

TUESDAY – FEBRUARY 27, 2018  
INFORMAL PRESENTATION - ZONING BOARD  
7:00 P.M. – TOWN HALL – 1529 NYS RTE 12  
BINGHAMTON – NEW YORK – 13901

PRESENT: Mr. Donald Phillips, Chairman  
Messrs. Ruston, Waskie, & Smith  
Mrs. Kinne

ALSO PRESENT: Terry Kellogg, Councilperson  
Scott Russell, Ordinance Office

ABSENT: Donald G. Walls, Esq. – Town Attorney  
Mrs. Pandich, ZBA Member

The following information was recorded by Terry Kellogg, Councilperson, during the Regular Session of the February 27, 2018 Zoning Board of Appeals meeting and after the meeting adjourned. This is Mr. Michael Lumsden's informal presentation to the Zoning Board of Appeals. The Town Attorney, Mr. Donald Walls, had exited as the regular session was adjourned.

Mr. Kellogg – Nancy do you mind staying as Mr. Lumsden wants to have a few words with the Board? He won't be long.

Mrs. Schnurbusch – Since they adjourned – wasn't going to take minutes – should I?

Mr. Kellogg – No it's not that formal - not meant to be business. Scott would you stay a few minutes? Go ahead Mike.

Mr. Lumsden – He'll make it quick. He knows it looks like a lot but it's not. Mr. Chairman, Lady and Gentlemen of the Board he'd like to thank everybody for the opportunity to address this Board. Some of you may know him, some of you may not. He and his wife moved here in 1984 as young kids starting out to build their lives together. Can't hear him?

Mr. Phillips – He can hear him and he's hard of hearing.

Mrs. Kinne – She can't.

Mr. Lumsden – Moved here in 1984 as young kids starting to build their lives together. The people of this community from our neighbors and our friends and employees of the Town of Chenango were very helpful. He is grateful and owes everything he has to this community. He never was really involved in politics or local government. He was busy building his businesses and raising his family.

He's done numerous projects over the years and had to come to the Town of Chenango to get permits, use variances, etc. He feels that he was always treated very fairly.

This all changed about five or six years ago when the town hired a new Code Officer. Just for the record, he never had a citation or a ticket. He seeks no political position or financial gain for what he is doing. He's also never retained an attorney. Like he said, about five or six years ago he started hearing a lot of rumblings from different people coming into his store and telling him their stories on how they were mistreated by the code

officer. These were people from all walks of life in the Town of Chenango. He also had a few encounters with the same officer none of which were very good. He had voiced his concerns to the Town and was basically told there was nothing they could do because he was a civil service worker.

He thought to myself how can one person have this much control over the people with no oversight or accountability from the Town. How can this be?

On December 16, 2016 when he attempted to make amends with this officer in front of his supervisor, once again he became hostile towards him. That is when he decided enough was enough.

He started reading Town law, State law and Federal law. He learned about Home Rule Law, Dillon's Rule of Law, Quasi Jurisdiction, Appellate Jurisdiction, Original Jurisdiction, three branches of Government, warrants, appeal process, official misconduct, the Color of Law and most importantly due process and much much more. For the first three months of 2017 he spent fifty to sixty hours a week educating himself. Through this process he learned that even though the Town of Chenango does a lot of things right and has a lot of good people working for them, it became apparently clear to him that the Town was doing some of their processes wrong which was some of the reasons (he believes) why the Code Officer became so out of control and there were no checks or balances. Once this Code Officer was no longer with the Town he did not stop his research. He had been contacted by lawyers from NYC and Syracuse calling him and asking him what was going on with the Town of Chenango. He assumed because they may have had clients, but He doesn't know. He also met with a few judges and New York State Officials outside of the area to verify what he had found.

He has stayed in direct contact with the Town Board every step of the way. He has given them different findings from the legal statutes and Supreme Court cases that he has researched. He has been extremely transparent with the Town Board. In the last few months, the Town Board has been very receptive to his information. About four months ago, the Town had New York State come into this office to conduct a course regarding the ZBA, code officer duties and general town practices. He attended this course as a citizen of the town. He must say he was pretty apprehensive about attending this course since he had spent so much time reading and learning he was still pretty nervous and questioned him and his understanding of the law. But right or wrong he had to know what the answers truly were. He knows a few of you on this Board and in this room attended the course. During this course it became clear that he was very correct in his understanding of how the law works and how things should be done and that all the time he had spent reading and researching had not gone in vain.

He does not want to see the Town of Chenango ever be put in another bad position with a code officer ever again. He also does not want to cripple the Town or see the Town facing large litigation cases against them for not following the right procedures.

In the last few months, he has read over the last six years of the ZBA minutes and their public hearings. There was a lot of reading. He is not here to cause trouble or point fingers, but there does seem to be a clear pattern of inconsistency. He humbly urges you to read last November's 2017 minutes of the Zoning Board of Appeals and also to read Gordon vs. Zoning Board of Appeals of Clarkstown, NY. Then maybe you can have a better understanding from where he is coming from.

If he can learn all of this so can the Board, and so can other people in this town. He has heard many times during this process that this is the way we have always done it. One thing he's learned in life is that just because the guy that came before you doesn't always mean he did it right- correctly. He believes people can be part of the problem or people can be part of the solution. That goes for the citizens of this town, and most importantly it goes for the people that represent and work in the town. As a citizen he would like to be part of the solution.

That is why he is offering to share all his information that he has acquired to the ZBA.

Hopefully we can all work together, roll up our sleeves and get a good process in place; only where it needs fixing. There is a lot more he could speak about, a lot more analogies and examples he could offer to the board. Maybe he will get the opportunity to do so in the future. That will be up to you.

These laws and these procedures were designed to protect all the people in this town. Everybody is familiar with the Hatfield and McCoy's. That is EXACTLY why the State designed these processes, procedures, and laws. That is exactly why he will always pay attention to the ZBA as a citizen of the Town of Chenango. He wants to make one thing clear he never has a problem with you guys allowing someone to do something on their property. Where he gets concerned is when people start telling people they can't do something on their property or they over reach and put pressures on them and do things that the law does not permit them to do when they are in the positions that you guys are in.

Thank you for giving him this time and if anyone has any questions he'd be glad to answer.

Mr. Phillips – Mike thank you very much.

Mr. Smith – November 2017?

Mr. Lumsden – November it was your last 2017 sir.

Mr. Phillips – Please you don't need to call me sir.

Mr. Lumsden – I've learned it's either Sir or Chairman.

Mr. Smith – Then there was a case from the State.

Mr. Lumsden – The case that references that is Gordon vs. Clarkstown. It was Gordon vs. the Zoning Board of Appeals. You can Google this; Gordon vs. the Zoning Board of Appeals of Clarkstown NY. Would you like me to give you a brief description of that?

ZBA Members – They will look it up.

Mr. Phillips – Thanks for your concern, thanks for your appreciation it was well received.

Mr. Lumsden – Thank you Victor. He wants to say this gentleman right here - he met him through this process and he's one good dude.

Mr. Phillips – Let's just put this upfront – we're off the record.

Mr. Lumsden – Yes they are.

Mr. Phillips – Number one protecting the Town of Chenango and filling in to the big plan. What we'd like to see in the Town of Chenango and number two equally important is the citizens. This board would like to approve everything that comes before it. If the citizens feel it's requested. As you know there are criteria that we have to follow by State regulation and State laws, but every member of this board; and everyone works their tails off, we are from the community. Not that it's a monetary thing this Board makes sixty dollars a month.

Their concerns are exactly your concerns. The Town as well as how to help citizens get by State regulation – not get by it....

Mr. Lumsden – That's that side of it. The Board also has the number one responsibility - is to appeal decisions made by a code officer. So that means any decisions made by the code officer. So that means any decision made by the code officer. As long as he's been coming here as many years that he's read of the town and he has never, he has asked, he and Scott are getting on a good page now – he's not throwing stones he's just saying that system inside the Town of Chenango was never there for the people. You guys do the zoning part as far as use variances and area variances his hats off to you. You guys do a wonderful job trying to get everybody. The problem comes in on the other end of it on the Appellate Jurisdiction side of it. Not the Original Jurisdiction that's what you guys do when you have use variances and area variances. He's talking about the Appellate Jurisdiction side that has not been happening.

Mr. Phillips – Understand.

Mr. Lumsden – Before people come into this office, which is the court room, people come before our judges that we elect they have due process to come to this Board.

Mr. Phillips – He's going to interrupt because you had a bad experience he understands that and he saw that. This gentleman (Scott) and he meet two to three times a week discussing things. You are getting two bounce backs all the time. He thinks they are both very reasonable men. I told you where my heart is – has been a member of this Town for 55/60 years. Been on this Board for thirty years – he checked today. This gentleman and I are on a totally different page with the bad experiences you've had.

Mr. Lumsden – Understand that Don you may not be here next year or five years from now.

Mr. Phillips – May not be here tomorrow.

Mr. Lumsden – Right. That's why this system that part of the appeals process which he's talked to Scott. Scott and he have had their problems, but they've always been able to sit down and discuss things properly. All he's trying to do is – you know the saying leave it in better shape than it was when you got it – he's trying to make sure he doesn't want to fight this battle ten years from now.

Mr. Phillips – You are a great citizen.

Mr. Lumsden – That's my point.

Mr. Phillips – You've made your point to this Board and we understand that. This guy (Scott) and he – don't shoot him unless you have a shotgun – going to have to shoot two.

Mr. Lumsden – It's not a matter of shooting anybody. It's just the matter of bringing this to everyone's attention. The reason why the situation got so far out of hand to the public was because part of it – think about it this way - if the appeals process was set up – he understands they are moving forward and there was a form then anybody that works under Scott or when he's gone does something out in the community and it comes before five people to judicate under Appellate Jurisdiction. They would have a bit more control instead of telling people there's nothing we can do.

Mr. Phillips – I got you.

Mr. Lumsden – The book matters and the rules matter all the way across the board.

Mr. Kellogg – Mr. Chairman he just has one final comment that he'd like to extend from the Board. He appreciates Jim (Dimascio) for being here tonight as well. Obviously small municipalities like ours have a challenge with training. We took advantage of some of that training at the Association of Towns training school, but he encourages all of you to refer to the Department of State website, because they have webinars, they have publications, and he knows it's a lot for people to do on their own time, but he knows this is more a vocation rather than employment for you guys as a lightly paid volunteer; and he does appreciate your service. If there are any questions in terms of zoning and things like that please extend questions to the Board and we'll do some research as well. Try to get you some guidelines and answers.

Mr. Phillips – Sure, in fact, Scott and he already have shared some things. There are two attorneys that they can go to because sometimes Mr. Walls isn't available. The state sanctions these folks.

Mr. Kellogg – The other aspect of this the Association of Towns membership that this town has, we can reach out to Lori Mithen-Demasi, Attorney with the Association. Can't represent us but they can give us some opinions.

Mr. Phillips – Exactly. He'd like to give an "at a boy" to Mike for bringing us all together and feeling strong about this.

Mr. Kellogg – He appreciates him coming in and speaking.

Mr. Lumsden – His hats off to all of you too. You guys give back. He's just trying to do it his way the best way he can. Just fix somethings a little bit and make sure there's always that balance. You guys do a wonderful job. Like he said you do everything you can to grant somebody. The issues come in on that part – on Original Jurisdiction when you start putting different things on it – that's one issue. The issue he is most concerned with is the Appellate Jurisdiction side. You guys are then like a jury – it's the same process that the court system has to go through. That is a tough thing but it has to happen all the way around. It can help even Scott when you have somebody...he sat in numerous Town Board meetings the public will come in here and they'll yell at the Town Board about someone living in a camper. They will come in here. The right process is Scott only has to go up according to the State and he can follow up on that complainant once he follows up on that complainant. Let's say if Scott goes up and he looks at it. He doesn't think it constitutes a problem so he goes – the guys all right. The neighbor comes in and wants to yell and scream at the Board. The Board needs to reference him to a form so if he's the neighbor he's the third party he can aggrieve it. He doesn't have a right to keep calling Scott making Scott go up there six or seven times or go hide on Saturday to see if you can catch him. That's not how it works. He can make a decision to give a guy a ticket can make the decision not to ticket, but there has to be a form. Whether he says to give a ticket or not. There has to be a form in place so that he's done his job so now the person that chronically wants to complain make him do the process. Make him fill out the Zoning Board of Appeals - now that person has got to put a face - let them face it. Ninety percent of what he gets called on will be gone and that stops the Hatfield's and McCoy's fighting with each other. That's why the system is there.

Mr. Phillips – Your working on the form and you have one.

Mrs. Kinne – She was going to ask that question. When and how can we implement it?

Mr. Russell – He has a form from Mr. Walls and some of it needs to be tweaked. At this point he doesn't know

who to ask this question – Who approves the form? Zoning Board of Appeals, Town Board? He doesn't have the answer.

Mr. Lumsden – Town Council.

Mr. Phillips – But you are creating one – Mr. Walls is creating one.

Mr. Lumsden – He doesn't know what else more he had to go through the channels last year just to clear it all up. He knew nothing about any of this. When it got so bad last year he was forced, doesn't want to say "forced", he felt he had no other option but to come to meetings to learn to do his due diligence as a citizen. He just wants to try to give back to this community. Like he said he wants to try to help. He doesn't want to sit there and have to do it in front of everybody. He's glad you do what you do.

Mr. Phillips – That's why he agreed to this meeting. It almost sounded like people were head hunting him (Scott), me, and Don Walls. He said that's not what's Mike coming from let's put it on the table so we put it on the table.

Mr. Lumsden – Right, heard it from the horse's mouth, so to speak, he's not bashful, he's not coy. Scott knows there are people in this room – dealt with him a long time. He's not politically correct – he'll say what he's got to say, but he wants you to know he's truly doing it for the right reasons. He doesn't want to see it be abused again.

Mr. Phillips – Thank you Mike.

Respectfully submitted,

Nancy Schnurbusch,  
ZBA Secretary