

May 17, 2007
Zoning Board of Appeals Minutes
Oswego Town Hall

Chairman: Greg Auleta
Board Members: Robert Baker, Timothy Anderson,
Debra Jaskula, Robert Dexter
Attorney to the Board: Kevin Caraccioli
Secretary: Marjorie Best

Call To Order:

At approximately 7:05 PM, Greg Auleta, Chairman OF HE Zoning Board of Appeals called the meeting to order.

Attendance:

Those in attendance were:

Greg Auleta, Chairman
Timothy Anderson, Member
Debra Jaskula, Member
Robert Dexter, Member
Kevin Caraccioli, Legal Advisor
Marjorie Best, Secretary

Absent was:

Robert Baker, Member

Acceptance of Agenda:

Greg stated we should accept the agenda as submitted. He said in the interest of fairness He asked that the Board approve a half hour of public comment under the consideration of Old Business. He would give the folks from United Group an opportunity to speak, and then ask for discussion from the floor.

Kevin stated for the record that there is a Court Reporter here, who has not been hired by the Town of Oswego to his knowledge, but may serve as a useful purpose in the long run. He stated this is the third public forum on this particular issue.

Approval of April 19, 2007 Minutes:

Greg asked if there were any questions or corrections to the minutes. There were none. Deb Jaskula made a motion that we approve the April 19, 2007 Minutes. Bob Dexter seconded the motion. All ayes. Motion carried

Old Business:

Application #2007-02 - United Group Development Corp. - Oswego College Suites - Area & Use Variance:

Greg said before we begin and before we set the clock, he wanted to make a couple of observations. One is to echo the commentary of Mr . Caraccioli, that we are now in our third meeting in which we have had discussion. I believe the total number of hours that we have in

terms of public discussion in the matter is well over 4 hours. The committee is in receipt of a variety of information - individual letters, petition, concerning objections to the proposal, and we are in receipt of a great number of letters in favor of the proposal. It should be noted for the record, that there has been considerable discussion by non residents of the town. He made one more announcement for the group. Tonight we hope to consider one of the issues before us which is the definition of whether or not the complex is a dormitory or apartments. The Board will not be in a position to consider the issue of the area variance, or the height variance. The reason is, we are not yet in receipt of a recommendation from the County Planning Board on a 239. On the advice of counsel, we have decided that we cannot consider that tonight.

Greg then turned the floor to United Development Group.

Jeff Smetana of United Development Group said there are a couple of things they had been asked to clarify. He introduced Craig Zogby from United, and David Clemenzi from Einhorn Yaffee Prescott Architecture and Engineering. Jeff said they are pursuing an additional driveway. It would go North from their property up to the access road. He said they submitted a letter of request of SUNY to allow an easement that would be to the benefit of the college, the project, and to the residents of the community. (Jeff pointed to the maps showing the driveway).

Greg said for the record, it should be noted that Mr. Smetana submitted a copy of that letter to the Board.

Jeff said there is also the question as to the height of the building, specifically how height is measured, and Dave Clemenzi is going to follow up on that issue.

Dave said the as the local zoning ordinance does not define how that is measured. He explained that when measuring their 4 buildings, and the lodge building. The State Building Code, along with model zoning regulations define the measurement of a building from the average grade of the front to the roof elevation. With that definition, with our 4 Typical buildings are 35 feet tall. That 35 feet is consistent with the height restrictions in zoning. As to the lodge building, which is a 4 story structure, again when measured in compliance with the New York State Building Code, is approximately 43 feet, when measured from the average grade to the to the midpoint to the roof. Dave said he sent a letter clarifying what he has stated.

Greg said the record should note that the Board is in receipt of that letter. It was addressed to Greg and he distributed it to the Board members.

Jeff Smetana said there was one final item he was asked to clarify. They have provided a section that they have taken a cross section from this point here (pointing to plans) on 104, which is the high point coming Westward on 104. They looked at the topography as well as the structures and vegetation. He pointed to markings in pink, if you were standing on 104 and looking Southwest toward the site. This would be the project site. He pointed to another plan and said it was a scaled down version. What it shows, there is an initial drop in elevation from this point on 104. This is the college maintenance building, depicting what the height would be at about 40 feet. It shows what the existing vegetation is, which there are 50 or 60 foot trees in there, and it shows where their buildings would be. We would cut some of the terrain a little bit, and this shows how it would look in the finished form. There are some existing homes, some large commercial structures in the area. There is some very mature growth from this vantage point. (again pointing to the drawings).

Greg asked if they were going to retain trees on the North side of the property. Jeff said yes. He said he talked to some of the neighbors about maintaining some of the screening here. He

also showed where there would be some clearing. The areas shown in blue looks like water, but it just swampy. There is tree growth in that area as well. It creates a nice buffer for the residential homes.

Greg thanked Jeff, and he said basically the conversation stated at 7:10 PM, and it is now 7:20 - he said by 7:50 we should be done. He asked if there was anyone who would like to address the group.

Donald Fitch:

He addressed Jeff by saying that in the beginning, he said people coming into Oswego will notice the project. Now he is saying it will be covered with trees. He also asked how many AI are going to be in there. Is there going to be an RA on each floor, and security cameras, or an RA and just one security camera? Jeff said to answer Don's first question, as you continue Westward on 104, the vegetation will create a screen. As to the AI, there will be one for every 30 or 40 students. Don asked how many on a floor. Jeff said there will be 32 students on a floor, so there would be one RA. Don also said Jeff mentioned a coffee shop or something like that. There will be a place for the residents to Get coffee and bagels in the morning, and they might do a little bit of entertainment on a Friday or Saturday, and the residents could have pizzas and subs.

Patty Tyrie:

First, Patty submitted an additional page of residents for the Petition she submitted at the last meeting. She said the day after the last meeting, she received a letter from the New York State Association of Towns. I had requested how to go about making sure that our town goes through the correct procedure when it comes to a variance request. We want to be sure that all the procedures go forth that Mr. Tyrie was reading that night. The Board would have to prove to the developer that all of these issues are adhered to. The burden of proof lies on the Board. We also want to make sure that the proper SEQRA process is done.

Kevin Caraccioli said there are two aspects of this issue. The site plan has been submitted, and the Planning Board has jurisdiction over that. We have jurisdiction over the interpretation of what this use is, and the area variance. With respect to an interpretation that would constitute a Type II Action, under SEQRA, and that is not generally an option that is reviewed that you would need an Environmental Statement or review on. With respect to the variance, an area variance dealing with height, there is what is called a Visual Impact Statement, which is part of the SEQRA process. This Board is going to undergo that exercise this evening. That, taking with whatever else we do, will be package up, coordinating with the Planning Board, will be sent to the County Planning Board, for their review under the General Municipal Law, Section 239. Then a comprehensive review is done by the County. Their review will then be turned back over to the Town Board, Zoning and Planning, and perhaps sometime next month there will be a final decision on all these issues.

Patty Tyrie said no decision will be made tonight until those things are done. Kevin said no decision on the area variance, the height issue. There are two issues - one is the interpretation of the Zoning Enforcement Officer's ruling that this use constitutes a dormitory. The applicant has suggested that their use is an apartment complex. That determination will undergo a discussion after the public hearing. If it is determined to be an apartment complex, that is permitted by right in that zoning district, and would not be in need of a variance. There is still the requirement for the area variance. That won't happen tonight. When the developers first submitted their application, it was Wayne's determination that it constituted a dormitory, and there were set back issues and height issues.

Greg Auleta said we are going to enter this into the record later on, but under Article 5,

Section C, under Board of Appeals, Subsection 2, Powers and Duties - "The Board of Appeals shall have all powers and duties prescribed by the Town Law and by this Ordinance, which are described as follows: (a) Interpretation. Upon appeal from a decision of an administrative official, to decide any question involving the interpretation of any provision of the Ordinance.

Tom Tesoriero:

Tom said the zoning officer has already made a determination that it is a dormitory, and that is what you are going to decide tonight where it is or isn't. He wanted to point out some of the things that have already been discussed at the last several meetings. One of which is on the blueprints themselves, it stated it as a dormitory. We asked the gentleman how they rent their 4 bedroom apartments, and they said they rent them a couple of different ways. He said they rent to a group of 4 - they sign some sort of bulk lease, then they sign individual agreements for each room. So if they sign them for each room, it's not only a dormitory, but a rooming house. Which he didn't know if a rooming house is permitted in the area. Also, it has been pointed out several times they are having AI Where else would you have an RA, except in a dormitory. He didn't know of an apartment building in the whole county that has AI They said if they have a disruptive student, they throw out that student, not the whole group of students. If you rent a house, and you have unruly people, you can't evict one person out of the whole house.

Amy D'Angelo:

She said she is a resident of Sterling. She wanted to comment on the previous individual that said apartment buildings are multi-unit housing. Multi-unit housing usually has to have separate utilities for each unit, unless all utilities are being paid for by the owner. What is the definition of a unit. A housing unit would contain a bathroom, living area, bedroom and kitchen facilities.

Greg said perhaps the applicant can respond to this. Jeff said the way the apartments are designed - dormitory residents share a common bath and common kitchen, In these apartments, this is a private living space, a private dwelling unit. They share a private kitchen, and a private bathroom. In other words, someone else could not come into this dwelling unit, and use the kitchen or bathroom. They are full dwelling units under the State Building Code, as it has a full service kitchen with a range, dishwasher, refrigerator, microwave, disposal, and there are 2 bathrooms, one being a handicapped and the other a regular bathroom. Amy asked about utilities. Jeff said the utilities are included in the rent. Residents can have their cable and internet in each of their individual bedrooms, as well as heating and air conditioning is included in their rent.

Deb asked Amy what her point was in being here. Amy said this area is familiar to her, and she goes through here all the time. She is concerned about the aesthetic impact on the development in this area. I look at these neighborhoods when I drive through them. She doesn't understand why this 50 acre parcel isn't. divided into housing. It would be a better use than commercial property. She doesn't see the need for this project in this area.

Jack Tyrie:

He asked if there would be an opportunity to address the variance when you make your determination.

Greg said we have devoted a considerable amount of time to this already. Discussion has covered a great deal of this area, and many of the concerns related to this area. He said at the close of the last meeting we had finished discussion. My inclination would be that discussion is finished, however, we will probably have a limited discussion when it comes time to

consider the issue. It is time to come to closure. The agenda calls for Public Comment at the willingness of the Board.

Jack said that Jeff has not presented at any point, the evidence to show that this project will not change the character of this neighborhood. It clearly will, It is going to endanger safety by adding 700 students who are going to be driving and walking in an area that has no sidewalks, and many sections have no lights. You will have people backing out onto 104 which is already dangerous. The parking lot at the end of Baylis Street is a commuter parking lot. The shortest distance from this project to that commuter parking lot is straight down Baylis Street. Right now, we see trees, but when they put up a 4 story building, every time he goes out of his front yard, he will see the traffic zooming down that street. He respectfully requested that they do what the Zoning Law says.

Jeff Smetana said some of those points will be discussed more at the Planning Board, but we have talked about the traffic and parking. Jeff pointed on the drawings to the commuter lots. These commuter lots - there are 25 spaces here, and 62 spaces here. They fill up by 9:00 or 9:30 in the morning, and they are difficult to get into. From this property to head down Johnson Road, the most likely path would be to head East on 104, and then head toward one of these lots. Our project is looking to promote the students leaving their cars here, and using the bus service.

Jack Tyrie:

Jack asked where did they get their information that says they are all going to park up there. Have you ever been on Washington Blvd. at 3:00, 4:00 or 5:00 o'clock when all the students are driving across campus to their apartments in the city. Now these students will be driving across 104, through Baylis Street, Franklin Street, and Draper Street. Jack told Jeff he is saying all this without any information to back it up.

Jeff said the traffic and parking is more of a Planning Board issue, and we will be addressing that with a traffic study.

Jerry Stepien:

He stated he lives on Franklin Avenue. He stated he has dealt with a lot of soldiers, and have dealt with a lot of avenues of approach. An avenue of approach is that these soldiers come from other areas." Johnson Road is a primary avenue of approach into Ontario Heights. That is a primary egress into our neighborhood. If Baylis Street is backed up, they'll go Franklin. If Franklin Street gets backed up, they'll go down to New Street, or let's go to Draper Street. I've seen soldiers, they get off work - what's the quickest way out. The quickest way out is the least amount of resistance. You people will have to protect our neighborhood - ingress and egress of 500 to 1,000 students on a daily basis - you will have to have the heart and soul to do the right thing. You are going to have soldiers, students if you will on bicycles, foot traffic, in cars, in trucks, and SUVs There is absolutely no respect. The traffic is bad now, but if you throw another 500 cars, it is going to be complete chaos. This is hogwash. The Sheriff's Department is no help. I guess I would have to direct traffic myself. Greg asked if there was a problem, who would you contact if you didn't contact the Sheriff. Your Supervisor is sitting right over there. Vickie said he could contact her, and she would call the Sheriff. Greg asked if Jerry was indicating this is a lawless town and county. Jerry said he has stood on Franklin Street and see two cars abreast. Jerry said maybe we could put an over pass over 104. Just jump across 104, and that will take care of it.

Jeff said a lot of the issues that we are talking about in terms of traffic and congestion, these are concerns that keep communities, towns and cities everywhere safe. With good design and planning, we could encourage people to use the bus. This would be a solution to the issues raised.

Richard Cummings:

He said his wife owns property in the Town of Oswego. He said he went to his mother-in-law's house. We went to Rudy's, and back around through the campus, then to my mother-in-law's house. This is the street that was called Park Avenue. It goes into Newman parking lot. We went into her house, came out at exactly 4:32. They waited to get out into the road, and decided they weren't going to wait any longer, because the cars were way up past the diner. So they went back out around down through Washington Blvd., down to Raby's, and it was backed up with cars there too. This was on a normal day. We don't need 700 more kids coming down Johnson Road. The Department of Transportation of the State of New York is who you would call as far as traffic. Also, there were 27 houses that the student association bought, and they were taken right off the tax roll. I hope you people think this over, because the impression he gets from the Town Supervisor is it's a done deal already. The way you run the meeting. We can talk to you. You let the people talk. He said "I honor you for the way you do things."

Greg said enough numbers have been thrown around, he asked Jeff how many students would Phase I comprise. Jeff said Phase I would be 400 students. Greg asked if they had a time frame on the projected second phase. Jeff said the second phase would come upon demand, and that would be couple of years down the road.

Greg said it is now 8:00 o'clock We began the discussion at 7:10, and we would take one-half hour of discussion, and we have gone beyond that. He recognized that there are still some individuals who would like to talk. The Agenda states under Number 7, Public Comment - at that point there will be an opportunity to express your opinions at that time. At this point, we want to begin the formal discussion of the one item before the Board. Under Article 5 - Generation Information of the existing Ordinance of the Town of Oswego, Section C - Board of Appeals - No 1 talks about the membership of the Board, and under No. 2 - Powers and Duties. - he read this before, but it is important to keep in mind, and he again quoted: "The Board of Appeals shall have all powers and duties prescribed by the Town Law and by this Ordinance, which are more particularly described as follows:- a. Interpretation: Upon appeal from a decision of an administrative official, to decide any question involving the interpretation of any provision of the Ordinance".

Greg said the items before us is a statement made by our Code Enforcement Officer on March 5, Mr. Newton, who is a fine gentleman and very helpful to all of us. His reason for refusal of the permit - "Requires an Area Variance for height and set back requirements". We settled the set back issue with United Group. There is a height variance requirement, a Use Variance. R-3 Zones do not allow a dormitory in that area. Greg's question is "Did Mr. Newton make an accurate interpretation of what is proposed?" As a general comment, Greg made this observation. We have to look literally what is in front of us. As he has listened to statements being made, he can't imagine any individuals here, who would want to rent an apartment then call it a dormitory. In a dormitory, you don't have something to cook with, something to wash with. All the amenities are made clear what constitutes an apartment. He asked Mr. Caraccioli to look into the Town of Oswego Laws, the application, and the item before the Board. He asked the Board Members if they had anything to say, and no one did, so turned it over to Kevin:

Kevin said he would read over what he identified as a Legal Memorandum. He understands that a Legal Memorandum he had written has been out in the public through an inadvertent release. He said he is confident in his research that he and members of his firm did. He read the Legal Memorandum into the record:

"INTRODUCTION

The issue before the Zoning Board of Appeals, in relation to an application for zoning approval submitted by the United Development Corp (United Group) for the development of a 177 unit residential complex to house, to the exclusion of all others, college students attending Oswego State University (OSU), is whether the use constitutes an "Apartment House" or "Dormitory" as both are defined with the Town's Land Use Control and District Regulations Ordinance (zoning ordinance).

It is undisputed that the property in question is located within the Town's Residential R-3 District. Accordingly, an apartment house is a permitted use (Art. IV, Section C(1)(f)), while a dormitory is not permitted. (Foot note - It must be noted that a dormitory was originally a permitted use in the R-3 District. Currently, dormitories are allowed in the Residential R-4 District and Open Land "O" District, however such a use is limited to "no more than three occupants, provided adequate off-street parking is available on the premises") Upon submission of the application by United Group, the Town's Zoning Enforcement Officer, Wayne Newton, determined that the proposed use constituted a dormitory.

DEFINITIONS

"Apartment House" is defined in the zoning ordinance as "a building or portion thereof used as a residence for three (3) or more families living in separate, complete housekeeping units."

"Dormitory" is defined as "a building or part thereof, used as group quarters for unrelated individuals sharing common cooking, social and hygienic facilities. Includes fraternity and sorority houses."

Immediately following the definition of a dormitory is a paragraph only identified as "A." which appears to define the term "Family" as intended by the Town when this provision was added in 19___. This section defines family as "one (1) to four (4) adult persons, together with any number of persons related to such adult by blood, marriage or adopting (sic) up to the 2nd degree of kindred living together as a single housekeeping unit."

FACTS

The United Group proposes to build a total of nine (9) housing units in a complex located on 21 acres of land along County Route 7. While the units are in close proximity to the OSU or the State University of New York. United Group maintains its own supervision of the student residents, provides its own security wholly independent of Campus Security, grants its student residents revocable licenses to occupy a unit, as opposed to a lease or contract which is subject to legal due process. Moreover, the students are housed in self-contained pods with each student having his/her own bedroom, and each group of four (4) students having their own bathroom, kitchen and living room.

DISCUSSION

Applying the provisions of the zoning ordinance to the facts as established on the record, there is justification for reversing the ZEO's initial determination that the intended use constitutes a dormitory. While at first glance the housing complex may more closely align with the definition of a dormitory as set out in the zoning ordinance, the zoning ordinance does permit the ZBA to interpret the common meanings of words, terms and phrases used in the ordinance.

According to Anderson's American Law of Zoning, a dormitory is defined as "a place of residence, other than a hotel, rooming or boarding house that is used, occupied and maintained for persons enrolled in a college, university, or other educational institution, and which is recognized and subject to controls by such educational accessory uses of such

colleges and universities, even if they are called living/learning centers. Finally, dormitories are regulated by the NYS Public Authorities Law, and more particularly the Dormitory Authority of the State of New York (see, Dormitory Authority Sec. 1676). The housing complex proposed by the United Group will not be subject to such regulations.

The provisions of the zoning ordinance also support this argument when one analyzes the definition of "Family" contained in Article I, Section C(A). Since a family is alternatively defined to include up to four (4) adult persons, each pod would constitute a portion of a building "used as a residence for three (3) or more families living in separate, complete housekeeping unit." (Emphasis added). Since the definition of Apartment House includes a building or portion thereof, the Town of Oswego ZBA would be justified in determining that the housing complex proposed by the United Group constitutes an Apartment House, as opposed to a Dormitory.

LEGAL AUTHORITY

Finally, the Court of Appeals, New York State's highest court, has declared zoning ordinances that restrict the size of a functionally equivalent family but not the size of a traditional family violates the New York State Constitution's Due Process Clause (NY Const. Art. I, Sec. 6). *Baer v. Town of Brookhaven*, 73 NY2d 942 (Five unrelated residents of a house brought action to challenge the constitutionality of the zoning ordinance that prohibited more than four unrelated persons from living together in a single-family zone).

Upon review of the Town's zoning ordinance, it is clear that the treatment of non-traditional family units and traditional family units may violate the State Constitution

(Foot note: Since a family, under Article I, Section C(A), may include 4 unrelated adults with any number of persons related to such adult(s) by blood, marriage or adoption, it is not unreasonable to interpret that provision to include up to 5 or more individuals living in the same dwelling, while a group of 5 or more unrelated adults are prohibited from occupying the same dwelling. The Court in *Baer* has clearly declared such an ordinance unconstitutional. It is also noted that the Town of Oswego is currently revising its zoning ordinance. This issue should be reviewed in order to comply with the State Constitution.

CONCLUSION

The ZBA is charged with interpreting the provisions of the zoning ordinance, pursuant to Article V, Section C(2). Such an interpretation has been requested by the United Group concerning the proposed construction of a 177 unit housing complex to be located on 21 acres in the Town of Oswego's Residential iR-3 District. This district permits, by right (but subject to site plan approval by the Town's Planning Board), apartment housing. It does not permit dormitories.

The definition of dormitory does not conform to the facts as presented. The applicant is not affiliated with OSU, is not subject to the provisions of the Dormitory Authority Law, and all other respects will be operated and maintained wholly independent of (but in cooperation with) OSU. Conversely, the proposed use is more akin to an apartment house. The definition of family would permit up to four (4) unrelated adults to live together as a single housekeeping unit, which is precisely how the applicant has designed each unit within the housing complex.

This interpretation is supported by the highest court in New York State, which has declared attempts to restrict the size on non-traditional family units, but not the size of traditional family units, unconstitutional."

Kevin said that is the legal interpretation that he has been asked to render. He realizes that this is not going to make everyone happy. It may create a walk through for a review by a

Judge. He feels confident that if the Zoning Board were to accept my interpretation, then it does form the basis for an argument that he feels comfortable in making to any Court in this country. I will turn this over to the Chairman. It would be appropriate at some point in this proceeding, to consider a Resolution on this interpretation. He has prepared a draft Resolution for the Board's consideration.

Greg said we should review for both the audience, and the members of the Board. It was the interpretation by Mr. Newton that it is a dormitory, as opposed to an apartment complex. We are in a position to interpret that Legal Memorandum, either to agree with it or to disagree with it. I would assume the Board rules that this is an apartment complex. I assume that someone or some group will be interested in filing an Article 78 Proceeding, which would be to appeal this decision of the Board. He asked if anyone had any questions regarding the Memorandum that was drawn up. Tim Anderson about Wayne, where did he determine it was a dormitory. Kevin said he didn't want to speak for Wayne, he thinks the proximity and relation to the college, and being occupied by college students, he felt it was more of a dormitory. With all due respect to Wayne, he didn't have all the available resources at the time, and he probably made the determination within the day he received the application. The Zoning Law does permit the Board to use its own common sense in coming up with the interpretation.

Tim Anderson had a question on the Anderson's American Law Of Zoning, "dormitory is defined as a place of residence, other than a hotel, etc. ----- is recognized and subject to controls by such educational institution" . Kevin said this definition is taken from the City of Syracuse. We have a definition of dormitory, but taken in and of itself, it doesn't lend much. When looking at the Law, and the Dormitory Authority, and Anderson, there has to be a connection between the college or institution and the living facility.

Richard Cummings:

He said Mr. Newton got his definition of a dormitory from the New York State Fire Code.

Greg said his first obligation is the zoning regulations.

Bill Dunsmoor:

He asked if the Board is bound by the existing Zoning Laws or by the Constitution.

Kevin said it is his interpretation that the Town cannot turn a blind eye to the Constitution of the State of New York. The Town Zoning Laws that are inconsistent with the New York State Law, it is his recommendation and belief the Town ought to obey the controlling law. In this case he believes there are provisions within the Zoning Law that are contrary to the New York State Law.

Greg said he had asked counsel to draw up a motion or Resolution that the Board of Appeals could approve or reject:

"In the Matter of an Application by United Group Development, Inc.

For an Interpretation of the Land Use Control and District Regulations Ordinance of the Town of Oswego, New York

RESOLUTION

WHEREAS, United Development Group, Inc. (United Group) proposes to construct a multi-unit student housing complex to be located off of County Route 7 (Johnson Road) in the Town of Oswego, and has made application to both the Town of Oswego Planning Board and

Zoning Board of Appeals; and

WHEREAS, United Group has requested an interpretation of the Town Zoning Enforcement Officer's (ZEO) determination that the intended use constitutes a dormitory, as defined in Article I, Section C of the Town's Land Use Control and District Regulations Ordinance (the Ordinance), as well as an area variance to increase the height of the proposed buildings; (Foot Note: "The area variance analysis will be treated separate from this determination given the coordinated review of the project with the Town of Oswego Planning Board including, but not limited to, the potential visual impacts the size of this project may have on the surrounding neighborhood pursuant to SEQRA. Pursuant to SEQRA, this interpretation constitutes a Type II Action and therefore no further analysis is required," and

WHEREAS, two separate public hearings were held, having been duly advertised in the Town's official newspaper and notices being sent to the property owners within 1,500 feet of the proposed site, to gather public input on this topic, one held on March 15, 2007 and the second hearing held on April 19, 2007, and the matter having come before this Zoning Board of Appeals (ZBA) for an interpretation based upon all relevant and material information that has been presented.

NOW, THEREFORE, upon motion made by board member _____
And seconded by board member _____, it is and shall hereby be

RESOLVED, that the determination of the Town of Oswego ZEO that the use proposed by United Group constitutes a dormitory, as defined in the Ordinance is hereby reversed in accordance with the Legal Memorandum prepared by Kevin Caraccioli, Attorney for the Town of Oswego ZBA, dated May 17, 2007, which is attached to and incorporated by reference to this resolution; and it is further

RESOLVED, that it is the determination of the ZBA that the proposed use shall constitute an apartment house complex and therefore shall be a permitted use with the Town's Residential R-3 District and in accordance with the applicable provisions of the Ordinance, subject to a further determination concerning the area variance application currently pending before this Board.

Kevin turned the meeting over to Greg for the appropriate motion.

Greg asked that someone make a motion. Robert Dexter made the motion, and it was seconded by Debra Jaskula. Greg asked if there was any discussion. Deb had a question on Section C. Kevin addressed Section C. You need to read the opening paragraph "Notwithstanding the numerical limitations of Subdivision A of this section, a group of adult persons numbering more than four (4) shall be considered a family, if the Zoning Board of Appeals shall make a determination of the criteria are covered. If the unit is developed to house 5 or 6 students, we would have another issue. These are designed to house one (1) to four (4) adult persons. Greg asked the members to vote to overturn the determination of the Code Enforcement Officer. He instructed the secretary to call Bob Baker's name, even though he is absent. All ayes. Motion carried.

Greg said that after New Business, we will go to Public Comment. Kevin stated there was some discussion earlier regarding the State Environmental Quality Review Act. Part of the SEQRA process as it relates to the area variance, the height may involve a visual impact.

He stated he is working with Mr. Greene, Attorney for the Town Planning Board in coordinating the SEQRA Review between our two boards. We both have the authority to issue permits. That having been said, the bulk of the SEQRA will be performed by the Planning

Board. The variance request for the height may have an impact on the surrounding environment. It is within this Board's jurisdiction to consider a Visual Environmental Assessment Form. Kevin has taken the liberty of preparing a draft of the EAF. This is intended to be submitted in a package that includes a long form SEQRA, submitted to the Planning Board, and further submit to all other interested and involved agencies, including the Count 239 review.

The Visual EAF Addendum will be used with Section 11, Part 2. There are impacts to be considered concerning visibility. You will see a whole list of questions that are asked on the distance between the project and resource. For instance "a parcel of land which is dedicated to and available to the public for the use, enjoyment and appreciation of natural or man-made scenic qualities". How close to the proposed project would be.- within 0 mile; 1/2 mile; 3 miles; 5 miles or 5 plus miles away. Kevin said he has done his best to try to answer, but he feels it is up to the board to go through this exercise. If we are all in agreement, we will adopt a motion for the EAF and pass it on to the Planning Board for further consideration. Kevin turned it over to Greg.

Greg said Kevin has already read the first Visibility, and it was agreed it is 0-0 miles; "Overlook or parcel of land dedicated to public observation" - 1/2-3 miles; "a site or structure listed on the National or State Registers of Historic Places" - 0-0 miles; "State Parks" - 5+ miles; "State Forest Preserve" - 5+ miles; "National Wildlife Refuges and State Game Refuges" - 5+ miles; "National Park Service Lands" - 5+ miles; "Any transportation corridor" - that would be 104 - 0-0 miles; "a governmentally established or designated interstate or inter-county foot trail" - 0-1/2 miles; "Municipal park" - 3-5 miles; Kevin stated this is a fill in form, but when we do the final draft, we may have to type some areas in here. "County Road" - 0-0 miles; "State Road" 0-1/2 miles; "Local Road" - 0-0 mile.

Question 2 - Is the visibility of the project seasonal? - Yes; Question 2 " Are any of the resources checked in question 1 used by the public during the time of year during which the project will be visible." - Yes. Item 4 - Description of Existing Visual Environment. 4 - "From each item checked in question 1, check those which generally described the surrounding environment. - Essentially undeveloped; Forested; Suburban Residential; River, Lake, Pond; Designated Open Space; Hilly" - all these categories are 0 mile. Urban is 1 mile.

Question 5 - Are there visually similar projects within - 1/2 mile. Question 7 - The situation or activity in which the viewers are engaged while viewing the proposed action - Travel to and from work; Involved in Recreational Activities; Routine travel by residents; at a residence; At worksite - The frequency of all these are Daily; Weekly; Holidays/Weekends and Seasonally.

Kevin said Greg should ask for a motion to adopt the Visual EAF, and then submit it to the Planning Board to include in the long Environmental Assessment Form, and then submitted to all interested and involved agencies. Tim Anderson made the motion, and seconded by Bob Dexter - All ayes. Motion carried.

Greg then opened the floor to Public Comment.

Frank Bevacqua:

Frank said when Kevin Caraccioli went through his litany of information, that one of the reasons this isn't. a dormitory is because it is not controlled by the college. So does that mean that the college will never be able to take this over, or become a dormitory.

Greg said there is the question of likelihood. That would be subject to a number of factors. What would be the projected enrollment at the college. If the college were to make such a proposal, it would have to be based on some kind of need. Now, there is no projected

increased student enrollment. Sometime in the future this could become college property, so therefore, it would become a dormitory.

Frank said Mr. Smetana said this would be 177 units. Does that mean each of these will pay into the sewer system - 177 times, like people do that have homes with multiple dwellings. Or is the Ontario Heights Sewer District going to be subsidized in their waste disposal.

Greg said this is not a matter for the Zoning Board, it would be a matter for the Planning Board. Mr. Smetana went through considerable length to indicate that they have engaged with the Town Board, and the appropriate agencies within the City, and they have been willing to engage in a financial relationship in some manner.

Frank said he hopes at sometime we get some definitive answers. Next door to where he lives, every unit had to pay a fee toward waste disposal.

Frank said his last point, his impression of a Town representation is they are supposed to represent the needs of the community. Some people in this town are favorable toward the project. He has a feeling this was a done deal before we got here. He feels the town betrayed us. The quality of life on my street is going to be much different now. Kids are going to be driving their vehicles. There will be kids on the street. He just hopes no one gets injured. He thinks the Board definitely made a mistake. He doesn't know why the Board approved this type of project in this area. This is a dormitory, no matter how you try to wash it through the legal procedure. He said if anything bad happens, the Board will have to live with it.

Amy D'Angelo:

First, she thanked the Board for allowing the public to attend. She said she supported the family definitions within the law. However, she did disagree with the counsel's choice to present with a different municipality's definition of a dormitory. If you would remove the unconstitutional part in your own Zoning Law, and interpret your own Zoning Law's definitions, to determine whether the Code Officer made a correct decision. Interpreting your own Zoning Laws based on another municipality in her opinion is incorrect. Every municipality has the opportunity to find things as they wish. In Syracuse and Auburn, housing is privately owned, and they call them dormitories.

Bill Dunsmoor:

Bill said counsel said earlier this evening that no doubt this will end up in Court. That probably someone else will be making that decision. Unfortunately, the local people will be the ones who will share the burden of the expense, not the out of town people. The other issue he thought fell on deaf ears, it was said there will be a coffee shop. He questioned if it would be okay in an R-3 District. He disagrees with the decision on the dormitory issue, and is sure we will get a decision from somebody else. And it is going to be costly.

Christina Skubis:

She said she lives on 55 Baylis Street. She purchased the property in November, and on a weekly basis between 2:00 and 4:00 when she goes to pick up her daughter from school, traffic pulls out from the college. Two weeks ago as she was pulling up to her house, to make a right to turn into her driveway, she was in an accident. It took 2 hours for a trooper to come to the accident scene. How is this going to be addressed with all these extra people.

Dr. Mario Rabozzi:

He said he lives on 18 Baylis Street. If Mr. Caraccioli's interpretation holds in Court, would it

be denying if 4 individuals, related or unrelated were not college students, and residency is available in this facility. Could the owners deny those people residency.

Kevin said he believes they could. Any business doesn't have to rent to someone they feel is inappropriate.

Dr. Rabozzi asked how the owners would regulate who is an adult and who is not. Some students are quite bright, and come to college at the age of 16. They are not adults. If this project goes, people will be monitoring it very closely.

Adjournment:

At approximately 9:30 PM, Deb Jaskula made a motion to adjourn the meeting. Tim Anderson seconded the motion. All ayes. Motion carried.

Respectfully submitted,

Marjorie Best
ZBA Secretary