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June 16, 2020

Town of Highlands
Consolidated Zoning Board of Appeals
254 Main Street
Highland, New York 10925

Re: ZBA Application of D. Kopald (Interpretation)

Dear Chairman Jannarone:

The above referenced application to the Consolidated Zoning Board of Appeals of the Town of Highlands and Village of Highland Falls (ZBA) is scheduled for a continued Public Hearing on Wednesday, June 17, 2020 at 7:00 p.m. This Public Hearing was opened on January 15, 2020 and at the request of the applicant has been adjourned and continued until the present time. The applicant has now submitted amended and supplemental documents to this Board in support of her application and has also submitted the letter of her attorney, Richard Golden, Esq., dated June 8, 2020, which consists of twenty (20) pages. The arguments the applicant now submits are essentially the same ones that were before this Board on the January 15, 2020 ZBA Public Hearing. Accordingly, I respectfully submit for this Board's consideration my prior letter to this Board, dated January 15, 2020, with the Exhibits A-D annexed thereto (This prior submission covered the issues of access to the premises by a Town road; Site plan approval not required; erosion control plan & permit not required). Rather than reiterate the positions set forth in my January 15, 2020 submission, I will use this letter merely to address the new matters raised by the applicant and her counsel and to bring the Board up to date concerning this matter.

Scope of Review by the ZBA:

Counsel for Ms. Kopald urges this Board to consider "all of the issues" raised by the applicant in her numerous Article 78 actions before the Orange County Supreme Court. Counsel for Ms. Kopald does not list or indicate what those issues are specifically. According to Judge

Onofry's "Amended Decision, Order & Judgment", dated February 7, 2020, Ms. Kopald's numerous and myriad allegations were extensive and ever-changing. It is not clear what Mr. Golden is asking the Board to decide. He seems to be urging the ZBA to hear and decide matters which are outside the purview and jurisdiction of the ZBA. Of course that would be entirely improper for this Board to consider. Please note that on page 11 of Judge Onofry's "Amended Decision, Order & Judgment" in the first paragraph he directs the applicant to make application to the Consolidated Zoning Board of Appeals for the Town of Highland and the Village of Highland Falls and thereafter cites to the law concerning the jurisdiction of a Zoning Board of Appeals and specifically indicates "Town Law Section 267-a [4], [5], [b]; Town of Highlands Code Section 210-43 through Section 210-46..." Therefore, contrary to Mr. Golden's assertions, Judge Onofry directed Ms. Kopald to the ZBA so that this Board may determine those matters it is competent to hear and decide. Judge Onofry, by his Amended Decision, Order & Judgment, may not expand the jurisdiction of a ZBA. A Zoning Board of Appeals is a creature of the legislature under New York State Town Law and the Town of Highlands Town Board has determined to establish the ZBA as set forth in the Town of Highland's Code. To the extent this Consolidated Zoning Board of Appeals takes up this application, it must do so within the jurisdictional limits established by the Legislature of the State of New York and Town Board of the Town of Highlands.

No Unique Harm to Applicant:

Mr. Golden seems to indicate that this ZBA may take up matters outside of its jurisdiction in that he contends Ms. Kopald has suffered "unique injuries" (Golden Letter, pg. 9) as a result of the installation of the modular home on the subject parcel (i.e. SBL 11-1-1.52 consisting of approximately 13.9 acres). Mr. Golden correctly indicates that in order for Ms. Kopald to have standing to bring suit in a court of law, the simple fact that she is a near neighbor does not automatically create standing. She must show some sort of harm distinct from the community and different from members of the general public.

To that end, Ms. Kopald submits on this application the "Kopald Affidavit", dated June 8, 2020, consisting of five (5) pages. By this Affidavit she claims to have been "injured" by the development of the Tonneson property. She admits that her home is 282 feet away from the modular home installed on the Tonneson lot. However, what she does not mention in her Affidavit or other papers, is that her home is at a significantly higher elevation than the Tonneson property. Her property is situated at the top of the hill, on aptly named Forest Hill Road. She claims that the land clearing that was necessary for the installation of the Tonneson modular home is 180 feet from her home. So post-construction, there is now approximately 180 feet of dense brush and woodland between the clearing for the Tonneson house and Ms. Kopald's house. Ms. Kopald cannot show that any tree that may have been removed to allow development has affected her home which is more than 180 feet away and uphill from the Tonneson home. She claims, "*it is an obvious fact*" that the few trees removed to make way for the modular home will, "*cause my property to increase in heat and cause my cooling bill to go up in the summer.*" She further claims, "*[t]he excess light is annoying and intrusive visually*"

(Kopald Affidavit, paragraph 4). These claims are conclusory, are not supported and they are unreasonable assertions.

She also claims that now that the Tonnesons have completed their home on a small portion of the 13.9 acre plot, that “fewer animals traverse the area since the forest has been decimated.” (Kopald Affidavit at paragraph 6). No forest has been decimated as only minimal clearing of trees (many of which were diseased or dead) was needed to place the modular home. Ms Kopald’s statement is simply wrong. Her anecdotal claims without proof are not worthy of consideration by the Board. Her claim that she can now hear the rumble of trains and traffic on 9W is likewise self-serving. She also claims, without proof, that the Tonneson property generates excessive noise which disturbs her. Her property is in a residential subdivision and there are other subdivisions in close proximity and there are residential condominiums in the immediate area. All of these residences generate the typical sounds of suburban residential life.

Additionally, Ms. Kopald neglects to inform this Board that her next door neighbor on Forrest Hill Road was also developing his property at the same time the Tonnesons had the modular home installed on their property. Upon information and belief, her neighbor’s property is located immediately to the southwest of her lot and that property is owned by Mr. McCarthy. Upon information and belief, Mr. McCarthy constructed a stick-built house on the site at the relevant time that the Tonneson’s project was ongoing. Yet she attributes all of the noise she hears to the Tonneson property and not to construction site operated by her neighbor. It is commonly known that the construction of a stick-built house is more disruptive and noise generating to a neighborhood when compared with the installation of a modular house which is constructed off-site and merely installed on the site.

Ms. Kopald also claims that due to the completion of the Tonneson home she was required to, “*install expensive radiation blocking shielding on my windows that, although reducing the electromagnetic radiation in some of my rooms, has not eliminated the problem.*” She claims that the Tonneson development has caused “*wireless transmission signals that did not exist in my home previously now literally and negatively affects me in home.*” (Kopald Affidavit at paragraph 7). To the extent such signals are in or about her home, and are not something she is imagining, there is no indication that the Tonneson home is causing her complaints. It is more likely her existing neighbors have Wi-Fi systems in their homes or have recently upgraded their systems.

In summary, all of the alleged “unique injuries” that Ms. Kopald is alleging, if not imaginary, are not objectively provable. Accordingly, Ms. Kopald is not aggrieved and has no unique injuries caused or attributable to the reasonable development of the Tonneson lot and the installation of a modular home thereon. Therefore, Ms. Kopald lacks standing in any court of law to bring a legal action as she is not aggrieved and has failed to allege any cognizable harm distinct from that of the community. She is similarly situated as any citizen in the Town of Highlands.

There is Compliance with Town Law 280-a:

With respect to the applicant's contention that the subject parcel has no access to a public highway or Town road, this Board is respectfully referred to my January 15, 2020 letter and Exhibit "D" attached thereto. Also, annexed hereto and made a part hereof, as Exhibit "1", please find a copy of a Town Board Resolution whereupon the offer of dedication of Hemlock Street (along with Cherry Street) was accepted by the Town Board by a vote of 5-0 on a motion offered by Councilman VanZetta and seconded by Councilman Yagel. Therefore, it is clear based upon my prior submissions of the deed and other documents, and a copy of the foregoing Resolution, that Hemlock Street is now and has been for many years, a Town Road. Hemlock Street abuts and touches the parcel in question and the parcel has a 50 foot frontage on Hemlock Street. Therefore, there is no merit to the applicant's contention in this regard and there has been full compliance with Town Law Section 280-a.

Affidavits Submitted by Applicant & Town:

The applicant also relies upon numerous Affidavits of Mr. Finkbeiner and Mr. Childs. Neither of these gentlemen are professional engineers. It appears that Mr. Childs is a forester and Mr. Finkbeiner is a surveyor, both having offices outside the state of New York. From my review of their Affidavits, I did not see any indication that they actually surveyed the premises in question or otherwise inspected the premises. To the extent they give opinions alleging various violations of law, they are simply not competent to give testimony in that regard. Both of these gentlemen seem to reach conclusions based upon their review of certain photographs and things provided by Ms. Kopald and others. It is simply unknown what they relied upon in reaching their opinions and accordingly these Affidavits are not probative of the issues in this application and should be disregarded by this Board.

On the contrary, the Building Inspector, Bruce Terwilliger is very familiar with the premise in question. Mr. Terwilliger previously submitted an Affidavit with respect to the underlying Article 78 actions in the Supreme Court. Mr. Terwilliger's Affidavit of November 26, 2019 is annexed to my submission to this Board of January 15, 2020 at Exh. "C". Mr. Terwilliger was on the site numerous times over an extended period of time and was intimately familiar with every aspect of the application, issuance of the building permits and the completion of construction. Mr. Terwilliger indicates that all permits were properly issued and the development complies with all aspects of the law. He confirmed that the local Fire Chief verified there is sufficient emergency access to the premises for fire apparatus. See also, the letter of the Fort Montgomery Fire District, by Chief Smith, dated September 6, 2019, to the Building Department verifying sufficient emergency access to the home (SMH Letter to ZBA of January 15, 2020 at Exh "C").

Newly Raised Issue:

The applicant raises a new issue alleging the necessity for a Storm Water Pollution Prevention Plan (SWPPP). A SWPPP is commonly required during the construction phase for major subdivision developments and commercial site plans. It is not required for the construction

of a single-family residence. The SWPPP is required on major construction sites to prevent or reduce stormwater runoff from entering into municipal storm sewer systems and/or into water bodies such as streams and lakes. With respect to the development of the modular home on the Tonneson parcel, there is simply no municipal storm sewer anywhere near the modular home. The modular home is surrounded by approximately ten (10) acres of woods and brush. Likewise, the site is on an incline proceeding up-hill to Forrest Hill Road where Ms. Kopald's house is located. Due to the pitch of the land, there are no streams or water courses, or lakes or ponds on or near the subject premises. Therefore there is no need for a SWPPP because there is simply no chance of run-off entering municipal storm sewers or streams or lakes. Any rainwater falling upon the site simply absorbs into the soil.

It seems that the Town of Highlands Code does not require a SWPPP for the construction of a single-family home. Town Code Section 164-7 (C) defines land development activities, and at Section 164-7(C)(3) states, "Condition C: stormwater runoff from land development activity disturbing between one acre and five acres of land during the course of the project, *exclusive of the construction of single-family residences* and construction activities at agricultural properties. (*emphasis added*).

Ms. Kopald's new claim that a SWPPP was needed during construction is specious. Under no circumstances or conditions can stormwater runoff ever flow up-hill from the Tonneson property to the Kopald lot on Forrest Hill Road. Therefore, Ms. Kopald is not aggrieved.

The applicant also claims that more than one acre of land has been disturbed. This allegation is made by Mr. Finkbeiner based not upon a survey that he conducted but rather photographs he looked at. It is unclear whether he was looking at photographs that may have been altered or if photograph review is an authorized and accepted method of accurate land surveying. As stated in the Affidavit of Mr. Terwilliger of October 31, 2019, which is annexed hereto as Exhibit "2", the disturbance on the property was only to the extent that was needed to install the foundation of the modular home and the septic field for the home. He also noted that there was no excessive clearing of trees on the property. It is important to note that Mr. Terwilliger as the B.I. was on the property on a regular basis. Erosion controls were installed upon the premises during the construction phase.

Ms. Kopald's Application is now Moot:

At this time, the Tonneson property is completely developed pursuant to lawfully issued building permits and the construction phase is at an end. Ms. Kopald's application before the ZBA seeks to stop construction. However, now there is no further construction to be enjoined. Although the application to the ZBA was timely filed in or about November 2019, Ms. Kopald has intentionally and without cause repeatedly delayed and adjourned the ZBA's hearing of her application. Her application was on the ZBA Agenda in December 2019 at which time a Public Hearing was scheduled for January 15, 2020. On January 15, 2020 the Public Hearing was

opened but Ms. Kopald refused to proceed and requested additional time to amend her application. She has sought serial continuances from the Board over the next 5 months until the present. During the winter months with no leaves on the trees Ms. Kopald observed and knew that the Tonneson project was moving forward to completion. Yet Ms. Kopald permitted the work to proceed without seeking an injunction or stay to safeguard her perceived rights. Ms. Kopald was content to see the project proceed to completion satisfied, it seems, to rely upon the ultimate success of her application before the ZBA. She intentionally delayed the ZBA Public Hearing in order to inflict maximum damage and injury to the Tonneson family when she planned for ultimate success before the ZBA. The unreasonable and intentional delay by Ms. Kopald has caused prejudice to the Tonneson family. Ms. Kopald's gamesmanship should not be rewarded by this Board. Accordingly, her application is now moot and is barred by laches.

In the case of Matter of Stockdale v. Hughes, 189 A.D.2d 1065 (3rd Dept. 1993), the petitioner neighbors unreasonably delayed in pursuing their opposition to the construction of an apartment complex. The Court determined:

We are persuaded by WAA's argument that petitioners' challenge to the issuance of the building permits is moot and barred by laches. It is well settled that where neglect in promptly asserting a claim for relief causes prejudice to one's adversary, such neglect operates as a bar to a remedy and is a basis for asserting the defense of laches (*see, Dwyer v Mazzola*, 171 AD2d 726, 727; *Matter of Taylor v Vassar Coll.*, 138 AD2d 70, 72-73), particularly in the area of land development (*see, Matter of Friends of Pine Bush v Planning Bd.*, 86 AD2d 246, 248, *affd* 59 NY2d 849; *see also, Matter of Sheerin v New York Fire Dept. Arts. 1 & 1B Pension Funds*, 46 NY2d 488, 496; *Matter of Eberhart v La Pilar Realty Co.*, 45 AD2d 679, 680).

189 A.D.2d at 1067. See also, Vanderwouds v. Post/Rockland Assoc., 152 A.D.2d 702 (2nd Dept. 1993).

Kopald's Harassment of the Tonneson Family Continues:

During the recent lock-down for Covid-19 pandemic purposes, Mr. Tonneson was performing minor work on the premises alone. He was constantly harassed by Ms. Kopald's repeated calls to the State Police and the Town Police alleging illegal activity on the premises. Apparently, upon information and belief, she alleged violations of the quarantine orders and alleged that work crews were on the premises performing construction work in violation of the Governor's Executive Order. Of course, all of these complaints were specious and false and designed to interfere with the Tonneson Family's quiet enjoyment of their premises. When the law enforcement investigations disclosed no violations whatsoever, Ms Kopald submitted an Order to Show Cause to the Appellate Division, Second Department in Brooklyn, New York, seeking various reliefs. Annexed hereto and made a part hereof as Exhibit "3", is a copy of Mr. Tonneson's Affidavit, dated May 14, 2020, which was submitted in Opposition to the Order to

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Show Cause for relief. She alleged that Mr. Tonneson and the Tonneson family were violating the Executive Order, were creating noisy conditions, and she made numerous other various unfounded allegations.

After Ms. Kopald received service of Mr. Tonneson's Affidavit, dated May 14, 2020, she withdrew her motion in the Appellate Division, with vows to return to Court at a later date. This information is imparted to this Board to advise your members of the on-going campaign of harassment by Ms. Kopald against the Tonneson family. The Tonneson family seeks only to be left in peace.

Thank you for your attention and consideration in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Honan', with a long horizontal line extending to the right.

Stephen M. Honan

SMH/drd
Attachments.