

**ONEIDA COUNTY BOARD OF ADJUSTMENT
MEETING MINUTES SUMMARY
APRIL 4, 2024 AT 11:00 A.M.
COUNTY BOARD ROOM, 2ND FLOOR
ONEIDA COUNTY COURTHOUSE**

Members Present: Harland Lee, Norris Ross, Mike Padzernik, Jeff Viegut, Dan Chronister, Steve Peterson, Guy Hansen (arrived at 11:05 a.m.)

Members Absent: None

County Staff Present: Karl Jennrich Director, Monique Taylor Administrative Support, Erica Sauer Program Assistant

Guests Present: Outside Council Greg Harrold, Attorney Joe Cincotta, Attorney Robert Gagan, Corporation Counsel Mike Fugle. See also guest sign in sheet.

Chair Lee called the meeting to order at 11:00 a.m. in accordance with the Wisconsin Open Meeting Law.

Wisconsin open meeting law statement.

Roll call of members.

Mr. Norris, “here;” Mr. Padzernik, “here;” Mr. Viegut, “here;” Mr. Chronister, “here;” Mr. Peterson, “here;” Mr. Hansen, “here;” and Mr. Lee, “here.” Mr. Peterson will not be participating in the hearing.

Approve the agenda.

Motion by Mr. Padzernik, second by Mr. Viegut, to approve the agenda. With all members present voting “Aye,” the motion carried.

Approve meeting minutes summary of January 18 and 25, 2024, February 15, 2024 and March 7, 2024. Motion by Mr. Padzernik, second by Mr. Ross, to approve the meeting summary of January 18, 2024. With all members present voting “Aye,” the motion carried. Motion by Mr. Viegut, second by Mr. Ross, to approve the meeting summary of January 25, 2024. With all members present voting “Aye,” the motion carried. Motion by Mr. Padzernik, second by Mr. Viegut, to approve the meeting summary of February 15, 2024. With all members present voting “Aye,” the motion carried. Motion by Mr. Viegut, second by Mr. Ross, to approve the meeting summary of March 7, 2024. With all members present voting “Aye,” the motion carried.

Appeal #24-001 – Consider a procedural/legal matter in Appeal #24-001 relating to Zoning Permit #2300797 concerning property described as being part of Government Lot 7, Section 33, T38N, R7E, PIN LT-446-1, Town of Lake Tomahawk. The board will consider the following procedural/legal issue:

- a. **Does the Oneida County Zoning Ordinance allow communication structures in Single Family residential Districts?**

The foregoing issue will be considered by the Board as a procedural matter only. The Board has offered the parties the opportunity to present a written legal position paper on the issue. Though the Board's meeting is open to the public, the public will not be afforded an opportunity to participate in the arguments to the Board by attorneys. The attorneys will be allowed 10 minutes for their presentations. The Board will then deliberate on the matter and arrive at a decision.

Chair Lee opened the floor for attorney presentations.

Attorney Joe Cincotta began his presentation by stating his legal opinion on and referring to his brief pertaining to Oneida County Zoning and Shoreland Protection Ordinance on communication structures in Single Family Residential Districts as well as Wisconsin State Statute 66.0404 Mobile Tower Siting Regulations. He further discussed that the 90 day approval timeline does not eliminate the right to appeal.

The brief submitted by Attorney Cincotta for this meeting is attached to the minutes as Exhibit A.

Attorney Robert Gagan began his presentation by stating his legal opinion on and referring to his brief pertaining to Oneida County Zoning and Shoreland Protection Ordinance on communication structures in Single Family Residential Districts as well as Wisconsin State Statute 66.0404. He further discussed his stance on the 90 day approval timeline that exists and that the application is approved because the 90 period had expired.

The brief submitted by Attorney Gagan for this meeting is attached to the minutes as Exhibit B.

Chair Lee spoke to the room pertaining to the materials provided to the board by the Attorneys over the course of the last meeting and this meeting.

The Board conferred concerning questions. Mr. Padzernick questioned the original application being submitted with the wrong zoning district of Forestry.

Attorney Joe Cincotta was allowed rebuttal. Stating his legal opinion on Wisconsin State Statute 66.0404.

Attorney Robert Gagan was allowed rebuttal. Referred back to the 90 day approval timeline being expired so the application should be deemed approved.

Chair Lee closed the floor for presentations.

The Board deliberated on the matter.

In response to a question from the board, Mr. Jennrich spoke to the department's usage of Oneida County Zoning and Shoreland Protection Ordinance 9.54 Mobile Tower Siting to approve/deny permit applications. Mr. Jennrich indicated that the reason for his administrative decision to proceed with the permit application process, without any further consideration, was his belief that the state statute 66.0404 took precedence over the Oneida County Ordinance 9.22(C)(3), which prohibits cell towers in property zoned Single Family Residential.

The Board conferred with outside counsel, Attorney Harrold, pertaining to Oneida County Zoning and Shoreland Protection Ordinance and Wisconsin State Statute. Attorney Harrold read County Ordinance 9.22(C)3 Single Family Residential District Administrative Review Use and 9.54 Mobile Tower Siting. Added further clarification on Wisconsin State Statute 66.0404.

Mr. Hansen spoke to the original issue with the Permit Application being submitted inaccurate, stating the wrong zoning district and the wrong county originally. Mr. Padzernik agreed with Mr. Hansen's statement.

Chair Lee spoke. Stating Oneida County Ordinance 17.04 Board of Adjustment, Powers and Duties of the Board:

17.04(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, interpretation or determination made by an administrative official, the Director or the Planning and Zoning Committee in the enforcement of §§59.69 87.30(b) or 145.20 Wis. Stats., or of any part of the Zoning, Floodplain or Private Onsite Wastewater Treatment System Ordinance.

Stating that there was an error made by the zoning director and staff from the beginning when deciding that Oneida County Zoning and Shoreland Protection Ordinance 9.22(C)3 and 9.54 was over ridden by Wisconsin State Statute 66.0404. Stated his opinion, based on arguments presented, that the Wisconsin State Statute does not over ride County Ordinance pertaining to Single Family Zoning.

Attorney Harrold spoke to the 90 day approval timeline and its relevance and importance to keep accountability for approval. Stated that the statute states its deemed approved after 90 days, however it does not say that an aggrieved person cannot appeal the approval. Further stating that Mr. DeMet and Ms. Farriss, who are aggrieved persons and hold the right to appeal the approval. Clarifying the steps of appeal to the Board of Adjustment and then to Circuit Court if so chosen. Referred to Wisconsin State Statute

66.0404(2)(f): A party who is aggrieved by the final decision of a political subdivision under par. (d) 2. may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

Motion by Mr. Lee, second by Mr. Hansen, that the Oneida County Zoning Ordinance 9.22(C)3 does not allow Cell Tower Communication Structures in Single Family Residential Districts, and as a result the permit issued, whether by County Zoning or by operation of law, is denied and the applicants appeal is granted. Roll Call Vote: Mr. Hansen "Aye", Mr. Ross "Aye", Mr. Padzernik "Aye", Mr. Viegut "Aye", Mr. Lee "Aye", the motion carries.

11:52 p.m. Chair Lee adjourned the meeting.

Harland Lee, Chair

Jeff Viegut, Secretary