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All correspondence must be sent to Rockland County Office

January 15, 2020

Town of Highlands
Zoning Board of Appeals
254 Main Street
Highland Falls, NY 10928

Re.: ZBA Application of D. Kopald (Interpretation)

Dear Chairman Jannarone:

The above referenced application to the Zoning Board of Appeals of the Town of Highlands is scheduled for a Public Hearing on Wednesday January 15, 2020 at 7:00 p.m. in the Town Hall. Please accept this written submission in opposition to the Kopald application.

FACTUAL & PROCEDURAL BACKGROUND

This office represents Mr. David Tonneson, Mrs. Deborah Tonneson and their daughter, Ms. Jaidin Paisley Tonneson, as the owners of a parcel of real property consisting of 13.9+/- acres, located on Hemlock Street, in the Town of Highlands, Tax Map ID 11-1-1.52 (hereinafter, the subject property). On May 23, 2019, the Tonneson Family purchased the subject property from Ned Kopald and the Estate of Jonathon Kopald for the purpose of constructing upon it a single-family home for Ms. Jaidin Paisley Tonneson. After purchasing the property an application for a building permit was submitted to the Town Building Department. Thereafter, a building permit was issued which permitted the installation of a building foundation and for related site work. Municipal approval was obtained for the installation of a septic tank and field to service the single-family home. The appropriate permits were issued by the Building Inspector for the placement of a modular home upon the foundation. They have also constructed an access driveway to the new home from Hemlock Street. As of today's date, the Tonnesons have spent considerable sums to perform this work and have made substantial improvements to the subject property in reliance upon the municipal permits issued by the Building Department of

the Town of Highlands. The Tonnesons submit that the building permits issued for the development of the subject property were lawfully and appropriately issued by the Building Inspector's office.

Ms. Deborah Kopald has filed an application with the Zoning Board of Appeals of the Town of Highlands claiming that the building permits were erroneously issued by the Town's Building Inspector for the development of the subject property. Although her application and submissions are difficult to decipher, it seems her main allegations are that the subject property does not have access to a public highway or street and therefore fails to comply with Town Law §280-a. Ms. Kopald also alleges that the Building Inspector should not have granted the building permits to Tonneson but instead should have referred him to the Town's Planning Board for site plan review and approval. Ms. Kopald further alleges a failure to comply with the "Erosion, Sediment and Drainage Control Local Law of the Town of Highlands", found in Chapter 101 "Erosion Control" of the Town Code.

Ms. Kopald is the owner of lands contiguous to the subject property and her property is located to the northwest at 88 Forest Hill Road (Tax Map ID: 20-2-5 & 4.1). Her property is situated uphill from the Tonnesons' lot.

As this Board is aware, Ms Kopald has previously commenced a CPLR Article 78 special proceeding against the Town and my clients, which is pending in the Orange County Supreme Court. She has also made application to the Appellate Division Second Department. The issues she has submitted herein for ZBA determination have previously been submitted to the Court in the above referenced actions. Accordingly, attached hereto as exhibits for this Board's consideration are Affidavits from the Article 78 action, as follows: Affidavit of David Tonneson, dated the October 24, 2019, with attachments (**Exhibit "A"**); Affidavit of Jonathan N. Millen, P.L.S., dated November 30, 2019, with attachments (**Exhibit "B"**); and; Affidavit of Bruce C. Terwilliger, dated November 26, 2019, with attachments (**Exhibit "C"**).

TOWN LAW §280-a

The subject property that the Tonnesons purchased in the spring of 2019 is contiguous and touches upon Hemlock Street. The subject property has 50 feet of frontage on the western terminus of Hemlock Street.

Annexed to the Affidavit of Jonathan N. Millen, P.L.S (Exhibit "B") as an attachment "B" is a copy of the Deed dated May 23, 2019 from the Kopald family to the Tonnesons, which contains a Schedule "A" metes and bounds legal description of the subject property. Please note that the land over which the "Right of Way" designated as "Poplar Street" is located is actually now owned in fee by the Tonnesons as set forth in the Deed. A field inspection of Poplar Street reveals it terminates along the south side of Hemlock Street.

Hemlock Street has been in existence and has been used by the public for many decades. Numerous homes have been constructed on both sides of Hemlock Street, presumably with municipal approval. Hemlock Street begins at the intersection with the south side of Franklin Street. From that point Hemlock St. runs south and west towards Poplar Street. Hemlock Street terminates where it meets the subject property of Tonneson. Hemlock Street is shown as having a 50 foot wide right of way on surveys and maps. Hemlock Street has a paved macadam surface with concrete curbs. It is improved with storm water sewer catch basins along the curb lines and there appears to be a sanitary sewer system constructed under the roadway. Utility poles are situated along the paved roadway servicing the many homes along Hemlock Street. It is expect there will be testimony at the public hearing before the Zoning Board of Appeals that Hemlock Street is presently and has been maintained by the Town for many decades and that municipal improvements have been made to the roadway.

The real property upon which Hemlock Street is constructed is owned in fee by the Town of Highlands. Attached hereto, as **Exhibit "D"**, is a copy of a Deed from Feith Realty, Inc. to the Town of Highlands, dated July 19, 1968, which transferred ownership of the lands consisting of Hemlock and Cherry Streets to the Town. Also included in Exhibit "D" is a copy of the "Offer of Dedication" made by Feith Realty, Inc. to the Town, dated December 13, 1967, and a letter of the NYS DOT, dated January 31, 1968, consenting to the dedication of these two roadways to the Town. The DOT engineer, Mr. Sinacori, notes that Hemlock Street has a right of way width of three (3) rods deeded to the Town. The final document in Exhibit "D" is, upon information and belief, the Town Clerk's minutes of July 19, 1968, whereby the Town Board accepted the Offer of Dedication of both Hemlock and Cherry Streets.

Based upon the foregoing, the provisions of Town Law Section 280-a are satisfied because Hemlock Street is a public highway or street. Even in the absence of the documentary evidence submitted establishing Hemlock Street as a municipally owned and maintained public highway, Hemlock Street is deemed to be a "Highway by Use" based upon the NYS Highway Law. Section 189 of the Highway Law, states:

Highways by use. All lands which shall have been used by the Public as a highway for the period of ten years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the town superintendent shall open all such highways to the width of at least three rods.

Hemlock Street has been in existence for many decades and has been used by the general public as a public roadway and highway. The Town plows the snow from it and otherwise maintains the roadway and provides for full public access upon it. Upon information and belief, municipal bonds have been issued in the past to fund improvements to the roadway and for the structures under the roadway. The right of way within which Hemlock Street is located is 50 feet in width, which exceeds the length of three rods.

Accordingly, there is no merit to Ms. Kopald's contentions. There has been full compliance with Town Law §280-a by the Building Inspector's issuance of the appropriate development permits for the subject property. It is clear that Hemlock Street is municipally owned and maintained. Additionally, Hemlock Street has been in existence for many decades as a Town maintained and publicly used roadway and accordingly is a "highway by use" pursuant to §189 of the Highway Law of the State of New York.

SITE PLAN APPROVAL BY THE PLANNING BOARD IS NOT REQUIRED

The modular home which has been constructed on the subject property is situated in the R-1 zoning district which permits the construction of a single family home as of right. The Tonneson family purchased this lot from the Kopald family for the purpose of constructing a single family home upon the subject parcel. The Tonnesons have not sought to subdivide the subject property to create additional building lots for the construction of multiple homes, or for any other purpose. As the Tonnesons merely made applications for building permits to construct a single family home, there was no necessity or requirement for the Building Inspector to refer the Tonnesons to the Planning Board. There is no requirement under NYS Town Law or the Town's code which requires site plan approval by the planning board for the construction of a single family home. A formal site plan is not required. Construction of a single family home is considered a Type II action under SEQRA.

Accordingly, there is no requirement under the code of the Town of Highlands nor under NYS Town Law which required a referral of the Tonnesons to the Planning Board for site plan approval. There is no merit to the contention of Deborah Kopald that Planning Board approval was required in this instance.

A PERMIT UNDER THE TOWN'S "EROSION CONTROL" LAW IS NOT REQUIRED

Chapter 101 of the Town Code is known as the Erosion Control Law which requires the issuance of a permit by the Planning Board for specified construction activities on land in the Town. Section 101-7(A) designates those activities which require a permit from the planning board. Section 101-7(B) designates those activities which are exempted from the permitting regulations of the Erosion Control Law. Section 101-7(B)(3) states as follows:

- B. The following activities are exempted from permit regulations: . . .
- (3) Excavations for the basements and footings of single-family houses and for septic tank systems, wells and swimming pools attendant to single-family homes;
- . . .

Since the Tonnesons merely sought and obtained permits for the construction activities associated with the improvement of the subject property with a single-family home, by the express provisions of Chapter 101 of the Town Code no such permit is required. This makes

perfect sense because, as indicated previously, under SEQRA the construction of a single-family home is generally considered a Type II action, with negligible expected environmental impacts.

Ms. Deborah Kopald has alleged that the Planning Board should have been involved in this matter and that the Tonnesons were required to submit an erosion control plan before cutting trees, performing site work, excavation and constructing their single family home on this lot. Ms. Kopald alleges that the Town of Highlands' code requires an erosion control plan for the erection of a single family home. As indicated above, the code explicitly exempts from the Erosion Control provisions construction activities associated with the construction of a single family home on a buildable lot. Ms. Kopald is mistaken concerning such a requirement. Erosion control plans are generally required as part of the subdivision approval process of land in anticipation of construction activities. It is also generally required for commercial site plan approval. However the code does not indicate any requirement for extensive erosion control plans and planning board approval before the issuance of building permits for a single family home on a single lot.

CONCLUSION

It is respectfully submitted that this Board issue its findings/determinations that the building permits for the development of the subject property with a single family home were properly issued by the Building Inspector and that Ms. Kopald's application be in all respects denied.

Respectfully submitted,



Stephen M. Honan

SMH/bk
Attachments.