

**VILLAGE OF ELM GROVE
BOARD OF APPEALS MINUTES
Thursday August 23, 2007**

1. Roll Call
Present – Chairman Ornst, Jacobson, Lorenz, Giampietro, and Book. Botcher excused.
Also Present – Village Clerk Mary S. Stredni, Zoning/Planning Administrator J. Balcom,
Assistant Planner Jen Ferguson, Attorney Danielle Bergner, Mr. and Mrs. Eddinger, and
Attorney Delano.
2. Minutes
Jacobson and Book moved and seconded to approve the June 21, 2007 minutes. Motion
carried.
3. Consider and act on whether to reconsider the May 24, 2007 decision of the Board of
Appeals regarding the review of a request for a variance by Thomas Eddinger, 2155 Lilly
Road.

Village Clerk Mary S. Stredni swore in Attorney Delano.

Attorney Delano stated his client's request for the Board of Appeals to reconsider the decision of May 24, 2007. Attorney Delano provided the Board with a handout titled 'Village of Elm Grove Board of Appeals Hearing Eddinger Matter Reconsideration August 23, 2007, 5:00 p.m.'. Delano stated that he believed the May 24, 2007 decision was incorrect as it was based on the determination that the playhouse is an 'accessory structure' and it is really a 'play facility' and therefore not subject to the Code of Ordinances. He also stated that he does not believe the Village of Elm Grove currently has an ordinance regarding 'playhouses'.

Attorney Bergner asked Delano whether he was familiar with the Findings of Fact for the May 24, 2007 hearing. Delano stated that he was.

Attorney Bergner asked Delano whether he was familiar with the March 22, 2007 memo from Austin Eich to the Board of Appeals containing excerpts from the Village Code of Ordinances defining structures and accessory buildings. Delano stated that he was familiar with that memo, but he was confused between the terms structures and accessory structures as both were used in the memo.

Attorney Bergner asked Delano to clarify the specific grounds he was setting forth on behalf of the Eddinger's in support of their request for reconsideration of the May 24, 2007 Board of Appeals decision. Delano stated that he believed the Board's May 24, 2007 decision lacked specificity as to what type of structure the playhouse was and what ordinance applied to the playhouse; that he did not believe the Village of Elm Grove ordinances regulated playhouses; that the playhouse is not an accessory structure; that there was not adequate discussion on this issue at the May 24, 2007 hearing; and that there were statements attributed to the former Zoning and Planning Administrator in a June newspaper article that he believed supported their position. Delano also complained of the long time period between the oral and written decision from the May 24, 2007 Board of Appeals hearing. He stated that the Eddinger's told him there was a lack of specificity in the oral decision and it was not clear to them.

Attorney Bergner asked Delano whether there had been any changes in circumstances since the May 24, 2007 hearing. She added that once a decision has been rendered by the Board of Appeals it is final; therefore there must be something on record to justify reopening

a case. Attorney Delano said that the June newspaper article was published after the May 24, 2007 hearing.

Giampietro asked Delano if there were any other grounds he wished the Board of Appeals to consider. Delano stated that he wanted the Board to consider a previous circuit court case involving the Village regarding a playhouse.

Book asked Delano if his client was presenting any new evidence for the Board of Appeals to consider. Delano stated that no new evidence was being presented. Delano added that the Eddinger's have new legal arguments but that the same facts exist as existed at the time of the May 24, 2007 hearing.

Delano stated that the Eddinger's have asserted all along that there are no rules in regard to their playhouse and the written conclusion of law from the Board of Review did not offer any guidance. The initial request for a variance was done because the village staff told them to request a variance.

Book asked Delano whether he was suggesting that the Board of Appeals cannot decide whether something meets the definition of accessory structure.

Delano stated that the Board could make such decisions but that he did not believe there are any rules applicable to playhouses in the Village.

Jacobson stated that the Board previously determined that the playhouse is an accessory structure and meets that definition in the Ordinance. The Board was given the task of whether a variance should be allowed and the Board found no hardship to allow the variance.

Attorney Bergner stated that the Board of Appeals was now to determine the procedural issue of whether to reconsider its May 24, 2007 decision.

Giampietro and Book moved and seconded to move into closed session at 5:22 p.m. pursuant to Wis. Stats. §19.85(1)(a) for the purpose of deliberating. Motion carried by roll call vote.

4. Move back into open session at 6:05 p.m.

Book moved to deny the applicants request to reconsider the May 24, 2007 decision of the Board of Appeals. Lorenz seconded the motion. Motion carried 5-0. Delano requested the Board's written decision by August 31, 2007. It was stated that he would receive the Board's written decision by that date.

5. Adjourn

Book and Lorenz moved and seconded to adjourn at 6:08 p.m. Motion carried.

Respectfully submitted,

Mary S. Stredni CMC CPM
Village Clerk