

**Town of Geddes  
Zoning Board of Appeals  
1000 Woods Road  
Solvay, NY 13209**

July 14, 2017

**Members Present:**

David Balcer- Chairman  
David Tortora  
Dominick Episcopo  
Councilor  
Vincent Scarantino  
Frank Smolen

**Guest Present:**

Don C. Doerr- Town Attorney  
George Panarities- Planning Board  
Mark Kolakowski – Town

Chairman Balcer calls the July 12, 2017 meeting to order, announcing time at 7:00 p.m. and ask that you please silence your cell phones.

All Members Present

Approval of the June 14, 2017 minutes

1<sup>st</sup> – Tortora

2<sup>nd</sup> – Episcopo

All in Favor

Opposed – NONE

Motion – Carried

Chairman Balcer states all matters heard by the Zoning Board of Appeals are in the form of a public hearing. Everyone who wants to be heard will be heard. Before speaking, we ask that you clearly state your name & address or the company you represent.

**NO NEW CASES**

**Adjourned Case # 615-** At the request of Cynthia Austin d/b/a Heavenly Glass of 106 Albernathy Street Liverpool, NY at 100 Stinson Street Syracuse, NY 13209 (T.M. # 018.-04-12.0) located in a Residential A: Single – Family Residential Zoning District, for a Use Variance to operate a stained glass studio to produce, sell and offer small class instruction for hobbyist.

Chairman Balcer states that he received an email from the Attorney Mr. Abraham asking to have the case adjourned until the August 9, 2017 meeting.

Chairman Balcer makes a motion to adjourn the case until August 9, 2017 meeting.

2<sup>nd</sup> – Smolen

All in Favor

Opposed – NONE

Motion – Carried

- **Appeal Case # 618** - At the request of Michael Kempisty of 1187 State Fair Blvd Syracuse, NY 13209 in regards to building permit issued at 1237 State Fair Blvd (T.M.# 019.-01-14.1) located in a Commercial C: Heavy Commercial Zoning District for an “ Interpretation” of the above – mentioned Zoning Code of the Town of Geddes as it relates to the Building Permit application issued at that address for a double sided billboard sign with the eastbound side being an LED digital face and the westbound side with a static face and up lights, specifically where it states” If the authorized sign has not been installed within 180 days from the date of issuance of the permit, then the permit shall expire, and a new application must be made for any sign work”.

Chairman Balcer received a correspondent 7/12/17 from an email from Weaver Law and reads the letter into record.

DRAFT



July 11, 2017

**VIA FACSIMILE (315.488.7583)**

Zoning Board of Appeals of the Town of Geddes  
ATTN: David Balcer, Chairman  
1000 Woods Road  
Solvay, New York 13209

Re: Public Hearing re: Public Notice 618  
**SUPPLEMENTAL AFFIDAVIT OF JACK RIBBLE**

Dear Chairman Balcer,

We represent KMG Properties, LLC (the "Company"), the owner of an LED billboard located on 1237 State Fair Boulevard, Tax Map No. 019.-01-14.1 (the "Billboard") which was constructed pursuant to the regulations found in the Article III, Section 240-19.2 (I-690 Billboard Overlay District) of the Town of Geddes Code. The Company holds a permit issued by the Town of Geddes (the "Town") dated February 23, 2016 (the "Permit"), a copy of which is annexed to the Affidavit enclosed herewith.

Based upon the initial public hearing held on June 14, 2017, we understand Mr. Kempisty asks the Zoning Board of Appeals (the "ZBA") to hold Article VII (Signs) Section 240-39(C) of the Town of Geddes Code (the "Code") applies to the Permit, and to further hold the Permit expired and is no longer valid based on the assertion the Billboard was not completed within the time period required thereunder. Section 240-39(C) states that "[i]f the authorized sign has not been installed within 180 days from the date of issuance of the permit, then the permit shall expire, and a new application must be made for any sign work. We maintain Section 240-39(C) is inapplicable to the Permit because Section 240-35(G) expressly prohibits billboards. Since a prohibited billboard cannot be an "authorized sign" under Section 240-39(C), the time restrictions placed on a sign permit under Section 240-39(C) cannot apply to billboards. This outcome is further supported by Section 240-19.2 of the Code, wherein the Town of Geddes expressly "recognizes that billboards are, by their nature, different in scope and purpose from other types of signage in the Town". Given the Town has expressly recognized the differences between billboards and other types of signs, it would be arbitrary and capricious to apply the same time frame for construction to both.

Article III (District Regulations), Section 240-19.2 (I-690 Billboard Overlay District) of the Code regulates the construction of billboards in the Town. Since Section 240-19.2 is silent as to how long a permit to construct a billboard remains valid, and Section 240-39(C) cannot apply for the reasons set forth above, we maintain the general standards of Article IX (Administration and Enforcement), Section 240-48 (Building Permits) govern. Section 240-48 provides that "[i]f no substantial construction has started on a

project for which a building permit was issued within one year of the time of first of first issuance, then the Code Enforcement Officer shall revoke the building permit and require that a new permit be issued for any subsequent activity”.

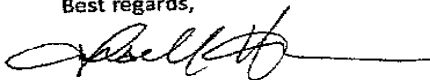
That said, regardless of whether a permit holder has six (6) months or one (1) year to complete a permitted project, a permit holder acquires a vested right in a permit by demonstrating a commitment to construct the permitted structure by “effectuating substantial changes and incurring substantial expenses” within the permit period. See *Town of Orangetown v. Magee*, 88 N.Y.2d 41 (1996). As maintained by Mr. Kempisty himself in *The Matter of the Application of Michael Kempisty v. Town of Geddes, et. al.*, filed in the New York Supreme Court, Onondaga County, Index No. 2017-539 (the “Case”), installation of a foundation of a permitted structure within the applicable period, by itself, is sufficient to establish a vested right in a permit. See Paragraph 39 of the Verified Petition filed in the Case<sup>1</sup>. In fact, according to Mr. Kempisty’s Verified Petition, even just *beginning* a foundation is sufficient to establish a vested right.

Here, as evidenced by the affidavit enclosed herewith, the Company completed installation of the steel post (including concrete) within six months of the date the Permit issued. In fact, all elements excepting installation of the digital face were completed within six (6) months of the date the Permit issued – going well beyond initiation and completion of the installation of a foundation as maintained by Mr. Kempisty to be sufficient. Accordingly, the Company acquired a vested right in the Permit within one hundred eighty (180) days; expiration of the 180-day period cannot affect the Permit. Mr. Kempisty would be barred by principles of judicial estoppel to maintain otherwise.

Therefore, we, again, respectfully request the Zoning Board of Appeals deny Mr. Kempisty’s current demand and rule that Section 240-39(C) of the Code does not apply to the billboard permit held by KMG Properties, LLC (the “Permit”), or, in the alternative, that despite the applicability of Section 240-39(C) to the Permit, KMG Properties, LLC acquired a vested right in the Permit prior to expiration thereof. Therefore, the Permit is valid and denial of Mr. Kempisty’s application is proper.

Please contact me with any questions or concerns in advance of the public hearing scheduled to be continued on Wednesday, July 12, 2017. Otherwise, I will see you at the hearing.

Best regards,



Lisa M. Weaver  
lweaver@weaverlawpllc.com

Enclosure

Cc: David Herkala, Esq. – Town Attorney (fax: 315-476-8002)

<sup>1</sup> As the Case indicates a copy of the Verified Petition was served on the Town, a copy has not been provided herewith, but can be provided upon request.

Chairman Balcer reads Mr. Ribble's Affidavit into record.

Michael Kempisty asks the Board to adjourn the case for him to have time to read the new letter from Weaver Law and Mr. Jack Ribble's Affidavit and to meet with the Town Attorney, Mr. Ribble and Weaver Law to see if an agreement can be reached.

Chairman Balcer mentioned that the Public Hearing is still open and if there are any comments or questions from the audience.

Lisa Weaver – Weaver Law Firm- an error has occurred on the 9<sup>th</sup> sentence of the July 12, 2017 letter it states "Index No. 2017-539" she states it should read "2010-2756" and she states the case on behalf of Jack Ribble and that they will maintain their position as stands.

Lisa Weaver also states that she cannot speak on behalf of her client with a joint meeting with Mr. Kempisty to discuss specifically. She will bring it to Mr. Ribble's attention and she cannot make a decision on his behalf.

Mark Kolakowski asks Michael Kempisty what he wants to rectify the situation if the interpretation goes the way Mr. Kempisty wants it to go.

Mr. Kempisty states that Mr. Ribble should go for a variance because he encroached visibly 980' from his bill board. So with that he needs a 20' variance and be approved so that allows Mr. Kempisty to get his digital bill board. Mr. Kempisty also states he wants to have a digital bill board on his property.

Mr. Kempisty asks the Board for an adjournment until the August 9, 2017 meeting.

Mr. Scarantino asks Lisa Weaver if Mr. Kempisty would like to meet with your client, does it have to be in writing "a formal request". Mrs. Weaver replies "Yes" she is certainly will entertain it.

Chairman Balcer makes a Motion to adjourn and keep the public hearing open to the next meeting.

2<sup>nd</sup> – Smolen

All in Favor

Opposed – NONE

Motion – Carried

Will someone make the motion to close the meeting?

Mr. Scarantino asks "what was the reason for the adjournment of Appeal Case # 615".

Chairman Balcer states that he received an email from the attorney asking for an adjournment.

1<sup>st</sup> – Scarantino

2<sup>nd</sup> – Episcopo

All in Favor

Meeting closes at 7:51p.m.