

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Town Hall, 351 Reynolds Road, Moreau, NY 12828 on the 1st day of August, 2018 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT

Gerhard Endal, Chair

Kevin Elms

John England

Scott Fitzsimmons

Matthew Manning



The Board reviewed the minutes of the June 27, 2018 meeting. Motion to approve was made by Mr. Fitzsimmons and seconded by Mr. Elms. All in favor, motion carries

Appeal No. 802 is stayed because the Zoning Enforcement Officer's related determination has been appealed. That is also the case with Appeal No. 803.

The next item is

**APPEAL NO 804**

A request of Janet Shaw of 55 Palmer Ridge Road, Gansevoort, NY 12831 asking for a rehearing of a previously denied Area Variance. The rehearing will be conducted pursuant to Chapter 149, Article X, Section 149-59 A and Town Law 267-a and 267-b. Applicant is proposing to subdivide a 9.466 acre parcel. One of these lots will not meet the required 5 acre minimum in an R-5, One and Two Family, Agricultural Zoning District. This parcel is designated as 90-1-55 on the Town Assessment Map.

It's been brought to the Board's attention that there is no time limit for rehearing. This Appeal was denied on Sept 27, 2017. Town law requires that the Board refuse to rehear anything less than a year after the official denial, unless the applicant can show that changed conditions have occurred that occasion a reconsideration. The Chairman read from the code for the attorneys.

Atty. Klingbiel thought that the application for rehearing of the Sept 27<sup>th</sup> 2017 was on the agenda tonight and that if that was denied, they would proceed with the other.

Atty. Buettner explained that Mr. Martin's determination that the second application was materially different from the first, was appealed this afternoon, and that action automatically stays the Board from acting on the Appeal.

Regarding 149-86 review, the provision about having to submit the evidence of change, Atty. Klingbiel doesn't think that is the ruling principle. The Town law does have the authority to supercede State Law, but that it doesn't supercede unless the provision states that it intends to. So his interpretation is that the Board can choose which procedure they want to adhere to, State Law or Town Law, since the Town Code

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doesn't state it intends to supercede State law.

Chairman Endal asked if the Attorney was arguing that the State Law says that the Town law has to specifically state that it is intended to supercede. Atty. Klingbiel agreed "In all respects and aspects" and 149 -86 doesn't do that. So they Town can go with either path.

Chairman Endal stated that his sense is that he is hesitant to overturn something in Town law. He would rather assume that the writers meant what they said. He feels the wording is very specific.

Atty. Klingbiel agreed that it is within the Board's discretion.

Mr. Elms agreed the Board should try not to deviate from Town Laws.

Chairman Endal asked Mr. Shaw and his Attorney whether there were changed conditions. Atty. Klingbiel stated that there was confusion on the night of the first decision. Mr. Shaw is hard of hearing and didn't understand his rights that were explained to him about the unanimous vote. That is their main argument; they don't have a change in circumstance that they can argue.

Chairman Endal looked at the minutes of the September 2017 meeting and said he knows that it is the Board's policy to make people aware of the special rules for when there are only 3 Board members. Atty. Klingbiel pointed out that there was no response from Mr. Shaw documented in the minutes when that was explained to him and argued that this proves Mr. Shaw didn't understand.

Chairman Endal stated that he didn't sense that there was a reason to re-hear it. There has been no motion actually made to re-hear it, so Atty. Buettner stated that there is nothing to table. Chairman Endal polled the Board and they were in agreement that, based on the fact that it doesn't meet the requirement to be heard within less than a year.

The applicant is welcome to return when the time limit has run out.

The Board discussed that the next regular monthly meeting comes close on the heels of this one and decided to meet on August 29<sup>th</sup> instead of August 22<sup>nd</sup>. Atty. Buettner indicated that she would not be able to attend.

The meeting was adjourned at 7: 17 pm. Motion was made by Mr. Elms and seconded by Mr. Fitzsimmons. All in favor motion carried with no roll call.

Respectfully submitted,

Tricia S. Andrews