

Approved
Town of Owls Head
Minutes of Board of Appeals Meeting
(Wednesday, July 6, 2016 – 6:30 P.M)

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

Board Absent: None

Staff Present: CEO Scott Bickford and Recording Secretary Deborah Sealey

CEO Bickford opened the meeting at 6:41 P.M. by introducing the participants. The first order of business was to elect a Chair and Vice-Chair for the Board.

I. Election of Officers

ACTION: William Doherty made a motion, seconded by Kermit Voncannon, for Wayne Meserve to be Chair of the Board of Appeals.
Carried 3-0-1 (Mr. Meserve abstained)

ACTION: Wayne Meserve made a motion, seconded by William Doherty, for Kermit Voncannon to be Vice- Chair of the Board of Appeals.
Carried 3-0-1 (Mr. Voncannon abstained)

The CEO turned the meeting over to the new Chair, who set out some basic ground rules for the meeting. Ms. Stanley joined the meeting at this time.

II. New Business

Beverly and David Gravison – 15 Osprey Lane – Appeal for Lack of Enforcement of Road Setback for New Construction by Theresa and Davis Massimi at 8 Osprey Lane

Chair Meserve asked Mr. Gravison if he had anything to add to the appeal. Mr. Gravison said the Massimis did not stay within the town ordinances of 25' off the setback of the laid out street. Osprey Lane had been laid out that way since 1882 on the Blackington plan.

Chair Meserve then asked the Massimis for comment and their attorney, David Goldman, noted that he had submitted written material (titled "Objection and Position of David and Theresa Massimi", dated 7/1/16) and said this was a fairly clear-cut, open and shut case. The Massimis had seen the CEO, submitted a drawing showing the building location and property boundaries, and received a building permit. After the permit was issued, the Gravisons had 30 days to raise any concerns, but had not done so. Six months later, after the building was essentially complete, the Gravisons had objected. There was no deviation between what was permitted and what was done, Mr. Goldman said. The Gravisons did not complain within the 30 days and now they claimed the clock was restarted when they did complain roughly six months later. Mr. Goldman said there was a Maine Supreme Court case directly on point that said that was not the way it worked.

The attorney said that if the Massimis had not built where planned there might be a question. That was the primary argument, but the appeal was also invalid because the two parties had different conceptions of where the boundaries should be; that difference of opinion was up to the courts, not the CEO. The permit applicants had only needed to prove right, title and interest and if an abutter disagreed it was not the CEO's job to handle the dispute. Mr. Goldman noted that there had also been an earlier litigation, which had raised questions of property rights, between the Massimis, the Gravisons, and others present tonight. They cannot raise issues in a later case that they could have raised in the prior one, he said. The Maine Supreme Court had made a decision and the Gravisons were barred from raising this claim.

Chair Meserve asked if Board members had any questions for the Massimis or Gravisons. Mr. Post said he had a copy of a building permit and a sketch plan with +/-25' offset, which was the minimum allowed, and asked how that minimum distance from the property line was first determined. Mr. Goldman said we were limited to the court record that exists and unless the CEO's decision clearly was wrong it must be upheld. The setback is measured from the road and this house was further back than the previous one.

Mr. Post said the CEO must enforce the code. He asked Mr. Bickford if the house was 25' back from the property line. The CEO responded that the plan showed that and the house was set back 25' from the road; however, even if it had not been, this house was set back further than the structure it replaced. Mr. Post said it was not set back 25' from the property line, as a surveyor had pointed out.

Mr. Goldman said the house was built in compliance with the permit issued. Mr. Post responded that the permit was valid but he had a problem with the CEO not enforcing a violation brought up within a timely frame. Mr. Goldman said the CEO certifies that the permit is in compliance with the ordinance, but it was not his role to determine who was right. Ms. Stanley said if the CEO believed he had good information and the setback was correct, then the boundary dispute was up to a court to decide.

Mr. Post said it was too late for the permit itself, but asked if it was untimely because Mr. Bickford did not follow through. He said if there was a valid complaint the CEO must do something about it. Mr. Bickford said he did not have to do something if he felt it was not in his station to do so. Mr. Goldman said the CEO had done what he was required to do: in this case he decided to do nothing about the complaint. Mr. Bickford said he took no action. Mr. Post said the argument against the Gravison complaint might still be timely. Mr. Goldman acknowledged that the appeal of the inaction was timely, but not the appeal of the permit. He said people could not wait forever and then complain.

Ms. Stanley felt the Board was here to decide if the CEO's inaction was appropriate. Chair Meserve said this meeting was concerned with whether the CEO was proper to decide not to pursue the late appeal. Ms. Stanley said the next step was to decide if the inaction was correct. Mr. Bickford said the only thing that had raised questions was the recently done Beal survey that showed the road to be in a different location than where it was when the structure was built. In order to take action he would first have to give the Massimis a chance to do a survey. He asked what good two surveys would do him since he was not a surveyor. The CEO said the Gravison survey was a way to reopen something that had already been accomplished.

Mr. Doherty asked how many permits had been issued with the road where it was. Mr. Gravison replied that there had been two new house permits on Osprey Lane. One was his and he had obeyed the setback law. The second was the Massimis'. Chair Meserve asked Mr. Gravison if he had investigated when he knew there was a house going in there: had he really needed to see ground being broken and a house going up to see that there was an issue with setbacks? Mr. Gravison responded that he could have come into the town hall and asked for all the records. He said it took months to build a house and asked how anyone would know there was a problem within 30 days. Mr. Gravison said the arrow on the sketch was taken off from the laid out street and went to the house, so the Massimis knew where the measurement

was to be taken from. Mr. Gravison said the porch was 7' off of the laid out street and the house was 17'. Mr. Post read from Mr. Beal's letter that the house was 25.1' from the ROW.

Ms. Stanley asked if Osprey Lane was a private or town road. Mr. Post said the road had nothing to do with it because the setback was measured from the property line. Mr. Doherty said the road had always been there and Mr. Post responded that the road's location was irrelevant. Mr. Gravison said it was nothing to do with the traveled way running on his property.

Mr. Goldman said even if the deed and 1882 plan showed the laid out street, people had lived there for generations and the Massimis had lived there for decades. A dispute between property owners as to where the property line was took the matter out of the CEO's hands.

Chair Meserve asked the Massimis and Gravisons if they had had adequate opportunity to express their questions and concerns. Mr. Gravison said he had pictures of a survey stake showing the edges of the laid out street 10' from the house. Mr. Doherty asked Mr. Gravison if he had used the road's position when he built and the appellant said he had. Mr. Doherty then asked him what he hoped to gain by appealing. Mr. Gravison replied by asking why have ordinances if they were not going to be enforced. Chair Meserve asked what would be gained by a successful appeal and what remedy would be appropriate. Mr. Gravison responded that the house should be moved or something should be done.

The Chair opened the meeting for public comment.

Theresa Massimi said the original cottage had been in disrepair and they had decided to move it since it was non-conforming because it was too close to the road and the neighbors. She said the 25' was measured from the middle of the traveled way. Construction had been started within six days of the permit issuance and the Gravisons had seen everything.

Donald Blackman, 6 Water Edge, said he had been plowing Osprey Lane for 30 years and it had never moved. He said Mr. Gravison should have complained a long time ago when he saw the house going up. He said no one down there had a problem with the Massimi house until it was completely done, which he felt was wrong.

Chuck Blackman said he grew up down there and used the road for 56 years and the road had not changed. He said the issues were deeper than what was being laid out tonight.

Mr. Gravison said the issue was not where the traveled way was, but that the law said you had to stay within the recorded laid out map. He said if the Board did not trust his survey it should have Mr. Massimi bring in his own. Mr. Goldman said Mr. Gravison wanted a battle of surveyors before the court, but the only decision to be made here was if Mr. Bickford's decision was clearly wrong.

Lou Edwards said he owned property down there and showed the Blackington plan to the Board. He said all deeds refer to streets as laid out and explained from where he thought they should be measured. Mr. Doherty said everyone down there bought their property knowing where the road was.

Chair Meserve thought the Board had enough information in order to vote on the appeal. Mr. Post said first they must decide if they had standing to hear the appeal. There was further discussion.

ACTION: Wayne Meserve made a motion, seconded by Larkin Post, that that we conclude we have the right to hear this appeal by the Gravisons.
Carried 5-0-0

ACTION: Sherry Stanley made a motion, seconded by William Doherty, that CEO Scott Bickford was correct in his decision not to take action.
Carried 4-1-0 (Mr. Post voted against)

Chair Meserve asked each Board member to state why he had voted as he had. Mr. Post said that, according to the ordinance, Mr. Bickford did not have the right not to enforce an ordinance, so he should have brought it forward. He thought Mr. Gravison had the right to appeal against the CEO but the Massimis could have counter-appealed.

Mr. Bickford said Board members should refer specifically to which part of the ordinance they were citing. Mr. Post said it was Section B (2) on page 4, which he read aloud. He said the ordinance specifically said setbacks were 25' from a property line. Surveyor Beal's letter said the Massimi house was within that 25', so the CEO should have issued a cease and desist order.

Mr. Doherty said four different surveyors would come up with four different lines. This was definitely a boundary issue, which was not the BOA's business. Ms. Stanley agreed, saying it was not Mr. Bickford's job to decide boundary lines. She felt he had taken the permit application in good faith and also thought a complaint should have come sooner.

Mr. Voncannon said he agreed with the previous two members and said people should make sure things were set back from boundaries. He said surveys should be made in the future, but Mr. Bickford had done his work in good faith.

Chair Meserve said he was persuaded heavily by the fact that the information was available after the permit was issued and action could have been taken. Thus, it came up against the timing of appealing the building permit. He said this was not the venue for resolving property disputes; there was a court structure to take that on. As to what should be done, the Chair said he did not feel the Massimis intended to go against their abutting neighbors. Common sense was also a factor in that the house was already built. Anybody building should be confident of surveys and Mr. Bickford made the correct decision in deciding not to enforce the complaint.

Chair Meserve said the Board would have to make Findings of Fact after the minutes were produced so they would be accurate.

III. Adjournment

ACTION: Wayne Meserve made a motion, seconded by Larkin Post, to adjourn at 7:48 P.M.
Carried 5-0-0

Respectfully submitted,

Deborah Sealey
Recording Secretary

