

MINUTES OF THE ZONING BOARD OF APPEALS OF THE TOWN OF KINGSBURY

Minutes of July 22, 2021

MEMBERS PRESENT:

Henry LaFountain, Chairman
Brian Heasley
Katherine Henely
William Whipple
Scott Winchell

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BY:

MEMBERS ABSENT:

(Excused)

ENFORCEMENT OFFICER/ZONING ADMINISTRATOR:

Todd Humiston

TOWN ATTORNEY:

Jeff Meyer

Chairman LaFountain called the meeting to order at 7:00 p.m.

Roll Call of all Members and Officials.

Chairman LaFountain entertained a motion to approve the minutes from December 8, 2011.

ON A MOTION BY MR. WHIPPLE, seconded by Mr. Winchell, the minutes of the May 27, 2021, meeting were adopted, as presented.

AYES: 5

NAYS: 0

ABSTAIN: 0

MOTION CARRIED

Chairman LaFountain stated the Geer Road Solar Project have decided to table their application for this evening.

Chairman LaFountain opened the public Hearing and presented the first item on the agenda.

1. ELLSWORTH FARM LLC & DANIEL ELLSWORTH is appealing to the Zoning Board of the Town of Kingsbury from a Notice of Violation / Order to Remedy by the Zoning Administrator dated April 20, 2021, regarding 74 Bardin Road, Town of Kingsbury, Tax Map no: 137.-1-41. Documents are available at Kingsbury Town Hall, 6 Michigan Street, Hudson Falls, New York during regular business hours.

Chairman LaFountain introduced Mr. Dan Ellsworth, Ellsworth Farm LLC and Edward Fitzgerald, McPhillips, Fitzgerald and Cullum, LLP to address the Board.

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Attorney Fitzgerald stated he is representing Dan Ellsworth, D.E. Contracting and Ellsworth Farm, LLC, President, and owner of Ellsworth Farming LLC. There are a few neighbors here tonight that would like to speak when the public comment is opened.

They are here tonight because the Enforcement Officer issued a citation in May alleging that certain activities were occurring on the property that are not allowed under the Zoning Code. We are here to appeal to you for a reversal of that determination.

Mr. Fitzgerald stated it is important to note we are not attacking the Enforcement Office or his intentions. We are simply saying the facts that he is basing his decisions on were not 100 % of what is going on at this location. Mr. Ellsworth purchased the farm in 2019 from Mr. Vaughn and the Vaughn Farm. When he bought the farm, he formed Ellsworth Farm LLC. This company took over the title to the land. Mr. Ellsworth has his own existing contracting company DE Contracting Inc for twenty (20) plus years. This company took over operations of the farm. The major benefit of that was he could start right away on the farm.

DE Contracting Inc. is the operating company for the farm. This is similar to many operating businesses including farms. The fact that there are two entities involved with this should not be any problem with the zoning code.

DE Contracting Inc. employs everyone that is working on the farm. All equipment that is being stored on the property is being used in some way for farm operations to some extent.

Attorney Fitzgerald stated one thing Mr. Ellsworth is not doing is running a paving business from the farm property even though he has some of his equipment stored there. What he does do is and may have been seen by the neighbor and Enforcement Officer, employees of DE Contracting Inc. coming and going from the property, that's true, because any employees of DE Contracting Inc. are there to do farming work. There are other employees of DE Contracting that do not go to the farm. They report to other job sites.

Mr. Ellsworth stated for the record he has sixty (60) employees. They have witnessed five or six cars there in a day. All of his equipment he owns is enough to line up from one end of Bardin Road to the other end. What he has at the farm location is a fraction of what he owns.

Attorney Fitzgerald stated, also some of the agriculture equipment is also being used off site and leaves the farm.

Attorney Fitzgerald stated a few things that are not going on at the property. There is not an office at this location, they do not meet clients at the property, not storing equipment that is not use in the agriculture operations.

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Attorney Fitzgerald stated for the record he has two affidavits from employees of DE Contracting Inc. Affidavits are from two of Mr. Ellsworth's long time employees.

Mr. Ellsworth stated farming is something he has always wanted to do. He grew up on a farm but went into the construction field. He has been in the construction field for 20 plus years and has finally saved enough money to do things he likes verses things he had to do.

After consulting with his lawyers and accountants it was decided to form Ellsworth Farm LLC and have DE Contracting Inc. run the operation of the farm.

Mr. Ellsworth stated he is not running his construction business from this property. All of his DE Contracting Inc. business is done at his office in Lake George, NY.

Wayne Kellogg, CEO of Warren Tires and Kellogg Racing, 122 Tracy Road, stated he believes Mr. Ellsworth's property is in tip top shape and is an asset to the community. Mr. Kellogg gave a description of all of the work that has been done on the property.

Tim Havens, Falls Farm & Garden, 1115 Dix Avenue, stated he is a customer of Mr. Ellsworth as well as Mr. Ellsworth is a customer of his. Mr. Ellsworth conducts business on the most professional level in anything he does. Mr. Havens stated he introduced Mr. Ellsworth to Blair Vaughn. Mr. Vaughn was looking to retire from farming.

John Dickinson, Ideal Dairy, stated has answered many questions for Mr. Ellsworth regarding the correct way to farming and helping him out.

Blair Vaughn, Bardin Road, stated he feels Mr. Ellsworth is being singled out.

Chip Doty, 111 Dean Road stated he agrees with Tim Havens. He thinks this is opening a big pandora's box.

Attorney Meyer stated the Board should give the Enforcement Officer a chance to explain his reasoning for the violation and what he saw. Ultimately what this Board is being tasked with is to affirm the Enforcement Officer meaning you agree with his interpretation of the Code, you agree with the facts as he stated them.

Attorney Meyer stated he agrees with Mr. Fitzgerald that you cannot get hung up on the names or the entities of Mr. Ellsworth. This Board is looking at the use only and what is going on at this location.

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Mr. Humiston stated he received a complaint that Mr. Ellsworth was running a commercial paving business at this location. There is no debate that Mr. Ellsworth is running a farm, no debate he uses his construction equipment on the farm, also there is no debate he uses that equipment on his commercial jobs. It is clear that our Code does not allow that equipment to run a construction business in that zone. It is Mr. Humiston's interpretation and belief that this is not a home base business as Mr. Ellsworth doesn't live there as the owner of DE Contracting Inc. Mr. Ellsworth also said he has an office in Lake George, but when I sent the notices to this address it was sent back as unclaimed. Mr. Humiston questions if there is still an office in Lake George. The complainant provided pictures of the vehicles that show the employees from the farm and then paving at different locations, such as AngioDynamics and Stewart's Shops which would have nothing to do with agriculture.

Chairman LaFountain closed the Public Hearing.

Discussion ensued among the Board with questions addressed by the Applicant.

Motion by Mr. Ross, seconded by Ms. Henely and carried by a vote of 5 ayes to enter into Executive Session at 8:15 p.m. to discuss pending litigation. Motion by Mr. Winchell seconded by Mr. Whipple and carried by a vote of 5 ayes to go out of Executive Session at 8:50 p.m.

ON A MOTION BY Mr. Winchell to approve the interpretation that the property be used for Agriculture purposes and that a commercial paving business is prohibited.

1. Find that DE Contracting, Inc. is no longer operating a commercial paving business on property.
2. Find that DE Contracting Inc use at the real property located at 74 Bardin Road is primarily for Agricultural purposed.
3. Finding is conditioned on DE Contracting Inc. use of the property shall remain in pursuit of the Agricultural purpose.
4. No equipment shall be stored on the site exclusive/privately for off-site use and all equipment on site must be used in furtherance of and agriculture operation as its primary use.
5. Find that the existence of two separate business entities operating on-site is not a violation of the Code of the Town of Kingsbury.

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ROLL CALL VOTE

Hank LaFountain, Chairman - Aye
Bill Whipple, - Aye
Brian Heasley - Aye
Katherine Henley - Aye
Scott Winchell – Aye

ON A MOTION BY MR. WINCHELL, and seconded by Mr. Heasley with all members approving the meeting was adjourned at 9:00 p.m.

Michelle Radliff
Secretary