

**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
FEBRUARY 27, 2014**

**CALL TO ORDER - 6:00 PM**

Members Present:     Jay Smith - Chairperson  
                          Glen Deletetsky - Vice Chair  
                          Peter Griswold - Secretary  
                          Mike Horn  
                          Doug Mayer  
                          Jerry DeHart (1<sup>st</sup> Alternate)

Mr. Smith noted that a quorum was present.

**ACCEPTANCE OF MINUTES** – February 6, 2013

**Mr. Deletetsky Moved to Accept the Minutes of the February 6, 2013 Meeting as Submitted.**

**DELETETSKY/HORN 4:0 UNANIMOUS**

**UNFINISHED BUSINESS - NEWELL PERKINS** – Regarding Map 7 Blocks 72A and 72B – Administrative Appeal under Article 5.2.A. Appeal of Code Enforcement Officer’s failure to act in an alleged improper parcel division.

Mr. Smith summarized the case and the Board’s protocol. He noted that the Board would begin with “Board Business” first and that this portion of the meeting is not open to public participation. The public may only participate when the Chair declares that the public portion of the meeting is open. This is particularly important in this case because discussion of jurisdiction is not open to public debate.

Mr. Griswold read the case caption into the record.

Mr. Smith asked the Board if there was anyone, on the Board, who felt he had a conflict of interest sufficient to disqualify him from voting or in any way acting impartially. No one did.

Mr. Smith asked if the Board has jurisdiction, or standing, to hear this case.

Mr. Smith noted that at the February 6, 2014 meeting the Board voted to table this case based on what the Board perceived as a shortcoming in the Town attorney’s opinion of January 16, 2014 and the Board asked for time to research the Planning Board Minutes of January 9, 2012 in order to determine whether or not the Town Attorney had come to a proper decision.

At the February 6<sup>th</sup> meeting the Motion not to hear the case passed and at no time at that meeting did the Board open the case, thus there was no public, or Board, discussion regarding the merits of the case.

Subsequently the Board received the results of the review of the Planning Board's January 9, 2014 meeting by the Code Enforcement Office, the Board also received a revised letter from the Town Attorney, dated February 18, 2014 (copies of which were provided to all Board members and interested parties).

Mr. Smith repeated his question, which he always asks prior to opening every case: Does the Board have jurisdiction, or standing, to hear this case?

Mr. Horn made a motion that the Zoning Board does not have jurisdiction in this case.  
HORN/GRISWOLD

Mr. Smith asked Mr. Horn to defend his position.

Mr. Horn responded that upon review of the Planning Board's minutes of July 9, 2012, it was found that the Planning Board did not render any type of a decision regarding the lot split of the Scanlon property nor was any permit issued, nor required. Consequently there was no approval given or permit issued that would be subject to an appeal.

He went on to say that this appeal is based on the failure of the Code Enforcement Officer to act, he (Mr. Horn) feels that Section 5.2.A of the Ogunquit Zoning Ordinance states that a "failure to act and in the enforcement of this Ordinance is not appealable to the Zoning Board".

Mr. Smith asked if Mr. Horn is basically repeating the conclusion of the Town Attorney.

Mr. Horn agreed and added that his motion is also based upon a review of the submitted material.

Mr. Deletetsky agreed with Mr. Horn that after a review of all the information there is no decision of the code Enforcement Officer which might be appealed.

Mr. Mayer also agreed.

Mr. Griswold agreed that he came to the same conclusion after a review of the material.

Mr. Smith summarized that proper review would look at the Ordinance as a series of excerpts beginning with Section 5.2 which deals with Appeals. This section gives the Board the power to hear appeals from "decisions of the Code Enforcement Officer". There are two types of appeals: Administrative Appeals, where the Board, if it feels the Code Officer rendered an improper decision, may uphold it, modify it, or reverse it. There are also Variance Appeals wherein the Board may grant a variance if some form of dimensional standard has not been met.

Mr. Smith referred to Section 5.3.A which states that the appeal must follow a "written decision by the Code Enforcement Officer" said appeal must be made within thirty (30) days of the written decision.

Mr. Smith agreed with Mr. Horn that the crucial section in this case is Section 5.2.A which deals with Administrative Appeals. This section does allow for an appeal to be filed by an aggrieved

party when, in his opinion, the Code Enforcement Officer fails to act. However the appeal for a failure to act may only be filed in the Code Enforcement Officer's review of, and action on, a permit or application, not just a letter from a citizen. There has to be a permit or a decision which the Code Enforcement Officer failed to act upon. In this case there was no written decision by the Code Enforcement Officer.

In addition, the failure to act rational proposed by Mr. Perkins' appeal is not "wrapped around" any permit or application. The Board is not in a position to tell the Code Enforcement Officer how to act, the Board's job is to rule on actions taken by or failure to act when there is a permit or application involved. Based upon this analysis of the logic and way the Ordinance is crafted, Mr. Smith agreed with Mr. Horn's Motion.

Mr. Smith noted that the aggrieved party does have rights, however the Board's jurisdiction may limit its ability to hear this case. The Board therefore is not ruling on the merits of this case, it is only ruling on due process.

Mr. Smith also pointed out that it is not the responsibility of the Board to tell the appellant alternative ways to proceed beyond the Zoning Board.

Mr. Horn noted that it was the Planning Board which did not make any decision on this matter and as a result the Code Enforcement Officer did not take any further action.

Mr. Horn also noted that the Ordinance does not require Planning Board approval for the initial split of a piece of property.

**Mr. Deletetsky Moved to vote on Mr. Horn's Motion.  
DELETETSKY/GRISWOLD 5:0 UNANIMOUS**

**Mr. Smith repeated Mr. Horn's Motion that the Board will not hear this case on the basis that it does not have jurisdiction.  
HORN/GRISWOLD 5:0 UNANIMOUS**

**NEW BUSINESS** – None

**CODE ENFORCEMENT OFFICER BUSINESS** – None

**OTHER BUSINESS** –

Mr. Smith noted that there are upcoming training seminars and he encouraged all Board members to consider attending.

The Board discussed holding a workshop to discuss changes to the Zoning Ordinance. Each Board member was asked to prepare a list of proposed changes for discussion. The Workshop was scheduled for March 10, 2014 at 6:00.

Mr. Griswold noted that given the new FEMA Flood Plan Maps the Board might want to review the potential impact upon Ogunquit properties.

It was agreed that this is a topic of great interest to the Board and that there are implications to Ogunquit properties with regard to insurance and building potential. It was agreed that this is a topic for a separate workshop, not to be included in the March 10<sup>th</sup> Zoning Ordinance Revisions Workshop.

**ADJOURNMENT** -

**Mr. Deletetsky Moved to Adjourn at 6:45 p.m.**

**DELETETSKY/MAYER 4:0 UNANIMOUS**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy  
Zoning Board of Appeals  
Recording Secretary

*Approved on July 31, 2014*