

Town of Red Hook  
Zoning Board of Appeals Meeting Minutes

October 8, 2014

**CALL TO ORDER**

The meeting was called to order at 7:00 PM by Chairman Annas.

**ROLL CALL**

Members Present: Nick Annas, Tim Ross, Jim Hegstetter, Chris Carney, Ken Anderson, John Douglas

Members Absent: Trilby Sieverding

Also Present: Victoria L. Polidoro, office of the Town Counsel

**PRELIMINARY BUSINESS**

Minutes of September 10, 2014: Chairman Annas asked if everyone had read the September 10, 2014 Minutes and invited comments or questions. Hearing none, Tim Ross made a motion to accept the Minutes as written. The motion was seconded by John Douglas and all were in favor

Planning Board Minutes and Letters: Chairman Annas asked the Board if they had any comments. There were no comments from the Board.

Building Inspector/ZEO Permits, Memos/Comments: The Board members are receiving the building permits. There were no comments from the Board.

Comments from the Chairman: Chairman Annas had no comments.

**REVIEW OF APPEAL**

Appeal 14-07, Michiel Van Dijk application for an interpretation of the determination of the Zoning Enforcement Officer issuing a Stop Order denying the operation of a facility known as “Ham House” offering: overnight accommodations in at least five bedrooms, a venue for weddings, dinners and a corporate retreat. The applicant’s property is located at 144 Kidd Lane in the Waterfront Conservation (WC) Zoning District, Tax Grid #134889-6174-00-425708.

Attorney John R. Marvin, Marvin and Marvin, PLLC, introduced himself and said he was here to represent Mr. Michiel Van Dijk who owns Ham House, which is the subject of the stop work order.

Attorney Marvin explained that they had met with the Intermunicipal Task Force but that may not happen again for a number of reasons. They will try and go back to the committee and get the property into the proper district. It really doesn’t belong in the WC district.

Attorney Marvin went on to say that in terms of the appeal now , that was one part they were trying to do and, the other part is that, technically, Mr. van Dijk is renting the house and not providing any of the services that were listed by Steve Cole. Attorney Marvin talked about this with Attorney Polidoro and, rather than go through all that, Attorney Marvin knows this needs to be set up for a public hearing in November.

Attorney Marvin states that they would be past the conflict they have now with the stop work order and they will, in all likelihood, withdraw the appeal at that time, since they won't have any conflict anymore.

Chairman Annas asked Mr. Marvin what was going to happen in the next 30 days.

Attorney Marvin said the house was just going to be rented for a year.

Tim Ross asked Attorney Marvin if Mr. van Dijk would only have one more event in October and then it would leased for a year.

Chairman Annas reviewed the particulars of this appeal to the Board and audience.

Tim Ross said there are probably already contracts issued for specific dates, but then puts him in peril he may have been shortsighted in not researching before he got those but, there better not be any for next year because that would create a huge issue.

John Douglas asked Mr. van Dijk how many people the building could hold.

Mr. van Dijk said that the building could hold about 50 or 55 inside for a dinner.

The Public Hearing is scheduled for Wednesday, November 12, 2014.

Attorney Polidoro reminded Attorney Marvin and his client, Mr. van Dijk, that if their appeal is not successful, the Town could still exercise its right to prosecute for these prior violations.

## **REVIEW OF APPEAL**

Appeal 14-08, Douglas and Talea Taylor application for an interpretation of the determination of the Building Inspector denying building permit #2014:0073 be revoked pursuant to Section 74-5 K Fire Prevention and Buiding Construction, of the Code of the Town of Red Hook, sitin g mobile home was illegally p laced on the Historic Hudson Valley property, i.e., without a valid building permit. The applicant's property is located at Montgomery Place Orchards, River Road in the Agricultural Business District, Tax Grid #6173-00-520145.

Attorney Richard R. DuVall, McCabe and Mack, LLP, introduced himself and said he was here to represent the applicants, Doug and Talea Taylor.

Attorney DuVall presented his case stating that Doug and Talea Taylor want the mobile home on their farm. Attorney DuVall stated that where they are getting hung up here is: A) whether or not they needed a building permit. As the petition is laid out here, Doug had come in and it was initially suggested to him that he didn't need a permit because it was a farm, which Attorney DuVall doesn't think is inconsistent, at least with the Court of Appeals Law and with the Ag and Markets Law, however, Attorney DuVall wants to make sure that the Ag and Markets Law talks

about this, that the health and safety aspects of the housing that is provided by the farmer and all the other aspects of the farming operation are compliant.

Chairman Annas confirmed with Attorney DuVall that the applicants do not need a permit to put this structure up.

Attorney DuVall said that according to the Court of Appeals, they did not.

Attorney Polidoro asked Attorney DuVall if that was his argument before the Board tonight.

Attorney DuVall explained that he would get to the particulars that get the applicants here tonight and they are the revocation of the building permit for the stated purposes. Attorney DuVall explained that he wanted to give the background of the law first.

Tim Ross stated that the whole public health and safety issue with the building permit portion of it and the ability to place the mobile home on the farm is a different issue.

Attorney DuVall didn't think there was any suggestion that the mobile home that was installed meets all requirements. There's no argument that it's an unsafe or unsanitary home. Attorney DuVall thinks it's exemplary.

Chairman Annas asked the applicants if the health department had cleared everything.

Mrs. Taylor confirmed that everything meets OSHA requirements with the Department of Labor.

Chairman Annas asked the applicant if the Dutchess County Department of Health has cleared all of this.

Tim Ross confirmed that you need approved sanitary and water supply.

Mr. Taylor told the Board that the water was approved but, everything was done through the New York Department of Labor and met OSHA requirements.

Mr. Taylor also stated that that's what they had to meet for migrant housing and that's what they did.

John Douglas stated that the building inspector didn't issue a Certificate of Occupancy (CO).

Mrs. Taylor explained that Steve Cole, CEO, was ready to give the CO to them. Steve Cole told them they needed to come up with a name for the road and they needed a wider step on the mobile home. The applicants took a picture of the wider step on the mobile home and then they received the letter stating that the trailer had to be removed.

John Douglas said, "That means they don't have all the requirements."

Attorney DuVall stated that the only reason they don't have all the requirements is the reason that brings them here today, which is that the building inspector revoked the permit based on the lack of an affidavit from the applicant as to the authority from the owner or the owner's signed application.

Chairman Annas asked that except for the permit, was everything else in place.

Mr. Taylor said they could have gotten an inspection from the Department of Health but, they were told they didn't have to because there was previous housing there, it was a replacement, and that was not necessary.

John Douglas asked if they had that in writing.

Mr. Taylor said that they did not..

Tim Ross stated that if the mobile home that came out was a three-bedroom and, it is replaced with a three-bedroom that is Dutchess County Health Department's standard. It's the exact same match and, that is permitted. If you went from a two-bedroom to a three-bedroom, it would be a different issue. If it's the same, it's essentially grandfathered in.

Attorney DuVall said the narrow question that they are here for and the narrow basis for the revocation of the permit was the lack of an affidavit from the applicant, as to the applicant's authority and/or a signed document from the owner giving written consent to the placement of the home there. Attorney DuVall suggested to the Board that the enforcement of that particular regulation, in these narrow circumstances is, in fact, an unreasonable restraint on the farming operation. The applicants have all the documentation. The applicants have a right to be there and, they have an obligation to farm that they undertook in the document.

Attorney DuVall further stated that in order to carry out that obligation to the owner, in their best business judgment, it requires them to own a mobile home. The document also requires the applicants to farm and operate the farm as in the past. In the past, they had a mobile home on the very same site. Historic Hudson Valley (HHV) is obligated under the document to provide capital improvements when Hurricane Floyd knocked down the mobile home and made it uninhabitable in 1999. HHV did not fulfill their obligations. Attorney DuVall is not sure why HHV has a problem with the mobile home, but said it was a private dispute between them and the applicants.

Attorney Polidoro asked if there was a mobile home on the property when the contract was signed in 2003.

Attorney DuVall said there was not but, it was there when they started the operation before that and said that these are very unique circumstances and that he would not at all suggest that the code should not require some evidence of authority.

Attorney DuVall does have a legal issue with the requirement of an affidavit from the applicant that he has authorized. In these narrow circumstances, that the enforcement of the affidavit is an unreasonable restraint on the right to farm.

Tim Ross's question is that he thought the crux of this was that there wasn't evidence that Montgomery Place wanted the trailer there.

Attorney DuVall said that Montgomery Place Orchards is Doug and Talea Taylor. They are the operators of the farm.

Attorney Polidoro said the owner of the property, Historic Hudson Valley, LLC, after the building permit was issued, submitted a letter to the Town saying that they had to rescind the building permit. HHV said they never gave authorization for it. When the building inspector went back to look at the original application, and Attorney Polidoro thinks it was incorrectly filled out or accidentally filled out, the applicant and owner were written as the same name. The building inspector didn't even question ownership and the records weren't checked. Attorney Polidoro went on to say when the building inspector got that letter, he went back and looked at the records and he decided that the particular section of the zoning law, if you don't have owners consent, needs either the owner's consent or an affidavit saying they have the legal authority to submit the application. The Taylors could not provide it, so the building permit was revoked.

Tim Ross questioned Attorney Polidoro regarding if the Taylors have a contract to farm that property for "x" number of years that almost gives them ownership rights

Attorney Polidoro said that HHV did submit a contract and they did point out that they did have the right to continue operations, and that's why she asked, at the time it was signed, what was happening at the site.

Attorney Polidoro said all that all the Taylors had to do to comply was to give an affidavit saying, "Under our contract, we believe we could submit this application." The Taylors did not.

Tim Ross believes that if there's any contention, it's between Attorney DuVall's clients and HHV and the Town is out of it.

Attorney DuVall doesn't feel comfortable having his clients giving an affidavit. It's a sworn statement of an opinion, a legal one.

Attorney Polidoro said that was the problem. Without something from the Town to rely on, they revoked the building permit.

John Douglas asked Attorney Polidoro to give us a copy of the letter so we could have in our file.

John Douglas asked Attorney DuVall if they had talked to HHV and asked them to give him a letter so they could proceed with the mobile home.

Attorney DuVall said he did not ask HHV for a letter because they already said that they did not like it.

John Douglas said that basically HHV not want the Taylors to have the mobile home.

Chairman Annas asked the audience if there was a representative from Historic Hudson Valley here tonight.

There was not.

Jim Hegstetter asked if the trailer was operational and were there people living in it.

Attorney DuVall said that is was operational and it was being occupied.

Chairman Annas mentioned that technically the Taylors do have a permit as long as they are under appeal.

John Douglas asked for a copy of the letter from the Department of Labor.

Attorney DuVall provided a copy for all the Board members.

Attorney Polidoro wanted to make sure the Board was aware that, before the building permit was revoked, HHV actually submitted an appeal to the Zoning Board of Appeals appealing the granting of the permit but they withdrew it when the building permit was revoked because it became moot.

(There was a misunderstanding with all Board members receiving a copy of above. Copies will be provided for all Board members and Attorney DuVall).

Chairman Annas said he is baffled as to why HHV can deny having the mobile home and was concerned, in light of what appears to be the current contract between the Taylors and HHV.

Attorney DuVall believes that this actually is a private issue between HHV and the owner of the property and the farmer who's occupying it per agreement.

Attorney Polidoro said that the issue is whether a town could prohibit migrant farm housing which is a little different in this situation as to whether or not they have the authority.

John Douglas confirmed with Mr. Taylor that for 15 years the mobile home has not been on the property.

Attorney Polidoro stated that the Town's only interest is either getting owner's consent or the affidavit per that section.

Tim Ross asked Attorney DuVall what their issue with the affidavit was.

Attorney DuVall read from the affidavit, "It shall be accompanied by an affidavit of the applicant that the proposed work is authorized by the owner."

Attorney DuVall further stated that for him to have his client sign that affidavit is a stretch because he's saying something under penalty of perjury that the owner has authorized him to do a specific thing. Attorney DuVall said he does not want to do that.

Tim Ross said that if this mobile home was more of a permanent structure, it would be more of an issue but, if your lease runs out you drag the mobile home out.

Chairman asked if there were any comments from the audience.

David Fraleigh, who operates Rose Hill Farm with his wife Karen, thought it was sad that the Town says they want farming to be here, yet this problem has come up for two people who have tried to farm here for quite some time now.

Chairman Annas stated that what the Town wants is to be sure that the owner of the real estate on which the mobile home on which the trailer is going to sit, is authorized by that owner.

Chairman Annas says that Mr. Taylor classifies this mobile home as another piece of equipment as opposed to a structure.

Jim Hegstetter questioned the address of HHV. The applicant on the building permit says 150 White Plains Road, Tarrytown, NY 10591 and the address on HHV's letterhead says 639 Bedford Road, Pocantico Hill, NY 10591. Public Hearing letters will go out to both addresses.

Mr. Taylor stated that they were employees of HHV for 8 or 10 years prior to them being proprietors and, part of their agreement is to fulfill their mission statement. Mr. Taylor further stated that they have criteria that they have to meet under their agreement by HHV running their orchards in a historically accurate way, i.e., attention to detail and appearance and keeping it going as an intact historic site.

Mr. Taylor went on to say that having the guys living on the property is absolutely important. In the agreement between the Taylors and HHV, it requires the Taylors to live in the house on the property so they may respond to security issues, weather issues, etc. This also goes for their Jamaican workers too. Mr. Taylor stated that there are a lot of times that he is on the road and Mrs. Taylor isn't available (she may be at the stand). Mr. Taylor says that being able to make a phone call to ask the workers to respond to something immediately, because they (the workers) don't drive, is very important that they be on site.

Chuck Mead, who operates Mead Orchards near Tivoli and has employed H2A workers since 1987, said that he's very familiar with the regulations and went on to say that the Taylors are exempt from a local health department permit because they have less than five seasonal workers and, this is the reason why NYS Department of Labor does the inspection. Mr. Mead stated that it's virtually the same inspection, it's just a different jurisdiction that does it and, the facility that he has on his farm is for 15 people and is inspected by the DC Health Department. He said it's really critical that they have good people on site for the types of crops that they grow.

Ken Anderson mentioned that, in going through the documentation that the Board was provided, it cleared a lot of questions as to why this is an issue. The ownership seems to be well defined and HHV seems to have indicated that they approve of what the Taylors have been doing. He doesn't see why the Town is dealing with this.

Attorney Polidoro asked if Mr. DuVall has attempted to talk to HHV and work this out.

Attorney DuVall said that it is a very complicated relationship. The Taylors been there for 28 years and things change and Mr. DuVall didn't want to speculate as to why HHV would write the letters to the building department saying we didn't consent.

Attorney Polidoro said that what she can see happening is if you are successful here, they're just going to go ahead and resubmit their appeal appealing the issuance of the building permit and we are just going to go back and forth.

Adam Taylor, Doug and Talea's son, added to the timeline that Montgomery Place Orchards received a notice from the Town of Red Hook that the building permit was rescinded before they were ever contacted by HHV. Adam Taylor further stated that HHV sent the letters to the Town of Red Hook saying the trailer was not authorized without every speaking to the Taylors first. Adam Taylor went on to say that the conversation came weeks after the building permit was

rescinded. The Taylors were left completely dumfounded as to why they would neglect calling them before calling the Town of Red Hook.

Attorney DuVall commented earlier that HHV is using the building permit process to foster some other agenda that is hidden to everybody and maybe even be hidden to them, however, Mr. DuVall wasn't sure.

Chairman Annas mentioned to Attorney Polidoro that eight years ago he volunteered for Historic Hudson Valley for five years and wanted to know if he had any potential conflict of interest.

Attorney Polidoro said that there's no conflict unless you personally feel you can't fairly judge the application.

The Public Hearing is scheduled for Wednesday, November 12, 2014.

### **ADJOURNMENT**

John Douglas made a motion to adjourn the meeting. The motion was seconded by Tim Ross and all were in favor. The meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Jackie Fenaroli  
ZBA Secretary