

In The Matter Of:
Town of Mamakating
Zoning Board of Appeals

Amy Thomas
1-25-18
January 25, 2018

Jeric Corporation
Court Reporting Services
P.O. Box 385
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COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

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Amy Thomas
Interpretation - Appeal
Tax Map Section 12; Block 1; Lot 20
Neighborhood Residential Zone

----- X

Town Hall
Town of Mamakating
January 25, 2018
7:04 P.M.

ZONING BOARD MEMBERS :

- MATTHEW MORDAS, Chairman
- GEORGIA RAMPE, Board Member
- CATHY DAWKINS, Board Member
- KENT FINDLEY, Board Member
- MATTHEW MORREALE, Board Member
- STEVEN MOGEL, ESQ., Attorney

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Reported by: Rosemary A. Meyer

1 - RE: AMY THOMAS -

2 CHAIRMAN MORDAS: Good evening, ladies and gentlemen.
3 Welcome to the Mamakating Zoning Board of Appeals meeting
4 for Thursday, January 25th. I'm your chairman, Matthew
5 Mordas.

6 I start off the meeting with a role call.
7 Georgia.

8 BOARD MEMBER RAMPE: Here.

9 CHAIRMAN MORDAS: Georgia Rampe.
10 Cathy Dawkins.

11 BOARD MEMBER DAWKINS? Here.

12 CHAIRMAN MORDAS: Kent Findley.

13 BOARD MEMBER FINDLEY: Here.

14 CHAIRMAN MORDAS: Matthew Morreale.

15 BOARD MEMBER MORREALE: Here.

16 CHAIRMAN MORDAS: And our counsel, Steven Mogel, is
17 present.

18 I have to make a correction on the agenda. It says
19 that the Applicant, Amy Thomas, has a continuation of a
20 public hearing. That public hearing has been closed
21 already, so I just wanted to say that for the record.

22 We're really here to basically focus on the
23 Applicant's request for a determination of a stop work
24 order issued by the Building Department back on October
25 21st of 2015.

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2 MR. MOGEL: Not quite.

3 CHAIRMAN MORDAS: Okay. Please correct me.

4 MR. MOGEL: The matter that's in front of the Board is
5 an appeal of the determination by Mary Grass. That
6 determination was issued January 20th of 2017. In that
7 determination Ms. Grass indicated that the operation that's
8 occurring on the property located at 14 Shannon Lane in
9 Pine Bush, Tax Map Section 12-1-20, constitutes mining.

10 There were two portions that were before the Board.
11 One was an interpretation of extractive operations that's
12 set forth in the code, the Zoning Code, at 199-6; and the
13 other was an appeal of the determination on January 20th,
14 2017. The Board issued an interpretation on August 24th,
15 2017 as to the meaning of the term "extractive operations,"
16 which the Chairman will go into in greater detail. The
17 matter that remains in front of the Board is the appeal of
18 the January 20th, 2017 determination. In that capacity,
19 the Board is acting as an appellate review.

20 CHAIRMAN MORDAS: Okay. All right.

21 MR. MOGEL: And let me add just one other part. The
22 decision was issued in August. I'm sorry. The
23 interpretation was issued in August, August 24th, but at
24 the request of the Applicant, the appeal of the January
25 20th determination was adjourned on a number of occasions

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2 for a variety of reasons, not least of which was that a
3 large FOIL request was made by the Applicant which did take
4 some time to produce. The matter was put back, I believe
5 on the November agenda. The Applicant did not appear, and
6 out of an abundance of caution the Board made a
7 determination that perhaps insufficient notice had been
8 given to the Applicant that they would be on the agenda and
9 the Board adjourned again. The matter was put on today's
10 agenda. The Applicant, through counsel, indicated that
11 they were under the impression that a meeting that took
12 place on or about October 24th of 2017 between members of
13 the ZBA and representatives of the Planning Board and
14 others, that the matter would be, I suppose indefinitely
15 adjourned until such time as the Applicant's engineers
16 could speak with the Town engineer. That was a matter that
17 was brought to my attention. I spoke with some of the
18 individuals who were at that meeting, including
19 Mr. Cappello. There was an informal agreement that it
20 might be beneficial for the engineers to speak. The
21 Applicant's attorney indicated to me, in writing, that the
22 Applicant's engineers had made multiple attempts to reach
23 the Town's engineers and had the been repeatedly
24 unsuccessful, that the Town's engineer had not responded.
25 Mr. Paggi responded in writing recently to myself and the

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2 Chairman, indicating that he had one message and that he
3 attempted to return that message. Notwithstanding, I made
4 the position clear that there was no such agreement that I
5 was aware of, in writing or otherwise, that said that the
6 Board would withhold making any decision on this
7 application. That was more than two weeks ago. I think a
8 couple of days ago we received a letter from the
9 Applicant's attorney that indicated that they would not be
10 appearing this evening, and again, renewing their argument
11 that some form of agreement had been made that a decision
12 would be put off indefinitely by this Board.

13 CHAIRMAN MORDAS: Okay.

14 MR. MOGEL: You can go ahead if you want.

15 MR. MORDAS: All right.

16 We have carefully considered the record assembled
17 before us over approximately ten months, including but not
18 limited to the submission accompanying the appeal prepared
19 by counsel for the Appellant dated March 20th, 2017, along
20 with its exhibits; the correspondence prepared by counsel
21 for the Appellant dated June 12, 2017, along with its
22 exhibits; the sworn testimony of Building Inspector Mary
23 Grass on June 22nd, 2017; a report by Town of Mamakating
24 Engineer Lawrence Paggi to the ZBA dated August 23rd, 2017,
25 based, in part, upon Mr. Paggi's visit to the subject

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2 property on or about October 21st, 2015, and again, on or
3 about July 13th, 2017; the correspondence of Ms. Halina
4 Duda, Regional Mine Land Reclamation Specialist for NYSDEC
5 dated December 22nd, 2015; comments from Appellant's
6 counsel, the public; and the eyewitness testimony of
7 several members of the ZBA during their visit to the
8 subject property on or about July 13, 2017.

9 On August 24th, 2017 the ZBA issued an interpretation
10 on the record of the term "extractive operations" which is
11 defined in the Zoning Code at Section 199-6 as follows.

12 Extractive operations: Any mining, quarrying,
13 excavation or removal of earth products prior to processing
14 for the purpose of sale or other commercial purpose. Earth
15 products include but are not limited to topsoil, sand,
16 gravel, clay or stone.

17 The removal of topsoil and land disturbances directly
18 undertaken in connection with the construction of a
19 building for which a building permit has been issued, or
20 the development of a site or subdivision in accordance with
21 an approved plan are activities excluded from this
22 definition.

23 The Board was asked and did, in fact, interpret the
24 meaning of this section as follows.

25 Although the removal of topsoil and land disturbances

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2 directly undertaken in connection with the construction of
3 a building for which a building permit has been issued, or
4 the development of a site or subdivision in accordance with
5 an approved plan are activities excluded from this
6 definition. The terms "building permit" and "approved
7 plan" mean current, valid, existing and unexpired building
8 permit, and current, valid, existing, unexpired approved
9 plan.

10 Site plan?

11 MR. MOGEL: Plan.

12 CHAIRMAN MORDAS: The Board was asked to delay issuing
13 a decision upon the Appellant's appeal of the January 20th,
14 2017 determination of Mary Grass in order to obtain a
15 response to Appellant's FOIL request. A subsequent
16 adjournment was granted due to conversations had with
17 representatives of the Planning Board and ZBA at a meeting
18 held on or about October 24th, 2017.

19 It is uncontested that the building permit for the
20 project expired on or about November 12, 2014. It is
21 uncontested that the approved site plan for the project
22 expired 18 months after its approval, which approval was
23 granted no later than October 22nd, 2013.

24 The Board further finds that based upon the
25 observations on site of the Town engineer and the

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2 admissions of Applicant through counsel, that land
3 disturbances have extended beyond those approved pursuant
4 to the expired site plan for the subject property.

5 Consequently, I would call for a motion upholding the
6 determination of Building Inspector Mary Grass dated
7 January 20th, 2017 with regard to 14 Shannon Lane in the
8 Town of Mamakating, Tax Map Section 12-1-20.

9 Any discussion or ...

10 MR. MOGEL: You're calling for a motion. There's no
11 motion on the table. If anybody wants to discuss.

12 CHAIRMAN MORDAS: Any of you want to discuss this
13 further before I ask for a motion?

14 BOARD MEMBER FINDLEY: No.

15 CHAIRMAN MORDAS: Okay.

16 BOARD MEMBER DAWKINS: "Valid permit," that presumes
17 that it's been paid for and all the payments are
18 up-to-date.

19 MR. MOGEL: Oh, yes.

20 BOARD MEMBER DAWKINS: Thank you.

21 So are you making the motion?

22 BOARD MEMBER FINDLEY: I'll make a motion. Can I make
23 a motion?

24 CHAIRMAN MORDAS: Sure.

25 BOARD MEMBER FINDLEY: I make a motion.

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2 BOARD MEMBER DAWKINS: I'll second.

3 CHAIRMAN MORDAS: All in favor?

4 BOARD MEMBER RAMPE: Aye.

5 BOARD MEMBER DAWKINS: Aye.

6 BOARD MEMBER FINDLEY: Aye.

7 BOARD MEMBER MORREALE: Aye.

8 CHAIRMAN MORDAS: Aye.

9 (The motion was approved and carried.)

10 CHAIRMAN MORDAS: All right. Okay. And the vote
11 basically is to deny the appeal.

12 MR. MOGEL: You're upholding the determination of Mary
13 Grass.

14 CHAIRMAN MORDAS: Upholding the determination of the
15 stop work order issued --

16 MR. MOGEL: Not the stop work order. The January
17 20th, 2017 determination.

18 CHAIRMAN MORDAS: Okay.

19 BOARD MEMBER DAWKINS: Of what it means, what
20 extractive operations are.

21 MR. MOGEL: Well, there was an interpretation as to
22 what it means. And then basically, pursuant to that
23 interpretation, its application to this --

24 CHAIRMAN MORDAS: We're upholding the stop work order.

25 MR. MOGEL: Well, there's no stop work order. That

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2 wasn't at issue. The stop work order from 2015, if you
3 recall, I mean there wouldn't even be jurisdiction here.
4 If the appeal was made of that stop work order it wouldn't
5 have been made within the applicable time.

6 If you see, I see you're pointing out in the
7 application that it indicates an appeal of a stop work
8 order. If you see, the relief request, Miss Thomas seeks
9 an interpretation of various sections of the Town of
10 Mamakating Zoning Law which are identified as alleged
11 violations in the stop work order dated October 21, 2015
12 and the Notice of Violation dated October 23, 2015.

13 Basically, these applicants were before this Board
14 back in 2016 after the stop work order. In essence, the
15 Board told the Applicant that they were upholding the stop
16 work order, in part, because there was no prejudice to the
17 Applicant. The Applicant had already ceased working. So
18 we just simply upheld the stop work order at that point and
19 the application was over.

20 The application, the newer application that was
21 submitted on March 20th, 2017, was specifically for an
22 interpretation of the extractive operations and an appeal
23 of the determination in the January 20th, 2017
24 determination by Mary Grass that the activities that were
25 going on on that property were, in fact, mining.

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2 CHAIRMAN MORDAS: Okay.

3 MR. MOGEL: So August 24th was the interpretation and
4 this evening is the appellate decision, the upholding of
5 Mary Grass' determination of January 20th.

6 CHAIRMAN MORDAS: Okay. I'm comfortable with the
7 vote.

8 BOARD MEMBER FINDLEY: I'm good.

9 CHAIRMAN MORDAS: Good. Okay.

10 MR. MOGEL: No one's asking for an amendment of the
11 vote based on anything that I've said?

12 BOARD MEMBER FINDLEY: No.

13 CHAIRMAN MORDAS: Okay. Thank you for that
14 explanation, Mr. Mogel.

15 (Time noted: 7:19 p.m.)

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REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings in the matter of Amy Thomas, to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.



ROSEMARY A. MEYER

Date Transcribed: February 19, 2018

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