUB**

Chairman Neuringer reminded the audience that this matter is closed. He stated that there are procedural issues that need to be discussed with counsel in executive session. Chairman Neuringer noted the merits of the case will not be discussed in executive session.

A motion to adjourn to executive session was made by Mr. Sullivan and seconded by Ms. Kramer.

Ayes: Neuringer, Kramer, Weprin, Sullivan  
Nays: Neufeld

The Board adjourned to executive session at 8:50 p.m.

At 8:56 p.m., the Board reconvened the special meeting.

Chairman Neuringer stated that subsequent to the public hearings and the closure of the public hearing and record, this Board received additional documents from the two parties involved which will not be included in the record or evaluated when making the determination.

Mr. Weprin stated that he has a problem because he does not know who owns the property. Mr. Silverberg stated that this is a legal issue and both parties have indicated that it is not this Board's decision to determine ownership.

Mr. Neufeld stated that he believes this has been Mr. Silverberg's thought process since the beginning, including during the Planning Board phase. He stated that the cases which were cited by Mr. Silverberg go toward restrictive covenant issues. The SAPOA matter is different.

Mr. Weprin stated that one can't calculate the FAR if one does not know the boundaries. Chairman Neuringer asked if the Building Inspector made his determination based on the 2010 tax map. Ms. Kramer answered that the Building Inspector looked at the tax map along with the survey and determined the FAR was appropriate and that is how he came to that decision. Ms. Kramer stated that the question she raises is that in November 2010, the tax map did not show the entire parcel the club purportedly owns and on which the FAR was based. Ms. Kramer asked which map the Board should use when making their determination. Ms. Kramer went on to say that what if the Assessor said he was going to change the map and then for whatever reason, he didn't make the change. Ms. Kramer said that if the Assessor changed the map it was based on a deed the Board is not comfortable with.

Chairman Neuringer stated that the question before the Board is was the Building Inspector correct in his determination at that time. He acted at a date certain. Ms. Kramer stated that the Board can't stop there; it needs to look at what was presented.

Mr. Neufeld suggested that the Board take the Chairman's suggestion and look at the Building Inspector's determination on that day. Ms. Kramer stated that if the Board is going to do this piece-meal, it is clear on the day it was in front of the Building Inspector the lot was not sufficient for the Building Inspector to make a determination of FAR. She stated that the lot was too small.

Chairman Neuringer asked if anyone had a problem with Ms. Kramer's statement. None of the Board members had an issue with it. Mr. Sullivan stated that he did not want to make a decision in a vacuum. Mr. Weprin stated that this matter will be ongoing and will continue for a long time. He stated that the Courts will most likely determine ownership and that the amended tax map may need to be revisited.

On the paving issue, Mr. Neufeld stated that many experts stated they made a determination that gravel would be better. Perhaps on that matter, the Club should have come for a variance, he said. Ms. Kramer noted that the FAR is one part of the appeal and the parking is the second part of the appeal. Mr. Silverberg stated that the Board should look at the entire appeal.

Mr. Neufeld stated that he does not feel gravel is paving. Mr. Weprin stated that he did not have an issue with the gravel. Chairman Neuringer stated that if paving is defined, it must be defined by the code. He said that roads have to reach a certain level of specification; the code requires it be paved. Mr. Neufeld stated that four people said gravel was the best way to go, but then you have to ask for a variance. He stated that the position was taken that others could make that determination.

Ms. Kramer suggested the Board look at the code, Section 342-60. She read from the code. Ms. Kramer stated that in the sentence she read aloud, it says nothing about paving. She then read further down the code. Ms. Kramer stated that the code is not clear with respect to this issue. Discussion arose regarding the portion of the code Ms. Kramer read.

Mr. Weprin stated that he does not think the FAR was properly determined, but he is not convinced the parking spaces shouldn't count. Ms. Kramer discussed the occupancy issue relative to the parking. She noted that an establishment can decide to have fewer guests for dining and in turn have fewer parking spots.

At this point the Board felt the issues should be addressed separately. Ms. Kramer stated that gravel is not paving and Mr. Neufeld concurred. The Board stated that the three appeals are: 1) FAR, 2) parking spaces, and 3) paving.

Ms. Kramer stated that the Club provided the Assessor with a deed and the Assessor stated he was going to change the tax map. She stated that the possibility existed that the Assessor could have changed his mind. She asked if the deed was used improperly by the Assessor.

Mr. Weprin stated that the discussion was moving beyond what the Board agreed upon when the Building Inspector first had certain information before him. Mr. Sullivan stated that the change in the tax map does bolster the Building Inspector's original determination. Mr. Weprin stated that this matter is troublesome. Chairman Neuringer stated that the Board can't assume that action taken after the Building Inspector's determination is appropriate. Ms. Kramer stated that had the tax map been changed a year ago, the Building Inspector would still have made the same determination.

Mr. Neufeld stated that the Board can break their decision into several parts. He said the Board can list findings and then put it all together in one resolution with separate votes.

Mr. Silverberg noted that the Board continues to go back to the validity of the deed. Mr. Kass indicated in his affidavit that it is not within the Board's purview to determine ownership. It is not something the Board should consider or be asked to consider, he stated.

Ms. Kramer stated that the deed may have been effective for the Assessor to make a change. Mr. Weprin stated that one does not have to go to the amended tax map if one makes a determination on the date the Building Inspector made his determination. Mr. Silverberg interjected by re-stating the fact that the Board should not be determining the validity of the deed. Mr. Neufeld noted that he strongly disagrees with Mr. Silverberg. He stated that this is not a deed and doesn't understand how someone can act on this deed. Mr. Neufeld stated that he does not want to act on something that was not changed at the time. Mr. Sullivan stated that the fact that the deed was presented

means the Board needs to address it. Mr. Weprin stated that he agrees with Mr. Neufeld; the deed is not a conveyance.

Discussion arose as to whether the site plan was zoning compliant. On the parking issue, Ms. Kramer stated that she does not feel the challenge is correct. She feels there are enough parking spaces and Mr. Weprin concurred. Mr. Weprin stated that he is willing to say that gravel is paving.

Mr. Neufeld stated that a memo from November 2010 referenced 122 paved parking spaces and the rest of the spaces were gravel. He noted that that distinction was made in the memo. Mr. Neufeld reiterated that the items should be broken up.

Mr. Silverberg stated that if the Board reaches a consensus, they allow him to draft something that can be reviewed by the Board and adopted at the May 5<sup>th</sup> meeting. He suggested the Board see if they have a majority on each matter before them. Ms. Kramer stated that the Board did a similar thing when they deliberated on the LaRusso matter.

Ms. Kramer asked if the Building Inspector had authorization to make a determination based on other documents beside the survey and tax map. The Board discussed whether the determination of the Building Inspector as to whether the lot was zoning compliant was accurate. Ms. Kramer indicated that the code states that in the case of submissions to the Planning Board, one must rely on surveys and tax maps. She stated that she does not think it can be zoning compliant based on the FAR. Based on the tax map alone, the lot was not zoning compliant on that date, Ms. Kramer stated.

Mr. Sullivan suggested the Board answer the applicant's question as stated in their appeal. Ms. Kramer stated that as of the date of the Building Inspector's determination, he did not have authority to look at anything else but the map. Mr. Neufeld asked if the expression of intent matters in this instance. Mr. Weprin, Ms. Kramer, Chairman Neuringer and Mr. Neufeld agreed that it did not.

With respect to parking, Chairman Neuringer does not feel this matter is cut and dry. Ms. Kramer stated that just because capacity is bigger doesn't mean you need to apply for more tables in a restaurant, for example. Mr. Weprin stated that the Club is going by what the Fire Marshal designated. Mr. Weprin, Ms. Kramer and Mr. Sullivan stated they are comfortable with the parking issue. Ms. Kramer stated that it is what the Club's posted capacity is that is relevant.

On the issue of parking, Chairman Neuringer stated that one can argue that gravel can be marked, but it won't last long. He went on to say that a person can't spray paint lines on gravel and expect it to stay. Mr. Neufeld, Chairman Neuringer and Ms. Kramer agreed that paving is not gravel. Mr. Weprin and Mr. Sullivan had no issue with paving.

Ms. Kramer stated that she is not certain gravel is paving, but also does not know if paving is required as up to 50% of the paving can be waived. The question is what the other 50% can be. Ms. Kramer stated that she is leaning toward gravel being adequate. Mr. Weprin stated that it troubles him to say you have to pave.

Mr. Silverberg will draft a series of findings so the Board can finish this on Thursday, May 5<sup>th</sup>. The 62 day time period runs out by Thursday, he stated.

**ADJOURN**

A motion to adjourn the meeting was made by Ms. Kramer, seconded by Mr. Sullivan.

Ayes: Neuringer, Kramer, Neufeld, Weprin, Sullivan

Nays: None

On motion duly made and carried, the meeting was adjourned at 10:21 p.m.

ROBIN KRAMER  
Secretary

Prepared by:  
Ann P. Powers