

**Organization River Area Council of Governments**

**Board Cooperative ZBA**

**Date and Time Wednesday, April 3 2013 at 7:30 PM**

**Place Town of Champion Offices Board Room (rear of building) 10 N Broad St, West Carthage NY**

**Contact [Chris Vargulick](#) Town Clerk Phone (315) 493-3240 Fax(315) 493-2900**

**Minutes**

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RACOG  
Cooperative Zoning Board of Appeals

TO: Members of the Co-op ZBA, T/Champion Board, T/Wilna Board, V/Carthage Board, Town/Village Clerks, Zoning Enforcement Officers, Timothy Farley, T/Champion Attorney, Mark Gebo, T/Wilna & V/Carthage Attorney and Planning Board Chairmen

FROM: Christina Vargulick, Cooperative ZBA Secretary

DATE: April 4, 2013

RE: Minutes from April 3, 2013

PRESENT: D. Austin, L. Haverstock, T. Kight and B. Shampine

EXCUSED: R. Blank

Chairwoman Kight called the meeting to order at 7:30pm. The roll was called.

Motion by L. Haverstock, seconded by B. Shampine to dispense with the reading of the March 6, 2013 minutes and to approve the minutes as presented. Ayes-4, Nays-0. Motion carried.

Chairwoman Kight summarized an application (Log #2013-1) for an interpretation of the zoning law for parcel no. 85.12-1-17 submitted by Lunco Corporation. The applicant is requesting an interpretation T/Champion Zoning Law relative to a stop work order issued on November 8, 2012 for a violation of Article 7; Section 710H - Zoning Permits; Alteration of Land Surface. The applicant maintains that the deposit of hard fill is for landscaping purposes and has continued for over 25 years. The Town alleges that the dumping of fill is an alteration of the land surface which requires a Town zoning permit.

Proof of notice having been furnished, the public hearing on an interpretation of the T/Champion Zoning Law was called to order at 7:31pm by Chairwoman Kight.

Chairwoman Kight, referring to the T/Champion Zoning Law, defined "landscaping" as "improvements to land, including but not limited to, the contouring of land, planting of flowers, shrubs, or trees, the use of decorative features, including sculptures, patterned walks, fountains, and ponds" and for "alteration of land surface" as "the grading, filling or excavation of land in connection with a site plan review use." T. Kight acknowledged the commonly accepted definition for "contour" as "the outline of a figure, body or mass".

Jason Bailey, Esq., Sheats and Bailey, PLLC, representing Lunco Corporation, submitted a letter dated April 3, 2013 and asked that it be read as part of the meeting (full text attached). T. Kight read the letter into the record.

Attorney Mark Gebo, Hrabchak, Gebo & Langone, appearing for the Town submitted a brief with attached exhibits (full text attached).

The following persons spoke in support of the Town's position:

Bruce Ferguson, 35087 Lewis Loop, reported that he had personally observed the dumping and stated that if the applicant had obtained the \$10 zoning permit both he and the Town could have avoided incurring legal fees.

Attorney Mark Gebo refuted a number of claims made in the letter submitted by the applicant's counsel. He stated that the ZBA has the sole responsibility to interpret the zoning law and to decide whether the actions of the applicant are defined as landscaping or alteration of land surface. He noted that the property had applied for a site plan review in 1985 and had been approved. He also noted that alteration of land surface for a site plan use requires a zoning permit (Section 710H). He advised the ZBA that the threat to sue the Town pending the determination of the application, as embodied in the letter submitted for the record from the applicant's counsel, has no bearing on the case. He also remarked that the applicant's prior non-compliance with the law does not imply permission or approval of the action by the Town.

The following persons spoke in support of the applicant:

Richard Thesier, 20181 Co. Rte. 45, reiterated that the issue was an interpretation of the law. He stated that he is not opposed to the dumping of hard fill and contouring of the land.

Michael Lundy, Lunco Corporation, stated that the proceedings were a waste of time and money. He alleged that the zoning law is vague and that the manner of enforcement is unprofessional. He urged the ZBA to overturn the zoning officer's decision.

All persons desiring to be heard, having been heard, the hearing was closed at 7:47pm.

The Board proceeded with their review. T. Kight reiterated the definitions of landscaping, contouring and alteration. She stated that contouring suggests outlining of existing surfaces while alteration is defined by a change. She noted that photographs submitted by the Zoning Enforcement Officer illustrate a sharp incline in the direction of a small stream. Based on the extent of the changes to the site, T. Kight concluded that the activity should be deemed an alteration of land surface and that the decision of the Zoning Officer should be upheld. L. Haverstock asked Mr. Lundy to clarify the location of the property boundaries and stream.

L. Haverstock stated that it is the responsibility of the Zoning Board of Appeals to determine the governing body's original intent. He examined the initial 1985 site plan review and approval and a 1987 permit allowing the deposit of hard fill. He stated that zoning permits have a maximum term of two (2) years. Mr. Haverstock noted that the applicant and his counsel have both stated that the activity has continued for over 25 years. Mr. Haverstock asserted that the continuous filling of an area over a 25 year period constitutes alteration of land surface not landscaping. L. Haverstock stated that based on the T/Champion Zoning Law that the decision of the Zoning Enforcement Officer should be upheld and that the applicant should be required to apply for and obtain a zoning permit.

D. Austin and B. Shampine expressed their concurrence with Mr. Haverstock's conclusions. B. Shampine questioned the Town's enforcement procedures.

The following resolution was offered by L. Haverstock, who moved its adoption, and seconded by D. Austin, to wit:

WHEREAS, the RACOG Cooperative Zoning Board of Appeals, at a meeting duly convened on April 3, 2013, reviewed the facts in an application (Log No. #2013-1) for an interpretation of the Town of Champion Zoning Law in regards to a stop work order issued to Lunco Corporation for failure to obtain a zoning permit for alteration of land surfaces; and

WHEREAS, said application requests an interpretation of Article 7; Section 710H; and

WHEREAS, the board held a public hearing, duly published and posted, on April 3, 2013; and

WHEREAS, at said hearing all who desired to be heard were heard and their testimony recorded; and

WHEREAS, all testimony has been carefully considered as to the definition of alteration of land surfaces and the intent of the law.

NOW THEREFORE BE IT RESOLVED, that the RACOG Cooperative Zoning Board of Appeals has determined that the deposit of hard fill on parcel number 85.12-1-17 is considered an alteration of the land surface; and

FURTHERMORE, the RACOG Cooperative Zoning Board of Appeals concludes that the decision of the Town of Champion Zoning Enforcement Officer, to issue stop work order to Lunco Corporation, was valid; and

FURTHERMORE, the RACOG Cooperative Zoning Board of Appeals has determined that a zoning permit is required.

The foregoing resolution was duly put to a vote as follows:

- L. Haverstock.....aye
- D. Austin.....aye
- B. Shampine.....aye
- T. Kight.....aye
- R. Blank.....absent

Chairwoman Kight informed Mr. Lundy that he needs to obtain a zoning permit from the Town.

Motion by D. Austin, seconded by B. Shampine to adjourn. The meeting adjourned at 7:57pm.

Christina Vargulick  
RACOG Cooperative ZBA, Secretary