

# TOWN OF NORTH EAST ZONING BOARD OF APPEALS MINUTES

April 16, 2015

A meeting of the Town of North East Zoning Board of Appeals (“ZBA”) took place on Thursday April 16, 2015 at 7:30 PM in the Town Hall, Millerton, NY. ZBA members present were Co-Chair Edith Greenwood, Jon Arnason, Patti Lynch and Carl Stahovec. Julie Schroeder recused herself from the scheduled matter but attended in the audience. Also present were Lynn Mordas, the appellant with respect to the matter described below and members of the general public.

**Lynn Mordas**  
**157 Indian Lake Road**  
**Review of Documentation for an Interpretation of §98-48.14(C)**  
**Tax Parcel #: 7269-00-187847**

Co-Chair Greenwood opened the regular ZBA meeting to consider a request from Mordas to postpone the public hearing as she intends to enter in additional information relating to an insurance claim made by the Town in 2012 regarding trespassing and breaching a berm on her property. She maintained this information should be included to refute Replansky’s allegations regarding her involvement in causing the drainage issues on Mill Road. The ZBA decided the reasons leading to Local Law #1 of 2014 were not pertinent to making the requested interpretation.

A motion was made by Lynch and seconded by Stahovec to reject Mordas’ request to postpone the public hearing. The motion was passed unanimously.

Greenwood recessed the regular meeting and continued the public hearing regarding Lynn Mordas’s request for an interpretation of the notices of violation she has been served. Mordas read a letter to the ZBA dated April 16, 2015 into the record. Greenwood then entered the following documents received after the March 31, 2015 meeting into the record.

1. Parrett/Coffin letter of support for Lynn Mordas – received 4/8/2015
2. Gregg Pulver’s email in support of the Town and his subsequent clarification regarding a reference to Peter Coon’s comment – received 4/13/2015
3. Warren Replansky’s summary of facts and issues following our site visit with several attachments already in the record – received by the ZBA 4/13/2015
4. Lynn Mordas’ email objecting to Gregg Pulver’s emails of 4/13/2015 being entered into the record - received 4/14/2015

With no additional comments, Greenwood asked for a motion to close the public hearing. The motion was made by Arnason seconded by Lynch and passed unanimously.

Greenwood reopened the regular ZBA meeting. Discussion ensued regarding the draft decision prepared by the ZBA's attorney George Rodenhausen. The findings of facts stated in the draft were accepted by the ZBA. The ZBA also decided that the tangled and unfortunate history of this matter is of no significance to the ZBA in making a decision.

Arnason addressed the issue of non-conforming use. He had researched the case law and stated that he felt the Town has the right to regulate issues concerning public health and safety. He also stated that he did not think Local Law #1 impacted Mordas' right to farm.

Arnason elaborated on his concerns regarding the ambiguity of Local Law #1. He began his comments by stating that given the history in this matter, his sympathies are with the Town as he felt that the Town has done everything possible to resolve this problem. Arnason then stated that in cases where a law is found to be ambiguous the ZBA is required to decide in favor of the applicant. Arnason explained the difference between manure and compost and then enumerated what he thought could be three possible interpretations of Local Law #1 as written. Arnason concluded that if a reasonable person can determine that there is more than one way to read a statute it should therefore be determined to be ambiguous.

Greenwood noted that George Rodenhausen's draft decision relied on what is termed the plain meaning of the law.

Stahovec stated that in his reading of Local Law #1, Mordas is in violation and as far as he is concerned she has alternative sites although they may be inconvenient or require some financial investment. Greenwood agreed but pointed out the ZBA has not been asked for an area variance but has been asked to make an interpretation.

Greenwood asked if the ZBA wanted time to think about the decision or if the members wanted to take a vote this evening. It was decided a vote should be taken on George Rodenhausen's draft decision.

A vote was taken with the following results:

Aye – Stahovec, Lynch, Greenwood

No – Arnason

Greenwood asked for a motion to uphold the Code Enforcement Officer's notice of violation and to authorize her to file the decision with the Town Clerk. A motion was made by Lynch and seconded by Stahovec. Lynch, Stahovec and Greenwood voted in favor of the motion. Arnason voted against the motion.

The next order of business was to review the minutes of the March 31, 2015 meeting.

A motion to approve the minutes for March 31, 2015 (with corrections) was made by Stahovec, seconded by Lynch and passed unanimously.

Greenwood requested a motion to adjourn the regular meeting. A motion was made by Arnason, seconded by Lynch and passed unanimously.

The meeting ended at 8:20 pm.

Respectfully submitted,

approved  
3/21/15

Edith Greenwood

Co-Chair of the Town of North East Zoning Board of Appeals