STATE OF WISCONSIN   **BOARD OF APPEALS**   **MILWAUKEE COUNTY**

Village of River Hills

IN THE MATTER OF THE APPEAL OF FREDERICK AND ANNE VOGEL REGARDING A FILLING AND EXCAVATION PERMIT ISSUED TO LINDA WRIGHT, 1777 W BRADLEY ROAD.

The meeting of the Village of River Hills Board of Appeals (the "Board") was called to order November 19, 2019 at 4:00 p.m. by Chairman Steven Spector, with Board Members David Melnick, Rosalie Gellman, Billie Smith, Karen Plunkett, and Alternate Don Daugherty present pursuant to a notice duly published and posted. A court reporter was present and transcribed the proceedings.

The order of business before the Board was the matter of the appeal of Frederick and Ann Vogel, 1805 W. Bradley Road from the decision of the Village Engineer of River Hills to approve the issuance of a Fill and Excavation Permit ("Fill Permit" or "Chapter 15 Permit") on November 7, 2019 to Linda Wright. Appearing before the Board were the appellants, Frederick and Anne Vogel ("Vogel) and their Attorney Joseph Cincotta; Linda Wright ("Wright") the party that applied for and was issued the Fill Permit and her Attorney Timothy Andringa (collectively "the parties"); and the Mustafa Emir the Village Engineer. In addition the Vogel's submitted a written Memorandum in Support of their Appeal on November 18, 2019 and Wright submitted a Response to the Vogel appeal on November 19, 2019. The Village Attorney submitted a Memorandum to the Board on November 18, 2019.
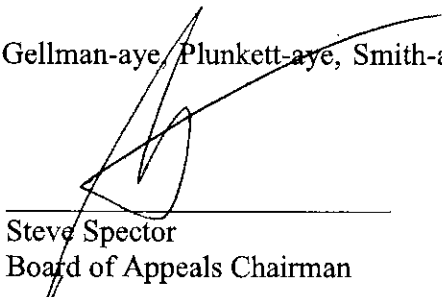
At the commencement of the hearing, the Village Attorney advised the Board that he was present at the hearing to provide legal advice to the Board. He reviewed the portion of his Memorandum to the Board that addressed provisions of Chapter 15 of the Village Code as it related to this Appeal advising that Chapter 15 of the Village Code provides that an appeal of the Village Engineer's decision to approve a Fill and Excavation Permit is before the Board of Appeals (Sec. 15.11). Specifically Sec. 15.11 (a) provides that it shall hear and decide appeals where it is alleged that there is error . . . . made by the Village Engineer in administering this ordinance.

The Village Engineer then presented his testimony regarding the decision to issue the Fill Permit. After his direct testimony he was questioned extensively by the Attorneys for the parties. All of his testimony as well as the questions and his answers were transcribed by the court reporter.

After the Village Engineer's testimony, Mr. Vogel presented his statement, then the Attorneys for the parties made statements to the Board as well. Attorney Cincotta stated that the Village Ordinance 2.40 was applicable and the Board had broad authority to decide the appeal. The Village Attorney stated that neither, Chapter 15 or Ordinance 2.40, had any provisions in them that referred to 2.40 being applicable to a Chapter 15 Fill Permit and that the Vogel's had commenced a lawsuit against the Village and Wright in Circuit Court that involves the applicability of Ordinance 2.40. He further advised that the Village has consistently interpreted Ordinance 2.40 as not requiring a Permit for the activities proposed under the Fill Permit issued to Wright.
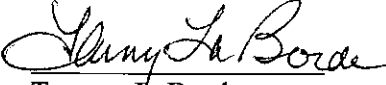
At the conclusion of testimony and having heard from the parties and the Village Attorney the Board conducted its deliberations in open session that were transcribed by the Court Reporter. After the Board had considerable discussion regarding whether the Village Engineer had committed error in his decision to issue the Fill Permit, the Chair asked if anyone was ready to make a motion. Moved by Rosalie Gellman and seconded by Billie Smith to affirm the Village Engineer's decision regarding the issuance of a fill/excavation permit to Linda Wright and to deny the appeal by Mr. and Mrs. Vogel as the Board finds no error by Village Engineer Mustafa Emir and do not believe that a permit under Ordinance 2.40 should be tied to a permit under Chapter 15.

Motion carried pursuant to roll call vote – Gellman-aye, Plunkett-aye, Smith-aye, Spector-aye, Melnick-nay.

Steve Spector
Board of Appeals Chairman

ATTEST:

Tammy LaBorde
Village Manager/Clerk/Treasurer

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