

Approved
Town of Owls Head
Minutes of Board of Appeals Meeting
(Wednesday, July 20, 2016 – 6:00 P.M)

Board Present: Chair Wayne Meserve, William Doherty , Larkin Post, Sherry Stanley, and Kermit Voncannon

Board Absent: None

Staff Present: CEO Scott Bickford and Recording Secretary Deborah Sealey

Chair Meserve opened the meeting at 6:07 P.M., saying this was a continuation of the July 6, 2016 meeting. Tonight the minutes would be reviewed and possibly modified and the Findings of Fact and Conclusions of Law would be made.

I. Approve Minutes of 7/6/16 Meeting

A couple of corrections were made and Chair Meserve asked the secretary to listen to the tape to find a particular passage he would like included.

ACTION: Sherry Stanley made a motion, seconded by William Doherty, to approve the 7/6/16 minutes as amended.
Carried 5-0-0

II. Finalize Findings of Fact and Conclusions of Law for Denial of the Appeal of Beverly and David Gravison (15 Osprey Lane) for Lack of Enforcement of Road Setback for New Construction by Theresa and Davis Massimi at 8 Osprey Lane:

Chair Meserve asked each Board member to reference the section(s) of the ordinance that guided his/her decision-making on denying the appeal at the 7/6/16 meeting.

Regarding whether the appeal should go forward because of the 30-day issue, Larkin Post read aloud from Section 1.6.D. Secondly, he said, whether the CEO should have enforced the regulation or not and had the ability to do so, Sections 5.1, 5.2, and 5.3 in the Zoning Ordinance discussed enforcement of the regulations of the Ordinance. In this case, Mr. Post had contended if there was a violation, the CEO should have enforced it or the aggrieved party could come before the BOA; however, because the CEO did not enforce the ordinance because he did not have the authority to judge where the property line was, a complaint was brought by Mr. Gravison.

William Doherty said he based his decision on the 30-day time limit restraint and from the “Duties of the Board of Appeals”.

Kermit Voncannon said he had based his decision on the 30-day limit. From his standpoint, the dimensional requirements of Section 3.4 of the Zoning Ordinance required that the setback be 25’ and he felt this should be monitored more closely by general contractors. Mr. Voncannon thought the CEO had acted in good faith, based on the 25’ setback.

Sherry Stanley said she agreed with the previous comments. She felt the Board had concluded that neither it nor the CEO had the jurisdiction to determine boundary lines. She said the Gravisons had appealed too late since the 30-day appeal limit was clear.

Chair Meserve said his decision was based on his interpretation of the Owls Head Zoning Ordinance Article I, Sections 1.6.D and 1.6.B.2. The first related to the 30-day appeal period, while the second said the BOA could reverse the decision of the CEO “only upon a finding that the decision was clearly contrary to specific provisions of this Ordinance.” Mr. Meserve said appellant Gravison had acknowledged that he could have come to the Town Office to review the permit, but had not. Therefore, what remained was a dispute over property boundaries, which apparently came to light six months after the building permit was issued, and was the province of the courts. Bringing this issue up six months after the permit was issued was too late for the Board to support the appeal.

ACTION: Sherry Stanley made a motion, seconded by William Doherty, that the Board adopt the following statement as the Findings of Fact and Conclusions of Law associated with the denial of this appeal: 1) The Board determines that the decision of the CEO not to take action was consistent with his duties outlined in the Zoning Ordinance (“...permit shall not be denied if the proposed use and structure are in conformance with this Ordinance.”) (Article 4.6), and also that 2) the Board can only reverse the decision of the CEO if his/her actions violated the provisions of the Zoning Ordinance; they did not. (Article 1.6.D), and also that 3) any challenges to the building permit should have been made, based on publicly available information, within 30 days of its issuance on October 16, 2015 (Article 1.6.B.2), and 4) this instance is based on a private boundary dispute and, thus, is the province of the Maine Court System to resolve, not the CEO or the Board of Appeals (per the Maine Municipal Association “Board of Appeals Manual”, which cites the following case: Rockland Plaza Realty Corporation v. LaVerdiere’s Enterprises, Inc., 531 A.2d 1272 (Me. 1987)).
Carried 5-0-0

Chair Meserve asked Mr. Post if he wanted to make a statement or motion concerning his opposition but Mr. Post said he thought he was past that point.

III. Adjournment

ACTION: Kermit Voncannon made a motion, seconded by William Doherty, to adjourn at 6:25 P.M.
Carried 5-0-0

Respectfully submitted,

Deborah Sealey
Recording Secretary