

TOWN OF CHATHAM
September 23, 2010

ZONING BOARD OF APPEALS
FINAL COPY

MEMBERS PRESENT:

Mitchell Khosrova
Robert Leary
JP Henkel
Adrian Ooms
David Everett, Chairman(7:25)
Jeff Lick
Tal Rappleyea, Atty.

MEMBERS ABSENT:

Kary Jablonka

Public Present:
Catherine Linck
Peter Linck
Andrew Gilchrest, Esq.
Paul Freeman, Esq.

The September 23, 2010, Zoning Board of Appeals meeting was called to order by Deputy Chair Mitch Khosrova at 7:03PM with a quorum present. The Pledge of Allegiance was recited. Mitchell Khosrova said that in the absence of ZBA clerk Marilyn Cohen, approval of the minutes from August would be deferred to the next meeting.

LAWRENCE AND KIM INTRIERI - REQUEST FOR RE-HEARING

Mitch Khosrova began by explaining the process for a re-hearing and Tal joined in noting that any decision must be unanimous. Mr. Gilchrest, representing the Intrieris provided a number of documents related to the 1996 stipulation order that was never signed. Mitch Khosrova asked why it hadn't been signed, which no one knew the answer to. Jeff Lick asked, if Mr. Intrieri had abided by the stipulation order as if it had been signed, and Mr. Gilchrest said that he did not know. The Board noted that the evidence showed continuing negotiations by both parties after the last court date.

Atty. Paul Freeman, representing the Lincks, stated that case law regarding unsigned binding agreements show that it must be a very specific transcribed hearing. Judges notes and other written evidence has not been admitted to show an agreement existed. He also noted that the recent hearing was also based on significant new information and a change in circumstances, including registration of the vehicles, corporate records, etc. This new information would make any prior agreement inapplicable to the new situation.

Jeff Lick noted that he believed Mr. Intrieri did not abide by the agreement based on evidence submitted in the hearing. JP Henkel said that Mr. Intrieri represented to the ZBA that the agreement had not been finalized.

Atty. Andrew Gilchrest requested that the board investigate the historic record, including speaking with the former town attorney and others involved in the historic case. Mitch Khosrova said that it was not the responsibility of the ZBA to present evidence, and wondered if any information learned would have an influence on the boards decision. David Everett asked about the change in circumstances. Paul noted that some of the issues did not appear to have been addressed in 1996.

At 8:00 David Everett made a motion to go into Executive Session to discuss the current lawsuit pending against the ZBA, which was seconded by Mitch Khosrova and was approved unanimously. The public was asked to wait outside the meeting room. At 8:25 David Everett made a motion to go back into a general session, Mitch Khosrova seconded the motion and it passed unanimously. The public was invited to rejoin the meeting.

The Board discussed whether it had enough information to make a decision on the request for a re-hearing or whether it needed more information. The Board decided it had enough information to make a decision.

Mitch Khosrova and David Everett summarized the boards thinking with the following points.

- The letters and papers submitted were already documents the board had seen and considered, and does not believe there is anything new to consider.
- Mr. Intrieri stated in a previous ZBA meeting that there was no agreement.
- Testimony in previous meetings gave evidence that Mr. Intrieri was not behaving in a way that was in accordance with the purported stipulation agreement.
- Documents show that Mr. Intrieri was still negotiating the proposed stipulation agreement after the meeting in the Judge's Chambers and never signed it.
- Even if there was an agreement in 1996, there was sufficient evidence to support the ZBA's decision, and would suggest no change in the outcome.
- If there was an agreement, there was no way for the ZBA to know what it was (i.e. a map is referred to but not in evidence).

David Everett asked that Atty. Tal Rappleyea document all of these points related to the boards thinking and that a formal decision would be made next month. The matter was tabled until next month's meeting.

The meeting was adjourned at 8:40.

Respectfully submitted,

Jeff Lick, acting clerk

David Everett, Chairman