

**Town of Halfmoon Zoning Board of Appeals
Minutes of May 5, 2008**

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:00 p.m. on Monday, May 5, 2008 at the Halfmoon Town Hall with the following members present:

Members: Chairman Hansen, Vice-Chairman Mr. Tedrow, Mr. Brennan, Mr. Rose
And Mrs. Jordan

Alternates: Mrs. Smith-Law, Mr. Burdyl

Secretary: Mrs. Mikol

Attorney: Mrs. Murphy-absent

Planner: Mrs. Zepko

Motion made by Mr. Rose to approve the minutes from the April 7, 2008 meeting and was seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen asked Mrs. Mikol to send an email out to the members with the additional information needed for the seminar she previously had sent to the Board.

Motion was made by Mr. Rose to open the public hearing for R.J. Valente at 7:26pm and seconded by Vice-Chairman Tedrow. Motion was carried.

R.J. Valente, 118 Button Road

Chairman Hansen opened the public hearing to the public and asked for any new information regarding RJ Valente's proposal. Chairman Hansen commented that the Board and the public covered a lot of ground some of it twice and asked the public for new information since the last meeting.

Mr. Koval, 97 Button Road commented that the only new additions he is aware of is the garbage trucks that were gone over the past several months and are now showing up again several days a week. The hours of operation have started at 5:30am and the workday seems to end later at night as well. RJ Valente told the Town that he would hydro-seed and also do some landscaping. Two weeks ago RJ Valente had someone spread some grass seed by hand and threw down some hay. The hay blew away and there has been no attempt to fix that or plant any trees or any kind of foliage since then. The road is back to the same condition it had been with stone and mud and when the mud dries it will become sand and when the wind picks up it will come my way and to the neighbors as well. There is an increase of traffic due to Brookwood Road being closed. People don't know the road and the condition of the road and they are driving very fast going through there, its dangerous. RJ Valente has not honored anything he has said to the Town thus far with regard to working hours and landscaping. It is very obvious that RJ Valente will never listen to the Board. He does what he wants when he wants to and he has been for quite some time now and that will never change.

Chairman Hansen asked the neighbors if they have been keeping a log of ongoing activities so they could submit it to New York State Department of Environmental Conservation (DEC). Chairman Hansen commented that most of these comments are Mining Permit violations and DEC should be made aware of them.

Mr. Koval commented that DEC doesn't care; they don't have enough manpower to baby-sit RJ Valente. Mr. Koval is told by DEC that once it hits the Town's Road it's the Town's problem. There is no satisfaction from DEC or the Town. Mr. Koval called DEC 2 weeks ago about other DEC violations and they said they were working on it. There is no one backing the neighbors up on this issue not the Town not DEC. Mrs. Zepko commented that she has been in contact with the Division of Water at DEC regarding this site since these issues have been going on. They were required to write a SWPPP which was due by May 15th and RJ Valente asked for an extension from DEC, which was granted. Mr. Koval commented that the SWPPP (Storm Water Pollution Prevention Plan) is something that is completed before a construction project starts not 3 months after the project is completed and trying to get a C.O. In the meantime, Mr. Koval, his neighbors, and the stream are suffering and RJ Valente does what he wants. Per Mr. Koval, his neighbor, Mr. Schramek was threatened by DEC not to touch the streambed until he had all the permits needed and was to be completed by October 1st because it's a fish hatchery. RJ Valente is destroying the environment and there have been so many violations at his site, which is being looked over by DEC.

Mr. Koval commented that RJ Valente is not supposed to be bringing debris back to the pit, however, he is and it's being dumped on the back hill near the additional parking area. Mr. Koval notified DEC and they are not doing anything about it. Mr. Koval calls the Town about the hours of operation, the Town sends RJ Valente a letter, the Town issues some warnings, RJ Valente is in compliance for a while and then it starts again. Why does the Town have laws if they are not enforcing them? Everyone else gets violation notices or tickets RJ Valente gets a warning.

Chairman Hansen asked Mr. Koval whom he is talking to at DEC and suggested that he get a hold of an ECO (Environmental Conservation Officer) or go to the State Representative and file a complaint with them. Mr. Koval commented that all the layers of nonsense that the neighbors have to go through are there. The layers of enforcement are there for a reason and for some reason he can dump millions of tons of earth into the stream, dump crap off the embankment and gets away with it. Mrs. Zepko commented that RJ Valente did receive fines regarding problems they have on the site as related to stormwater issues and there were other fines regarding violations as to the haul road as well. The plan to correct the basin and the problems they have with that is what RJ Valente got an extension for. Mr. Koval stated that these are the fines and violations that Mr. Marotta (a representative of RJ Valente who attended previous ZBA Meetings on this application) said he knew nothing about at the last meeting.

Mr. Koval asked if someone in Town handles SWPPP's now? Mrs. Zepko said that the Town in January passed a Local Law relating to stormwater which are on file at the Town Hall, however, the site being a Mine as well as being approved prior to the passing of those laws is not under jurisdiction of those laws. Mrs. Zepko is the Stormwater Management Officer for the Town of Halfmoon however; it's not under the Town's jurisdiction, unfortunately, with this site at this point. Mr. Koval asked if it has been determined whether its part of his Mine Permit, it has been the bone of contention all along. Mr. Koval is told one thing from the state and another thing from Valente and another thing from the Town. That was the big point of this meeting. RJ Valente was supposed to have all this information and he is not even here at the meeting tonight. RJ Valente is just stringing the Town along, the statute of limitations is running out for a lawsuit against RJ Valente and nothing is getting done.

Mrs. Zepko commented that she was advised by DEC that this was part of their jurisdiction. Mr. Koval asked if that was in writing, Mrs. Zepko commented no it was via a phone call with Mr. Bill Lupo, Division of Water Region V. That conversation was prior to any variance request. Mr. Koval asked that when the original approval was granted and then sent back, wouldn't that make it under the SWPPP process? Mrs. Zepko replied it was done prior to the passing of the Local Law.

Chairman Hansen commented that there has been no response from RJ Valente. Mrs. Jordan commented that it was also her point at the last meeting that it's at RJ Valente's advantage not to be here, not to give the information we seek because they just continue on as normal. Vice-Chairman Tedrow commented that the Board could act given the information and the understanding that the Board has as Chairman Hansen outlined at the last meeting of the Board. Vice-Chairman Tedrow further explained that the Board has an application for an extension or enlargement of a non-conforming use and based on the information in hand now there are uses there, including the office, the servicing of some vehicles from off site, and the storage of vehicles not involved with the mine; these are not pre-existing uses and therefore this Board cannot approve them as an expansion of a non-conforming use. The Board is in a position where we could deny the application on that basis. Mr. Rose agreed with the statement made by Vice-Chairman Tedrow.

Chairman Hansen asked if anyone in the audience had any further comments? No one chose to speak.

Motion made by Vice-Chairman Tedrow and seconded by Mr. Brennan to close the public hearing. Motion was carried.

Mr. Rose commented that he couldn't find any basis for the extension of the existing use in the record or what the applicant has shown to the Board. A motion should be made at this meeting right now to deny the existing non-conforming use.

Mrs. Jordan wanted to point out that the building was originally not for office space it was just used for maintenance of trucks and had one bay and that's what they are claiming is a pre-existing use. They are proposing to extend it to the larger building; however, the larger building is much more than just for the maintenance of trucks.

Chairman Hansen commented that he doesn't recall that a strong argument was ever made on doing maintenance work even in the small building. Mr. Rose commented that on page 10 paragraph 3 of the minutes it does say that Chairman Hansen commented that the one-bay shack was being used for the maintenance of vehicles and Mr. Marotta agreed.

Mrs. Jordan commented that it was not used as an office. Mr. Rose commented that the distinction should be clarified for the record and in the motion. The basis for that extension has not been proved here. Chairman Hansen commented that it certainly wasn't the extent of maintenance that they are doing now and it is not likely that a minor repair would be done on the site without sending the truck out somewhere else to be repaired.

Mrs. Smith-Law commented that Mr. Marotta said it was their main office now where the girls work and they run all their businesses out of there and that there is a construction debris business and salting business, its hard to keep track of it all.

Chairman Hansen spoke with Mrs. Murphy twice today and she couldn't make the meeting tonight. However, in Mrs. Murphy's opinion the Board could deny the application on two grounds. One being RJ Valente didn't adequately justify the fact that they were pre-existing non-conforming uses. The other would be that RJ Valente didn't file a complete application, which is pretty obvious because the additional information they were requested to submit to the Board was not received. Mrs. Smith-Law commented that the application is incomplete, however, denying it on those grounds would only extend this process and the applicant would resubmit again.

Vice Chairman Tedrow commented that the stronger action is to deny it on the basis that it's not an extension of a pre-existing use or there are uses proposed here that are not expansions of pre-existing uses. Chairman Hansen asked Mr. Rose if that was his Motion. Mr. Rose was making a point but is now ready to make a Motion.

Motion was made by Mr. Rose to deny the request made by RJ Valente on the basis that there is no compelling evidence to justify the basis for granting the extension. Seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen commented that the issues are all valid however; they are not directly related to what the Zoning Board of Appeals has jurisdiction over. Basically RJ Valente couldn't support the fact that the new building had uses in it that they were conducting there before. The dust and things like that is DEC issues and someone needs to put DEC's feet to the fire on that. The neighbors might have to go beyond DEC to get that issue addressed.

Chairman Hansen suggested too that they go to the Town Board and put it on their agenda and see if they support you in going to DEC or beyond DEC to State Representatives to put pressure on DEC. It is true that DEC is understaffed and has been since Pataki was Governor and they laid off hundreds and hundreds of people. Mr. Koval asked what the next step is for the RJ Valente does it go to the Planning Board; does it go back to the Building Department? Chairman Hansen commented that he is not sure. The Zoning Board of Appeals does not have any enforcement powers. You, Mr. Koval, could have filed an appeal on the basis of issuing RJ Valente a building permit commented Chairman Hansen. Anybody that feels that they are being grieved by an action of the Town in issuing a permit for something can file an appeal. The Town is not required to notify you personally but the Law is set up that there is a statute of limitations on the time. Generally you would notice activity going on at the site indicating something you were aware of.

At this time, there was much discussion from the audience but they could not be heard, as they were not on the microphone. Chairman Hansen commented that when an applicant comes before the Board that is the end of it, how the decision is carried out is up to the Building Department or the Town Board. The decision of the Board is on file in the Office of the Town Clerk within 5 days of the hearing.

Mr. Rose commented that the discussion now is beyond the bounds of the Zoning Board of Appeals but based on what the Board heard tonight with the issue of the garbage trucks, trucks going out at 5:30am, the dust, the apparent lack of hydro-seeding, and the debris coming back and forth to the site. Would it be outside our capabilities to have Mrs. Mikol prepare a letter for our signature to Mrs. Wormuth explaining that this apparent lack of where it goes next needs to be answered and let the Town Supervisor drive it to the Building Department or Planning Board. Mr. Rose feels more comfortable leaving the applicants with at the least a path to a resolution tonight on their behalf. Chairman Hansen commented that they do have another path but the neighbors will have to pursue it directly.

First of all, most of the items mentioned are the DEC permit violations. They are directly in the DEC permit and the Town doesn't have direct jurisdiction over it. Someone has to get DEC to enforce them. Mr. Rose understands that point, however, the neighbors don't know what to do next or what the next step is. Mr. Rose didn't want to walk out tonight and leave this situation ambiguous to all parties. Again someone spoke from the audience and could not be heard because they were not on microphone.

Mrs. Smith-Law commented that the Board denied the continuance of a non-conforming use and most of the things we have had before came to the Board before construction began. The Board has a building that is up and is operating. Doesn't the Building Department have the right to shut them down? Chairman Hansen commented that the answer would have to come from the Town Attorney to the Town Board because it's up to the Town Board on what type of enforcement they want to take. Chairman Hansen commented that tomorrow during the day there is a Town Board meeting. During the meeting they have an open microphone session and the neighbors could attend the meeting and explain that the Zoning Board of Appeals denied RJ Valente at last night's meeting of the ZBA for an extension of a non-conforming use and you want to know what will happen now and what direction this will go in. Mr. Rose commented that a letter should be submitted to the Board so it's in the record for the meeting.

Motion made by Mrs. Jordan and seconded by Vice-Chairman Tedrow to adjourn the meeting. Motion was carried.

WHEREAS, an application was made to the Zoning Board of Appeals by R.J. Valente of 118 Button Road to change a three bay garage to a four bay garage and known as tax map number 279.-2-23.2; and

WHEREAS, a public hearing was conducted before the Town of Halfmoon Zoning Board of Appeals on March 3, 2008, at or around 7:00 p.m. during which it was requested that the applicant provide additional information based upon questions from the Zoning Board and comments from the public as to the activities occurring at the Button Road site; and

WHEREAS, despite the applicant failing to provide all of the information requested by the Zoning Board of Appeals and the attorneys for the Town of Halfmoon, the hearing was reconvened on April 7, 2008. Again, the applicant was unable to provide the information requested by the Zoning Board of Appeals and the Town Attorneys. Public comment was again received and the matter was adjourned to May 5, 2008 for the applicant to provide additional information; and

WHEREAS, the applicant failed to appear at the May 5, 2008, adjourn date and failed to provide additional information to the Zoning Board of Appeals or the Town Attorney; and

WHEREAS, the applicant submitted an application that requested a change from a three bay garage to a four bay garage which is outside the authority of the Zoning Board of Appeals; and

WHEREAS, the applicant put forth on the record their request for an extension of a pre-existing non-conforming use to enable them to obtain a permanent Certificate of Occupancy for the garage that was constructed in a manner that was not in conformance with the approved plans stamped by the Town of Halfmoon Planning Board; and

WHEREAS, the applicant stated on the record that the new building was being utilized for Corporate offices which were not at the site previously, that additional vehicles were now being stored at the site that were not related to the mining operations, and that repairs were being conducted on the site that were not done in the past; and

WHEREAS, the Zoning Board of appeals listened to the concerns as set forth by neighboring property owners; and

WHEREAS, the Zoning Board of Appeals considered if there was a preexisting use being extended or enlarged; and

WHEREAS, the Zoning Board of appeals determined that the applicant had failed to provide the necessary information requested; and

WHEREAS, the Zoning Board of Appeals determined that the use of the property prior to the construction of the new building was authorized pursuant to a Department of Environmental Conservation mining permit; and

WHEREAS, the Zoning Board of Appeals determined that the uses the applicant put forth are not directly related to the mining occurring at the site; and

WHEREAS, the Zoning Board of Appeals determined that this is not an extension of a preexisting nonconforming use as the mining was a conforming use and the new uses are not related to the mining; and

WHEREAS, the Zoning Board of Appeals determined that the proposed use would have an adverse effect on the physical or environmental conditions in the neighborhood; and

NOW, THEREFORE, IT IS RESOLVED AS FOLLOWS:

1. That the Zoning Board of Appeals hereby denies the application of RJ Valente dated 1/17/08 requesting an extension of a pre-existing non-conforming use and an enlargement from a three bay garage to a four bay garage.

Motion made by Mr. Rose and seconded by Mrs. Jordan to deny the application.

Role Call:

Chairman Hansen - aye

Vice-Chairman Tedrow – aye

Mr. Rose – aye

Mrs. Jordan – aye

Mr. Brennan – aye

Motion carried

Cc: R.J. Valente, Halfmoon Materials Group LLC
118 Button Road, Waterford, NY 12188

Mr. Joseph Zappone, ESQ.
6 Century Hill Drive, Latham, NY 12110

Mindy Wormuth, Supervisor
Steve Watts, Building & Development Administrator
Mary Pearson, Town Clerk
DM file

Cc: Minutes to Board Members

Respectively submitted by Denise Mikol, Secretary
Town of Halfmoon Zoning Board of Appeals