

**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
JUNE 24, 2010**

**A. CALL TO ORDER - 7:00 PM**

Mr. Smith called the Roll with the following results:

Members present:                    Jay Smith – Chairperson  
   Mike Horn  
   Roy Wooldridge  
   Anthony Mauro – 1<sup>st</sup> Alternate  
   Robert Hanson - 2<sup>nd</sup> Alternate

Members Excused:                    Larry Duell – Vice Chairperson  
   Glenn Deletetsky– Secretary

Also present:                            Paul Lempicki, Code Enforcement Officer

Mr. Smith noted that in the absence of Mr. Duell and Mr. Deletetsky, Mr. Hanson and Mr. Mauro would both be moved to full voting positions.

Mr. Smith noted that a quorum was present.

**B. ACCEPTANCE OF MINUTES - June 3, 2010**

**Mr. Horn Moved to Approve the Minutes of the June 3, 2010 meeting as Amended.  
HORN/MAURNO 5/0 UNANIMOUS**

**C. UNFINISHED BUSINESS – None**

**D. NEW BUSINESS –**

- 1. JOHN and CAROL REILLY – 297 Main Street (Map 7 Lot 17). Administrative Appeal Under Article 5.2.A. Appeal of the Code Enforcement Officer’s Issuance of a Stop Work Order dated 18 May 2010 for a pre-1930 structure.**

Mr. Smith asked if there was anyone on the Board who felt he had a conflict of interest sufficient to disqualify him from hearing and impartially deciding this case. There was no one.

Mr. Smith asked if the Board had standing/jurisdiction to hear and decide this case.

Mr. Horn responded that it was his opinion that the Board did not have jurisdiction over this case. He cited Article 5.2.A of the Ogunquit Zoning Ordinance which states that: “...*Any notice of violation, or any related order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals. Such enforcement actions are appealable only to the Courts as allowed by law and rules of civil procedure.*”

Mr. Horn noted that Mr. Lockman, the Town Planner from Southern Maine Regional Planning Commission, concurred.

Mr. Horn Moved to Dismiss this case prior to hearing it.  
HORN/HANSON

Mr. Smith called for discussion of Mr. Horn's motion. He noted that Mr. Horn has cited Section 5.2.A of the Zoning Ordinance, particularly Paragraph 2. Mr. Smith noted that the Applicant has come before this Board because he was instructed to do so by the Ogunquit Planning Board, which was a misinterpretation of the Ordinance on the part of the Planning Board.

Mr. Wooldridge asked if this application had been submitted to the Planning Board.

Mr. Smith responded that the Applicant addressed the Planning Board during the "Public Input" portion of an earlier meeting. The Applicant did not formally submit an application to the Planning Board. Mr. Smith noted that at the Zoning Board's June 3<sup>rd</sup> meeting this applicant asked to present his case on an emergency basis. At that time Mr. Smith asked if the Board had standing to hear this case. The Board was caught off guard and asked to make a snap decision on the spot which did not give them time to review the ordinance properly. As a result the question was not properly answered. Mr. Smith noted that this is the first time, in his fifteen years on this Board, that there has been a request to deal with a Stop Work Order. Now, having had the time to review both this case and the Zoning Ordinance he (Mr. Smith) agrees with Mr. Horn that this Board does not have jurisdiction to hear this case.

Mr. Smith confirmed that this Board can not overturn a Stop Work Order, however he suggested that there is a way to resolve this matter, other than going to Court.

Mr. Horn pointed out that any discussion of the merits of this case, or recommendations for further action or procedures, is beyond the scope of this Board.

Mr. Smith agreed, he went on to state that this case might be resolved thru collaboration between the Applicant and the Code Enforcement Officer and an ex-post-facto request to the Planning Board asking to demolish. If the Planning Board sees fit to grant an after-the-fact request to demolish then the Code Enforcement Officer can reverse the Stop Work Order. If the Planning Board rejects the after-the-fact request to demolish then the Applicant can appeal to the Courts.

Mr. Smith went on to say that he is somewhat distressed that the Planning Board did not give the Applicant correct advice. While it may appear to the Applicant that the Town is playing games with him, this is not the case. He apologized for this but confirmed that there is nothing this Board can do for him.

Mr. Wooldridge pointed out that there is nothing to prevent the Code Enforcement Officer from modifying the Stop Work Order on his own initiative to allow the Applicant to get back to work on the interior of the structure, while maintaining the Stop Work Order for all exterior work.

Mr. Smith agreed that the Code Enforcement Officer, along with other Town agencies, could come up with a course of action which will allow for work to resume.

Mr. Horn called for a vote on his motion.

**Motion to Not Hear this case based upon Article 5.2.A of the Ogunquit Zoning Ordinance.  
HORN/HANSON 5/0 UNANIMOUS**

Mr. Smith again apologized to the Applicant for the lack of clear instructions regarding resolution to this matter. He suggested the Maine Municipal Association may be able to assist Mr. Lempicki in finding a way to move this case forward, however this Board does not have jurisdiction to overturn a Stop Work Order. Mr. Smith encouraged Mr. Lempicki to find a way to allow work to proceed, however he noted that the Board does not have the authority to force him to do so.

The Applicant expressed his frustration over the lack of clear process for resolution to these types of issues. He acknowledged his part in the problem and stated that he does not want to go to court, however he will if he has to.

Mr. Smith responded that the due process to overturn a Stop Work Order is not through the Zoning Board of Appeals, and he again apologized for the Planning Board's improper guidance. He informed the Applicant that he needs to go to the Planning Board and ask for an After the Fact Design / Site Plan Review.

Mr. Gallagher asked if they can get the \$160. Applicant Fee returned.

Mr. Smith responded that the Applicant needs to contact Mr. Lempicki to answer that question.

**E. CODE ENFORCEMENT OFFICER BUSINESS – None**

**F. OTHER BUSINESS – None**

**G. ADJOURNMENT –**

**Mr. Wooldridge Moved to Adjourn at 7:30 p.m.  
WOOLDRIDGE / HORN 5/0 UNANIMOUS**

Respectfully Submitted

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Maryann Stacy  
Recording Secretary

*Approved as Submitted on October 28, 2010*