

VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN
(Official Minutes)

ZONING BOARD OF APPEALS MEETING

Wednesday, June 24, 2015

Chairman Peg Pollitt called the meeting of the Village of Fontana Zoning Board of Appeals to order at 5:30 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Board of Appeals members present: Roll call vote: Chairman Peg Pollitt, Derek D’Auria, Greg Trapani, John O’Neill, Jim Feeney

Also present: Attorney David Danz, John Gutowski, Lucille Gutowski, Warren Hansen, President Pat Kenny, Clerk Theresa Linneman, Attorney John Maier, Village Administrator Dennis Martin, Zoning Administrator/Building Inspector Ron Nyman, Trustee Pappas, Village Attorney Dale Thorpe, Trustee Tom Howell

Discuss and Consider Action on the Issue of the Board of Zoning Appeals’ Jurisdiction Over the Appeal Filed by Donald Gutowski

Attorney David Danz was hired as outside counsel to advise the Board of Appeals, Attorney Dale Thorpe was present to defend the Village Board’s adoption of the zoning ordinance, and Attorney John Maier was present to represent John Tracy’s Lakeview Terrace Condominium Development. Danz introduced himself and noted it is his intent to stick to the agenda as presented. Thorpe stated it is his job to represent the Village Board and their decision to adopt the ordinance to rezone the parcels at 264 and 268 Third Avenue. Thorpe presented background on the pendulum swing that has occurred with the state statutes over the last 20 years regarding zoning issues and what, if any, jurisdiction the Board of Appeals has over such matters. He said if this appeal petition had been presented 20 years ago, it likely would have been heard; however, over the more recent years, case law proves much more conservative in the Board of Appeals jurisdiction. Thorpe included similar case law from the Town of Magnolia to support his position. Pollitt asked for a timeline of events leading up to the current meeting. Thorpe stated he did not want to get into the details surrounding the approval of the zoning ordinance and wanted only to speak to matters related to the current meeting. He stated the ordinance went to a public hearing at the Plan Commission meeting held on April 27, 2015, which was favorably reviewed and presented at the May 4, 2015 Village Board meeting where it was adopted. Don Gutowski, Park Ridge, IL, and owner of the parcel located at 221 High Street, filed a petition to appeal the zoning approval ordinance on June 2, 2015. Attorney Maier introduced himself and stated he has a municipal background, especially in zoning law. He reminded the Board of Appeals members they are here only to decide if they have jurisdiction over the case and stated what he believes Mr. Gutowski would like is for the Board of Appeals to reconsider the approval of the ordinance. Since the Village Board adopted an ordinance, it was a legislative determination and it is his belief the Board of Appeals does not have the authority to overturn something that was acted on at the legislative level. He believes it would have to be appealed at a higher level, such as the circuit court level, not a body with less authority than the Village Board. Maier pointed out the types of cases the Board of Appeals typically hears are ones that have to do with zoning variances. There is no place in state law or local ordinance that states a Board of Appeals can overturn an adopted ordinance. Thorpe stated he agreed with Maier and said an approved ordinance is not appealable at the local level. He gave an example of the type of case the Board of Appeals would be able to hear, such as a permit that is applied for and denied by Building Inspector/Zoning Administrator Ron Nyman when it should have been issued. In that case, an appeal could be filed by the person applying for the permit and the Board of Appeals could overturn

Nyman's decision not to issue the permit; however, the Village Board has the last word locally on rezone ordinances. He suggested there is a remedy, however, it is with the circuit court, and not with the Village. Mr. Gutowski stated he has background in village government, however it was in Illinois. He read the Village of Fontana's zoning ordinance which is why he decided to appeal the decision. He felt the approval was rushed through since it went through the Plan Commission and only a week later was approved by the Village Board. He stated he was appalled by the lack of attention paid to the zoning ordinance and learned he only had 30 days from the approval date of the ordinance to file an appeal. Attorney Danz said the general pecking order in cases like these is to go up, not down. Since Mr. Gutowski is appealing the highest level that exists in the municipality, the next step would be circuit court. Mr. Gutowski stated he contacted several attorneys in the area, however, none of them would agree to represent him due to a conflict of interest as it is a small geographical area and many attorneys know each other. Attorney Maier suggested he look to Madison or Milwaukee for assistance. Attorney Thorpe distributed a draft resolution handout, which if the board chose to adopt, would officially make the determination that it is not the Board of Appeals jurisdiction to conduct a hearing on the petition filed by Mr. Gutowski. The Board members agreed they did not have the authority to consider the petition that was filed to object to the Village Board's adoption of Ordinance 050415-02 and a motion was made to adopt the resolution as presented.

O'Neill/Trapani 2nd made a MOTION to approve Resolution 062415-01 Regarding the Appeal by Donald Gutowski as to the Village Board Ordinance No. 050415-02 as presented, and the MOTION carried without negative vote.

Gutowski stated when he came into Village Hall to file the appeal he was not directed to file the claim elsewhere. Administrator Martin apologized and said he has never had a similar claim filed in his 10-year tenure and stated it was sent to the Attorney Thorpe the same day for review. Martin said he now has the knowledge on what to do if the same type of appeal should happen in the future. Thorpe stated this type of appeal is rare and everyone involved had to do a lot of research to determine how to move forward. He felt it was appropriate to hold a meeting to have the Board of Appeals members decide whether or not to hear the case and wanted to give Mr. Gutowski the opportunity to speak on his own behalf. Thorpe suggested the Board of Appeals could vote to refund the \$325 appeal application fee since the appeal did not go to a hearing and no notices needed to be published.

Pollitt/D'Auria 2nd made a MOTION to recommend Village Board approval to refund the \$325 appeal application fee to Donald Gutowski, and the MOTION carried without negative vote.

Adjournment

Trapani/D'Auria 2nd made a MOTION to adjourn the Zoning Board of Appeals meeting at 5:59 pm, and the MOTION carried without negative vote.

Minutes prepared by: Theresa Linneman, Village Clerk

Note: These minutes are subject to further editing. Once approved by the Zoning Board of Appeals, the official minutes will be on file at the Village Hall.

Approved: _____