

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, MARCH 3, 2011 AT 7:00 P.M. IN THE COURTROOM AT 169 MT. PLEASANT AVENUE, MAMARONECK, NEW YORK.

These are intended to be “Action Minutes” which primarily record the actions voted on by the Zoning Board at the meeting held March 3, 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
Robin Kramer, Secretary
Barry Weprin, Vice Chairman
Dave Neufeld, Board Member
Greg Sullivan, Board Member
Steve Silverberg, Counsel to Board
John Winter, 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 7:13 p.m. and he introduced everyone and detailed the procedures for the meeting. The next meeting is scheduled for Thursday, April 7, 2011.

1. Application #12SP-2007, DANSE ELITE

Melonie Hodges, the applicant, addressed the Board. She stated that she is renewing a special permit to operate a dance establishment for ages five and older. Ms. Hodges noted that there have been no changes in the hours of operation or the number of students. Everything is the same with respect to the original application.

Chairman Neuringer asked if anyone wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Sullivan, seconded by Ms. Kramer.

Ayes: Neuringer, Weprin, Neufeld, Kramer, Sullivan
Nays: None

2. Application #4A-2011, JOSEPH CALDWELL

Joseph Caldwell, the applicant, addressed the Board. He stated that he is requesting a variance of Article V Section 342-27 to legalize a pool deck where the lot coverage is 38.8% and the maximum allowed is 35% per the Code. Mr. Weprin asked how the situation came about. Mr. Caldwell stated that he had applied for permits to renovate and finalize a Certificate of Occupancy. In June of 2008, he applied for a permit for a pool and deck. Originally the deck was to go around

the pool. Mr. Caldwell said he was told by Rob Melillo, the Deputy Building Inspector, that the deck would impinge upon neighboring properties. In July of 2008, Mr. Caldwell stated that he came up with another plan for the pool and deck. The permit was for the pool and deck. Mr. Caldwell stated that the pool was installed the last week of September or the beginning of October. He stated that he received a Certificate of Occupancy and had passed inspection. The plans were for a 16' by 24' above ground pool and small deck.

Mr. Caldwell stated that in December of 2010, he received a violation notice from the Building Department. He was advised by Mr. Melillo that the deck was not part of the permitted use and that there was a coverage issue. Mr. Caldwell stated that he was instructed by the Building Department to apply for a variance.

Mr. Caldwell went on to say that homeowners and neighbors have had no issues and Mr. Caldwell submitted a letter from neighbors supporting the work he has done. The letter was submitted into the record.

Chairman Neuringer asked if the Board had a copy of the plans that the Building Department issued the permit for. Mr. Caldwell stated that he had two sets of plans done after the original plan was denied. He didn't receive the plans back, only the permit.

Chairman Neuringer asked Mr. Caldwell how he received the Certificate of Occupancy. Mr. Caldwell stated that the deck was constructed after the Certificate of Occupancy was issued. Chairman Neuringer asked if the completed work included the pool and deck and Mr. Caldwell answered that it only included the pool.

Ms. Kramer asked if the pool was free-standing and Mr. Caldwell answered in the affirmative. Chairman Neuringer asked if it was his understanding that he could build the deck after the pool was constructed because he thought he had received permission based on the plans and Mr. Caldwell stated that was his understanding.

Ms. Kramer noted that the two surveys don't have dimensions on them and that the Board has no way of knowing what was constructed based on the survey. Mr. Silverberg noted that the Certificate of Occupancy was dated October 23, 2008. John Winter stated that there were two Certificates of Occupancy. A clarification letter was sent to take out the wording of the deck. Mr. Silverberg read the letter and noted that there was no date on the letter. Mr. Caldwell stated that he believes he received the letter in 2010.

Chairman Neuringer noted that the deck is not in the plans after the application was submitted. He asked Mr. Caldwell if he had calculated what the impact would be to go from 38.8% to 35%. Mr. Caldwell stated that there would be no deck and in a perfect world he would like to keep it as is. He stated that he does not have a big yard. Mr. Caldwell went on to say that he is on a tight pension and it would be costly to him to make more revisions.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Sullivan, seconded by Ms. Kramer.

Ayes: Neuringer, Weprin, Neufeld, Kramer, Sullivan
Nays: None

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

Steve Kass, Esq. appeared on behalf of the applicants. Chairman Neuringer reminded Mr. Kass that this is a continuation of an adjourned application and the Board wishes to hear only new information and see only new material regarding this matter. He asked both parties not to repeat or represent what was already discussed at the last hearing. Mr. Kass agreed and stated that he did not intend to repeat the materials and information already submitted.

Mr. Kass started by saying that with respect to the ½ acre (the disputed property), the Club feels this is moot because the Village Assessor has indicated that he will be amending the tax assessment map. This does not bear on the appropriateness or the validity of the Building Inspector's determination on December 2nd. Mr. Kass noted the letter from the Office of General Services requesting the Village not take any action with respect to title of this property because the state is review the matter. Mr. Kass went on to say that he does not know if any measures have been taken by the Assessor, but in view of the state's request, it should be rescinded at this point. Mr. Kass stated that the correction deed is not sufficient and that his submissions to the Board indicate why.

Mr. Kass stated that the Club, in its most recent submission, indicated that it believes the boring log of September 2010 demonstrates that the ½ acre has not been filled and was never underwater. Mr. Kass said that he has submitted two letters from soil test expert Henry Moeller, which disputes the Club's findings. On the first test the Club performed (soil boring), the report indicated that it had not been filled. Mr. Kass stated that Mr. Moeller found the complete opposite. Mr. Kass noted that Mr. Moeller found that the boring log which went down 23 feet shows the top 6 feet is compacted and filled material and the 9 feet of material below that can only be marshland.

Mr. Kass went on to say that the Club suggests that the boring log is not in the disputed area and Mr. Kass feels that it is. Mr. Kass stated that the map in Mr. Moeller's first report shows that it is part of the disputed area. Mr. Moeller's follow up report deals with three subsequent probes which are less intensive than a boring log. Mr. Kass said the report indicated two of the probes hit rock ledges at three to five feet and showed no relevant materials. The third probe went down approximately eight feet and reported a compacted material for the top six feet. Mr. Kass said Mr. Moeller found nothing inconsistent with the conclusions of the September boring log.

Regarding parking, Mr. Kass commented on Village Engineer Keith Furey's memo to the Board indicating that everything was done appropriately because Mr. Furey exercised his authority to approve grading under Section 342-60 of the Village Code. Mr. Kass stated that Mr. Furey is not correct. Neither he nor the Planning Board had the authority to defer the paving of more than 50% of the required parking, which is what occurred. Mr. Kass stated that contrary to Mr. Furey's memo, the parking that is proposed in the Otter Creek area, including the ½ acre of land, is not for seasonal or temporary overflow parking; it is the principal parking area.

Mr. Kass stated that Mr. Furey's memo could be misunderstood to suggest that there was to be curbing in the Otter Creek area and that is not true. The Club said they were going to stripe the gravel and that can't be expected to last. Mr. Furey's memo is not a basis for overcoming the parking issue.

Mr. Kass referenced the 1989 Underwater Lands Study. He noted that the study shows the degree to which the state and Village worked together to determine the areas where there are land grants. There has never been a grant in this location. The issue before the Board, Mr. Kass stated, is whether the Building Inspector made an improper determination on December 2, 2010.

Mr. Weprin asked Mr. Kass what his thoughts were with respect to the Board making a decision while the State has asked the Village not to move forward with amending the tax map. Mr. Kass stated that the Board can close the hearing and make a determination that the Building Inspector erred in his determination of December 2, 2010.

Ms. Kramer discussed a scenario that assuming the tax map is changed and the Club is now in compliance with its FAR, what would be the point in this Board overturning the Building Inspector's determination if the Club can get approval from the Building Inspector and the Planning Board once they prove they own the property? The project can still move forward, albeit a few months from now.

Mr. Kass stated that there is currently litigation against both the Planning Board and Harbor Coastal Zone Management Commission (HCZMC). 1) The Planning Board failed to comply with wetlands law, 2) The Planning Board failed to look at alternatives for SEQRA purposes, and 3) Similar claims are against the HCZMC regarding consistency.

Mr. Weprin asked if Mr. Kass could challenge the Village Assessor's position and Mr. Kass stated that he was not sure of an Article 78, but it could perhaps come before the Zoning Board. Mr. Silverberg respectfully suggested that Mr. Kass review the Real Property Tax Law when considering legal action.

Mr. Neufeld asked, with regard to the appurtenances, did Mr. Kass have any position as to what is included in appurtenances. Mr. Kass stated that the applicants believe this land was historically underwater and it belongs to the State of New York. If, for any reason there had been natural accretion to create this area looking so different, then one can't expand and convey land as an appurtenance, Mr. Kass stated. If the Otter Creek land was underwater, then it is state land. Mr. Kass stated that you can't convey land as an appurtenance.

Mr. Kass said that he does not believe the Shubert Foundation had ownership of this land in 1995. The appurtenance issue only comes up if it turns out the land was never underwater, Mr. Kass noted. The 1923 Ward-Carpenter survey makes clear where the high water line is and Mr. Kass does not believe anybody acquired interest thereafter. Mr. Kass stated that it is pretty clear that at some point this area was filled.

Chairman Neuringer asked Mr. Kass if he had a copy of the correction deed with corresponding metes and bounds and Mr. Kass indicated in the affirmative. Chairman Neuringer asked if Mr.

Kass had a copy of the original deed with corresponding metes and bounds and Mr. Kass indicated in the affirmative. Chairman Neuringer asked if the metes and bounds had been compared between the 1995 deed and the correction deed. Mr. Kass stated that the 1995 deed used the same property description as the 1923 Ward-Carpenter survey and all subsequent transfers into the Shubert Foundation and this does not include the disputed ½ acre. The only deed Mr. Kass has seen that uses the larger property description that attempts to include the larger parcel is the 2010 correction deed. Chairman Neuringer went on to say that both deeds described a closed traverse, but they were different sizes and Mr. Kass stated that comment was correct.

Mr. Silverberg stated that Mr. Kass has submitted an affirmation in December with the original application and paragraph 11 of that affirmation states that Mr. Kass isn't asking the Zoning Board or any other municipal board to determine the ownership of Otter Creek parcel; that can only be done by a court or the OGS. Mr. Silverberg stated that a significant amount of time has been spent on the ownership issue, and he is trying to understand what the significance of all the overall discussions of ownership as this Board cannot make a determination of ownership.

Mr. Kass stated that ownership issues arose because the Club was arguing, and to some degree the Building Inspector accepted the argument, that the Club's property went beyond what was shown on the tax map. That is why the issue came up.

Mr. Neufeld discussed the southwestern corner of the property and Mr. Kass stated that the 1995 deed followed the Ward Carpenter survey and the correction deed changed that description. Mr. Kass illustrated on the map where the high water mark is located. Ms. Kramer indicated that a surveyor doesn't determine where the high water mark is, the water does. Mr. Kass agreed with Ms. Kramer's remark.

Mr. Neufeld asked if a grantee gains or losses title or is it from the time of acquisition. Mr. Kass stated that his understanding of the law is that natural action by the tide that either accretes or decreases the size of the parcel is effective to move the boundary as against the owner which is the state in these circumstances. Mr. Kass referenced the 2002 OGS letter stating that the state remains the owner of underwater titled land. The line can move by natural occurrences, but not by human filling.

Mr. Kass said that the November 2010 deed is an attempt by the Club to appropriate state owned property, the disputed ½ acre parcel. Correction deeds typically come from grantors. In this instance, the correction deed is from the grantee to the grantee, Mr. Kass said. The Club is attempting to create a recorded deed to give to the Tax Assessor, Mr. Kass indicated. Mr. Kass went on to say that the Club can't convey more than what they have and the ½ acre parcel is more than what they have.

Chairman Neuringer asked if anyone in the audience wished to address the Board. No one did.

Mr. Noto appeared on behalf of Mamaroneck Beach and Yacht Club. He distributed to the Board an Affidavit in Opposition to the Notice of Appeal. Chairman Neuringer stated that there was a deadline of Monday, February 28th. He went on to say that deadlines are put in place so that the

Board as well as opposing parties have an opportunity to digest the information. Mr. Sullivan stated that if the application is still open, the Board should accept the materials.

Mr. Noto started by stating that there is universal agreement that the Board is not being tasked with the determination of ownership; it has no jurisdiction. Only the Supreme Court Justice can make a decision on ownership to property or strike down a deed. The applicant has raised the issue of ownership repeatedly without any evidence that the state owns it. They have stated that the Club filled the property without any proof. Mr. Noto stated that the Club has a deed, title policy, insurance and the tax map is being amended to conform to the deed. The issue of the disputed ½ acre is moot.

Mr. Noto went on to say that Ms. Kramer made a very good point earlier. Mr. Kass stated that it doesn't matter that the Tax Assessor is changing the map because on December 2nd the Club was not in compliance. Mr. Noto asked what would be the point in having the Club come back and go through the same process again. The Building Inspector made a determination that the Club was in compliance back in December, Mr. Noto said. The Club is still in compliance today, he noted. Mr. Noto said there is no issue before this Board. Mr. Noto stated that he would now discuss the ownership issue.

Chairman Neuringer stated that at the last meeting Mr. Gordon spent a good deal of time discussing ownership after he stated that the Board is not here to determine ownership. Mr. Noto stated that the Club is the most affected party in this matter and they are not the applicant. Mr. Noto stated that Mr. Kass was given ample time and the Club should be able to defend its position. Mr. Noto indicated that the applicants have been opposing this matter for months, yet no one has agreed with their position. The Board of Architectural Review, Harbor Coastal Zone Management Commission, Planning Board, former Village Attorney and consulting engineers all have not bought this argument.

Mr. Noto stated that the applicants have yet to find a title company to refute what the Club's title company is saying. The first thing someone does when they have a title issue is to go to a title company, Mr. Noto said; one doesn't go to a surveyor. Mr. Noto indicated that when the issue of ownership first came up, the Club went to their title company. The title company did a thorough search back to 1660 with the Bud Grant and came to the conclusion for which they are willing to insure that the Club owns this parcel.

Chairman Neuringer asked if Mr. Noto could provide a copy of the affidavit from the title company to Mr. Kass and Mr. Noto stated that he did.

Mr. Noto pointed to a map Mr. Kass had cited earlier. He said that the surveyor stated that he had looked at the Bud Grant and determined where the property line should be. Mr. Noto stated that the line excludes the Club's property and cuts across Shore Acres. The title company not only researched the Bud Grant, but they also researched the properties across the creek to see if they came from the Bud Grant, because if they do, the disputed property does as well Mr. Noto said. It was determined that they do come from the Bud Grant. The Bud Grant follows the shore line; it doesn't cut through the properties as illustrated in Mr. Kass' map. Mr. Noto said that the Club has demonstrated sufficiently that they own the parcel in dispute.

Mr. Noto suggested the Board re-read the January 3, 2011 memo from the Building Inspector. If the Club can show the Building Inspector that they own the property, they can use it. Mr. Noto stated that if the Board were to make a determination that the Building Inspector was incorrect, they would be wreaking havoc on the waterfront community. There are a lot of waterfront properties that don't appear on the tax assessment map, yet those properties are being used, Mr. Noto stated. Mr. Noto reminded the Board that in December 2010 it granted the owners of 1 Skibo Lane a side yard setback variance to build and the property wasn't on the tax assessment map. Mr. Noto added that decisions the Board makes have far reaching impacts on the Village. He said that the Club owns the land and if the state owned the land, they would have said something in November.

As for the parking issue, Mr. Noto stated that parking is not an issue and he highlighted Village Engineer Keith Furey's memo. Mr. Noto said that as applicants the Club followed the directions of the Planning Board, HCZMC and the BAR. For SAPOA to come to the ZBA is a veiled attempt to undo what the Planning Board determined, he stated. The Club could have paved the marina and they would still be well under the 50%, Mr. Noto indicated. For compelling environmental reasons, Mr. Noto stated, the Village Engineer and the Planning Board told the Club to use gravel and gravel is equivalent to paving.

Mr. Noto went on to say that this situation could create a conflict between the Boards and for the applicants, the Planning Board might say "A" and the ZBA may say to do "B". This would leave the applicant in a difficult position. Mr. Noto said that the Village and land use boards need to speak with one voice.

Joel Sachs, co-counsel for the Club, addressed the Board. He stated that there are two matters which Mr. Noto did not address which were submitted in the Club's February 28, 2011 submission. Exhibits A, B and C relate to title insurance. Exhibit D relates to the issue of the soil borings which show the disputed parcel was never underwater, Mr. Sachs said. Mr. Sachs introduced Mike Ludwig, Senior Biologist, of Ocean and Coastal Resources.

Mr. Ludwig addressed the Board. He stated that he reviewed the submission involving the Club and went on to explain what he found. He noted that 11,000 years ago was the end of the last glacial period and the sea level began to rise. Up until 8,000 years, the Long Island Sound was a freshwater lake, Mr. Ludwig stated. In that 3,000 year period, a tremendous amount of soil was moved around and washed by the water, Mr. Ludwig said. Some of the soil came down to what is now know as Otter Creek. Mr. Ludwig indicated that other soil came from Mamaroneck Harbor down Mamaroneck River and accumulated on this property. Mr. Ludwig stated that soils that are under the top six feet of this parcel are indicative of those fine-grained materials that were the end of the glacial period.

Mr. Ludwig stated that the parcel property is subjected to a lot of wave activity and that wave activity pushes material from the confluence of the harbor and Otter Creek up onto the property. Mr. Ludwig concluded by stating that the area has been filled, but it is a natural, accretional fill in which OGS and OCR have preliminarily agreed is the result of the last 8,000 years of evolutionary activity.

Mr. Neufeld asked Mr. Ludwig his opinion as to whether the land was underwater in 1995. Mr. Ludwig stated that he has aerial photos dating back to 1925 which show the land was not underwater. Somewhere between 11,000 and 3,000 years ago this land was underwater and it was fresh water at the time.

Chairman Neuringer asked if consideration is taken when photographing aerial shots as to whether there is high tide or low tide. Mr. Ludwig stated that by photo-interpreting, he determines and calculates water elevation. The photos are taken with the sun is highest apex and shadows are the smallest. Mr. Ludwig said that it depends on what the purpose of the photo is as to how it is shot.

Ms. Kramer asked where the high water mark was in 1995 and where it is today. Mr. Ludwig stated that it is a surveyed point based on National Oceanic and Atmospheric Administration's databases. It illustrates where the elevation is for the United States, Canada and Mexico. Ms. Kramer reiterated her questions and Mr. Ludwig stated that he does not know because he has not surveyed the area.

Chairman Neuringer asked what the difference is between boring and probe soil sampling. Mr. Ludwig answered that the boring procedure is the physical movement through the soil column which collects material. The probe procedure utilizes a push rod that does not necessarily collect soil data. The procedure checks to see if soil is unconsolidated so that the bottom can be reached.

Chairman Neuringer asked what the purpose of each is. Mr. Ludwig stated that a probe generally is used to determine the ease in which one can drive a structure vertically in the column. A core boring is used to determine what the strength and load carrying capacity of the soil that one is pushing the structure through.

Mr. Sachs addressed the Board again. He noted that Exhibit D from the Club's submission addresses the spy camera Mr. Natchez referenced at the last meeting which allegedly demonstrated that the Club was filling in portions of the parcel. Mr. Sachs said that, in fact, the Club was doing remedial work under the supervision and direction of the DEC. This fact is contrary to what Mr. Natchez would like the Board to believe, he stated.

A brief discussion arose regarding the title policy. Mr. Noto stated that Chicago Title has always been the underwriter for the Club. Chairman Neuringer asked why the Club went through all this work with respect to tile. Mr. Noto answered that the Club always assumed it owned the property. It was when the Club came before the Planning Board and the Club's adversaries brought their complaint that this came to light. Had the Club done a survey in 1995, this would have been found out then and would have saved the Club a lot of problems, he stated. In 2010, the Club asked the title company to confirm ownership, Mr. Noto said. The club also went to the OGS. Mr. Noto indicated that both did a very thorough search. The issue of ownership was never an issue until this past fall because SAPOA does not want the Club to building, Mr. Noto said.

Chairman Neuringer asked if the correction deed is based on a survey. Mr. Noto answered in the affirmative; the Spinelli survey. Mr. Noto said that surveyors do not determine ownership; title companies determine ownership. Ms. Kramer stated that title companies certify ownership and wanted to make that clear for the record. She said title companies don't determine ownership.

Mr. Neufeld stated that what the Board has in front of it is a title insurance policy and not a certification. From 1994-2010, the only title insurance that existed excluded this piece of property, Mr. Neufeld said.

Greg DeAngelis, the Club's architect, addressed the Board. He stated that he wanted to make some clarifications to comments made by SAPOA. With respect to sprinklers, they allow you to have more floor area, but they do not increase occupancy. Mr. DeAngelis noted that the sprinklers are already installed. He stated that if the Club wanted to increase occupancy, the site plan would have to be amended.

As for the size of the dining room, Mr. DeAngelis said he does not concur with Mr. Natchez's assessment that the area is ballroom size or catering hall size. The Club wanted a smaller room to meet the needs of the members and it won't be used simultaneously with the dining hall, he said.

Mr. DeAngelis stated that there is also a claim that the parking spaces are inadequate and this is not the case at all. In the dozen meetings the Club had with the Planning Board, it was never discussed, Mr. DeAngelis stated. He noted that Mr. Furey submitted a letter on paving. Mr. DeAngelis also said that various codes throughout the country were looked at and are similar to the Village Code. The Club asked civil engineers for definitions of paving. Mr. DeAngelis stated that there are three types of paving: 1) gravel, 2) flexible pavement, 3) rigid pavement.

Chairman Neuringer asked if the number of parking spaces is determined by the number of occupants or by the occupancy determined by the code. Mr. DeAngelis stated that he would use the sign posted in the room for parking calculations and that is what the Club did. Mr. DeAngelis continued by stating that he does not know how the 386 occupancy number posted in the room was calculated. Mr. Winter stated that the number posted in the room was determined by the previous Fire Marshall based on the old codes. The Village is accepting that number as the legal occupancy; if any changes are being made they will have to come through the Building Inspector, Mr. Winter said.

Mr. Neufeld clarified that Mr. DeAngelis' definition is one of highway engineering and not paving. He asked if Mr. DeAngelis look for the definition of paving. Mr. DeAngelis stated that he had the engineer look for the definition.

Chairman Neuringer stated that if the code requires paving, the definition presented says it can be gravel.

Mr. Noto stated that at a location nearby Pine Street, the Village required paving and the Village accepted gravel. Mr. Noto said that Lisa Rosenshein, the Club's owner, wished to address the Board.

Mr. Rosenshein stated that Mamaroneck Beach and Yacht Club was a labor of love for her father. She then went on to list a series of facts regarding this matter: 1) The Club has been operating on the same property since the 1950's. 2) The Club has appeared at multiple Board meetings. 3) The Courts have upheld this project. 4) The Planning Board has spent numerous hours on this matter. 5) The Club has used local experts. 6) The Club owns the ½ land near Otter Creek. 7) The area by

Otter Creek has always been used as a parking area. 8) The area has not been filled. 9) There was an Order and Consent from the DEC. One violation occurred in 2006 and the other violation occurred in 2008. Both violations have been remedied. 10) The Club has been operating a dining hall with 368 person occupancy and the Fire Marshall does an inspection each year. The club has never violated the occupancy level. 11) The Club would not provide insufficient parking for its members. 12) The tax map will show that the Club owns the property. 13) The Building Inspector has stated the Club is zoning compliant. 14) The engineer has determined that gravel is adequate. 15) The Planning Board has reviewed the parking situation and has found that it is environmentally sensitive.

Mr. Noto stated that this project has been scrutinized vigorously and all have rejected arguments that have been presented. Mr. Noto concluded by saying that the Club asks that the ZBA reject the application in its entirety.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

Ms. Kramer asked if based on the definition of Section 342-3 of the code, did Mr. Noto think there is anything else that is relevant than what is shown on the Assessor's map. Mr. Noto answered no.

Ms. Kramer went on to say that she wanted to make it clear that the Board would not be throwing the Building Inspector under the bus if they were to disagree with his determination. Mr. Noto stated that this is a very serious issue before the Board and should this determination be overturned, it would have far reaching impacts on the community and not simply for the Club. He went on to say that this is a serious issue as it pertains to the Mamaroneck waterfront.

Chairman Neuringer reiterated what Ms. Kramer stated regarding the statements of throwing Mr. Winter under the bus if the Board were to disagree with his determination. Based on Mr. Winter's memo, this has far reaching consequences for the waterfront, Mr. Noto said.

Mr. Kass addressed the Board again. He noted that the Ward Carpenter Survey was a serious survey of the high water mark line. That was the metes and bounds description used in the deeds. Mr. Kass stated that the applicants raised the issue to the Planning Board, but they didn't raise it before the BAR or HCZM. He said this matter should have come before the Zoning Board first before it went for site plan approval to the Planning Board.

Mr. Kass stated that the DEC requires gravel areas to be treated as impermeable or paved. The surveys were done fairly and the Club needed more FAR and used this area to achieve that. Mr. Kass also stated that he does not wish to be viewed as an adversary in this matter and he feels for the loss Ms. Rosenshein has experienced. He concluded by stating that the Building Inspector's interpretation should be overturned.

Ms. Kramer asked Mr. Silverberg if the Board is required to make their decision based on the Building Inspector's December 2, 2010 interpretation or based on current facts as the tax assessment map has been or will be altered. Mr. Silverberg stated that there is a lot of information from both sides which need to be examined and he will provide a memorandum to the Board at a later time and then they can deliberate.

A motion to close the public hearing was made by Mr. Neufeld, seconded by Ms. Kramer.

Mr. Kass attempted to make a comment, but Mr. Silverberg stated that the hearing was closed and it was not appropriate for Mr. Kass to make any further comments.

Ayes: Neuringer, Neufeld, Kramer, Sullivan, Weprin
Nays: None

At 9:50 p.m., the Board took a brief recess.

At 10:00 p.m., the Board reconvened.

APPLICATIONS CLOSED

1. Application #11-2011, DAVID LARUSSO

The Board discussed the merits of the application. Chairman Neuringer reminded the Board that this is an interpretation. Ms. Kramer noted that there are three parts the Board must look at: 1) reasonable number, 2) customary household pet, and 3) household pet. She stated that racing pigeons may be household pets but there is no evidence in Mamaroneck that racing pigeons are customary household pets. Also, permits were given for pigeons racing in the 1970's. Ms. Kramer went on to say that even if it were customary in the 1970's, it does not make it customary today.

Chairman Neuringer stated that the Board does not know when the racing of pigeons stopped or what the appropriate amount of time is for when things that were popular in the past cease to be popular now. How much time does the Board wait?

Mr. Sullivan stated that if pigeons still existed today, it does not make it a customary issue. Mr. Sullivan said that he does not believe the applicant demonstrated that the pigeons are household pets. He indicated that the applicant had originally indicated that these birds are more like athletes and if they don't perform, they are destroyed.

Mr. Neufeld stated that he felt this is a matter for the Board of Trustees. Pigeon racing was permitted and no one ever said that now it is not permitted. Ms. Kramer stated that if something is not permitted in the zoning code, it is prohibited. There is no other provision, other than customary household pet, in the code which allows Mr. La Russo to have racing pigeons. Mr. Neufeld stated that it was permitted and asked how one gets to it not being permitted. Ms. Kramer stated that language was taken out of the code regarding pigeons. That is no longer part of the Village's code. The Board must determine whether it is a reasonable number of customary household pets.

Chairman Neuringer stated that if coops exist today, there is nothing in the code that says pigeons are outlawed. Mr. Weprin stated that he did not believe racing pigeons are pets. A pet is for companionship and Mr. Weprin is not sure if the proposed number of pigeons is a reasonable number.

Mr. Sullivan stated that his concern is that they are extinguished if they do not perform. This is not how customary household pets are treated. Mr. Sullivan also stated that he has been to many properties in his tenure on the Board and he has never seen one pigeon coop in Mamaroneck.

Discussion arose regarding ambiguity going in favor of the property. Mr. Neufeld stated that the fact it was once permitted and now has gone out of fashion, the Board needs to determine how to handle this. Mr. Silverberg suggested looking back at the Village minutes to try and determine why the pigeon coops were dropped from the code.

Mr. Silverberg will draft some findings for the Board. The Board wishes to review a resolution for denial of the application from counsel.

The matter is held over until the April meeting.

2. Application #3A-2011, TERRENCE O'NEILL

The Board discussed the merits of the application. The Board found the within application was a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

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

Ayes: Neuringer, Kramer, Weprin, Neufeld, Sullivan
Nays: None

3. Application #12SP-2007, DANSE ELITE

The Board discussed the merits of the case. The Board found the within application was a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

A motion to approve the renewal of the special permit was made by Mr. Weprin for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Sullivan.

Ayes: Neuringer, Kramer, Sullivan, Weprin, Neufeld
Nays: None

MINUTES

A motion to approve the minutes of January 7, 2011, as amended, was made by Chairman Neuringer, seconded by Mr. Neufeld.

Ayes: Neuringer, Kramer, Sullivan, Weprin, Neufeld
Nays: None

A motion to approve the minutes of February 3, 2011, as amended, was made by Chairman Neuringer, seconded by Mr. Neufeld.

Ayes: Neuringer, Kramer, Sullivan, Weprin, Neufeld
Nays: None

ADJOURN

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

Ayes: Neuringer, Kramer, Sullivan, Weprin, Neufeld
Nays: None

On motion duly made and carried, the meeting was adjourned at 10:37 p.m.

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers