

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, October 21, 2009*. The meeting was called to order, and began with the Pledge of Allegiance.

John Mattis, Chairman presided and other members of the Board were in attendance as follows:

Charles P. Heady, Jr. (absent)  
James Seirmarco  
David S. Douglas  
Adrian C. Hunte  
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman  
Ken Hoch, Asst. to DOTS Director/Code Office  
John Klarl, Deputy Town attorney

**ADOPTION OF MEETING MINUTES for 8/19/09 and 9/16/09**

Mr. John Mattis stated do we have a motion please? So moved, seconded with all in favor saying "aye."

\* \* \*

**CLOSED AND RESERVED DECISIONS ADJOURNED TO NOVEMBER 2009**

Mr. John Mattis stated as information:

- A. CASE No. 51-08                      John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**
  
- B. CASE No. 06-09                      Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **Case No. 33-08** Decision and Order.

\* \* \*



Mr. John Mattis stated yes, let's adjourn that to the November meeting, so moved, seconded with all in favor saying "aye."

**B. CASE No. 11-09**                      **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8<sup>th</sup> Street, Verplanck.**

Mr. John Mattis stated was here for an Interpretation we referred him to the Town Board. It was a split zoning in the middle of his property and they're waiting action there so can we have a motion to adjourn that? So moved, seconded, with all in favor saying "aye."

**C. CASE No. 26-09**                      **Steve Erenberg** for an Area Variance from the front yard requirement to legalize an addition and an Area Variance from the front yard requirement to legalize the eave overhang of the addition on the property located at **23 Furnace Brook Drive, Cortlandt.**

Mr. John Mattis stated we have a letter from his attorney Mr. John J. Gotchman indicating that he is changing his plans and is withdrawing the case and will bring the building into compliance. That is withdrawn.

**D. CASE No. 27-09**                      **Brie Gallagher** for an Interpretation/challenge of Steep Slope Permit No. 20090271 on the property owner by Kyler Cragolin on the property located at **222 Mt. Airy Road West, Croton on Hudson.**

Mr. **John Delano** presented himself to the Board and stated I'm a professional engineer at the firm of Batey & Watson. I might first ask for your indulgence if we could defer this matter to later on the agenda as council is not yet present. I believe that he has additional documents and some input that's appropriate to the case.

Mr. John Mattis responded we will do it since you're here but generally we call them when they're called. They know that the meeting begins at 7:00 p.m. and it's a quarter after 7.

Mr. **John Delano** stated if you prefer I'll proceed without council.

Mr. John Mattis responded no that's okay, we can wait.

*Please see below for the recalled case no. 27-09.*

**E. CASE No. 29-09**                      **ACRS, Inc.** for an Area Variance from the total allowed signage requirement and the maximum letter height requirement on the property located at **3061 E. Main Street, Mohegan Lake.**

Mr. Peter O'Mara stated I'm here from O'Mara Associates. I'm here on behalf of ACRS, Inc. I'm looking for the Interpretation regarding the site visit last Saturday on the size of the sign for

the proposed Bed Bath and Beyond project in the Cortlandt Town Center.

Mr. Raymond Reber stated I was at the site. They had put up the banner as we had asked. The banner that was up was the 210 square foot which is now being displayed at the upper picture by the applicant's representative. The sign that is being proposed is not very much different from the previous sign that was there because you can still see the shadow of it which was Linens 'N' Things. Linens 'N' Things was a single line of letters. The individual letters were larger. Overall, this because it's two rows of letters is slightly higher in its height but it's not as wide. The Linens 'N' Things actually was wider. In terms of overall area it's very similar and certainly when you look at it on the building it looked quite proportionate. It certainly didn't look oversized and it certainly made it easy to read as you were coming into the parking area. However, they did have available for us a somewhat reduced sign of about 159 square feet which they then put up to replace the previous one so that you could get a sense of the difference and a) it did look disproportionately small, almost lost on the façade and obviously it was somewhat more difficult to read from a distance. To me it seemed the 210 square foot was consistent with what was there before, consistent with what's next door with Home Depot, consistent with the overall façade that was there so I didn't have any problem with the 210 square feet as being shown in the illustrations.

Mr. John Mattis stated I was also at the site inspection and concur with all of the things that Mr. Reber said. Last month we felt that maybe the 210 was a little too large but this shows the reason why we have site inspections and why it's nice to make a banner and take a look at it. When I look at the Town Center I look at what's the visual impact from the service road and that sits so far back that for safety reasons with cars going back-and-forth there, and I know myself I once had a minor accident there, it's important to be able to spot which of the businesses are which so that you're not looking all over the place and that large sign, because of the size of the façade it doesn't appear to be much bigger than the Linens 'N' Things and it fits in perfectly. The small one actually looks quite small. Any other comments?

Mrs. Adrian Hunte stated the 159 square foot sign, the photo that we have here, it appears that the picture was taken closer to the building than the 210 square foot sign, I just wanted to make sure that's correct.

Mr. Peter O'Mara responded yes, that could be possible. I actually took many pictures that day and I probably made the mistake of not taking the pictures from the exact same location. That is a true statement.

Mr. James Seirmarco stated the sign Ordinance and signs in general are very important to me and I guess it's old age went to the site and stood in front of Wal-Mart for about an hour and a half. I couldn't figure out why no one else was there and then I went home only to find out I was supposed to be in front of Bed Bath and Beyond. I can't have too much to say because I tried I just wasn't in front of the right building. Just one question: Bed Bath and Beyond will occupy the whole building, you're not subleasing it to anybody else right?

Mr. Peter O'Mara responded that is not entirely true. Right here, I don't know if you can see this that well. This portion of the façade closest to the Home Depot for about 30 feet to 34 feet, I think it's actually 34 feet, Bed Bath and Beyond is actually doesn't need that much square footage so that will be a future tenant.

Mr. James Seirmarco asked and they will have a sign?

Mr. Peter O'Mara responded they will have a sign and I think there was a previously submitted exterior elevation showing a small dash line and it just said "future sign." So, yes there will be a small sign somewhere above but not as high.

Mr. James Seirmarco asked my question is did you use the entire building to calculate the standard required 159 square feet?

Mr. Peter O'Mara responded no I used the 105 feet which is the linear feet for the Bed Bath and Beyond space.

Mr. John Mattis asked you went to the right where that front façade is and cut it off there?

Mr. Peter O'Mara responded right.

Mr. John Mattis stated another comment in looking at this the major neighbors to the left and to the right are Home Depot and A&P. This looks slightly bigger, maybe the same size as A&P, but it looks smaller than Home Depot.

Mr. David Douglas stated as the other members of the Board well know I'm usually opposed to any Variances regarding the signs however, as this appears to be consistent with what Linens 'N' Things had I would be in favor of it.

Mr. John Mattis asked any other comments? Mr. Chin?

Mr. Wai Man Chin responded no, I have no problem with it.

Mr. John Mattis asked is there anyone in the audience that would like to speak?

Mrs. Adrian Hunte stated on ZBA **case no. 29-09** for ACRS, Inc. for Bed Bath and Beyond at 3061 E. Main Street, Mohegan Lake, NY for an Area Variance for the total signage requirement height of letters I'd like to make a motion to close the public hearing, seconded, with all in favor saying "aye." I would like to make a motion for the Area Variance for the total signage requirement and height of the letters be granted. It's for the total signage from an allowed 105 square feet up to 210 square feet and an Area Variance for the maximum letter height from an allowed 3 feet up to 3.83 feet on the above referenced property, this is a SEQRA type II action, no further compliance required, seconded with all in favor saying "aye."

Mr. John Mattis stated the motion is carried.

**F. CASE No. 30-09                      Dominick Santucci** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. John Mattis stated again we've been adjourning that. That's another case where they're in front of the Town Board requesting a slight change or a Special Permit authority from the Town Board, so can we have a motion to adjourn that?

Mr. Wai Man Chin stated I make a motion on **case 30-09** to adjourn to the November meeting, seconded with all in favor saying "aye."

Mr. John Mattis stated the motion is carried.

**G. CASE No. 31-09                      Paul G. Feliu** for an Area Variance from the requirement that no accessory structure (above ground pool) is permitted to be installed in the front yard on the property located at **103 Eton Downs, Cortlandt Manor.**

Mr. Paul Feliu stated when I was here last I was seeking a Variance for an above-ground pool and we ran into some technical difficulties that I was unaware of namely having two fronts due to my corner property. Some recommendations were made to place the pool on a different part of the property. Your person who works in the – Mr. Flandreau gave me some documentation showing that probably the alternative wouldn't be possible because the section of the property has an easement on it that runs clearly across the entire section of the property. I don't have space behind and the only other place I would have is on the – if you're looking at the front of my property on the right hand side or the second front how ever you address this.

Mr. James Seirmarco stated personally I've known this Board for quite a few years and sometimes there's difficult cases that come before us and this by far is the most difficult case in many, many years. We understand the situation, the pool was purchased for you as a gift and you did not know you had two front yards and we have asked staff to try to help to find a place to put the pool and we've spent a long time discussing it in work sessions and unfortunately not every piece of property can support a pool. We have looked in your neighborhood and the other one that we did grant a Variance for was a special case. All the rest that you brought to us are non-conforming and I'll leave it at that since we're not an enforceatory Board. Unfortunately, we cannot figure out any way to permit this. There's just nothing that works. I know you tried, the staff tried, we tried to think of it and there's nothing that works. Unfortunately, we're going to have to deny this. I speak for myself, I'm sure that other members will have some comments.

Mr. John Mattis asked any additional comments from the other Board members? We know the hardship that you're under because the pool was already purchased and given to you but unfortunately if we allowed it for that reason people would go out and buy pools and then come to us and ask for Variances and we'd set a precedent.

Mr. Paul Feliu responded there was one Variance.

Mr. John Mattis stated we've granted one in a number of occasions we've had requests and this was a special circumstance. It sat far, far away from the road. Technically it was in the front yard, it wasn't visible from the road. It really was something that you wouldn't even see and that was the reason. There was a specific reason why we granted that one.

Mr. James Seirmarco stated it was unique.

Mr. John Mattis reiterated it was very unique.

Mr. James Seirmarco stated and the others that you showed us pictures are in violation.

Mr. John Mattis stated there are no Variances or Permits for any of those other pools that you mentioned. That's not up to us to enforce that. That's up to Code Enforcement to look into that. I wish there was something we could do for you, unfortunately our hands are pretty much tied on this one.

Mr. James Seirmarco stated we have tried in many instances to help applicants to try to rearrange things. We tried again this past Monday to figure out a way and there's just no way we can figure it out that makes sense without putting it two foot from your house. It just doesn't make sense.

Mr. Paul Feliu stated it would be approximately 10 feet off the property on the right hand side and I'm below the grade where the road is on top and it's currently partially blocked off by trees that we put up there which will eventually grow out and thicken.

Mr. John Mattis stated I've driven by there a couple of times to try to wrestle with this one and from Eton when you look directly down you don't really see it but when you're coming up Eton Road you see it coming in each direction. On both of those streets you'll see the pool when you're coming down one way or you're going up the other way. It's when you're right in front of it because of the elevation that you don't see it.

Mr. Paul Feliu stated you can see my neighbor's pool and theirs is in the back coming from those roads as well.

Mr. John Mattis stated I understand that and the purpose of this is so that you don't have front yard pools even though in this case it looks like a side yard, it's a front on that street. When they're in the back, if you can see them we can't do anything about it because the Code allows it. As I said I wish there was something we could do here.

Mr. Paul Feliu stated I'm sort of stuck here because I came not trying to do something illegally.

Mr. John Mattis stated I understand.

Mr. James Seirmarco stated and we do appreciate that.

Mr. John Mattis stated the problem is on the left side of your house there with that easement. That would be an alternative that you could have used but the easement doesn't allow for it.

Mr. John Klarl stated the easement doesn't allow above-ground pools?

Mr. Paul Feliu responded it runs along the entire length of the property and it starts basically -- the sewer starts out on the edge of the driveway by the Cortlandt Little League Baseball Field and then it goes all the way across. It actually cuts through my property and it cuts through my neighbor's property.

Mr. John Klarl asked there were the easements that were imposed by the Town a couple of years ago for the sewer lines? If I recall the language, I'd have to take a look at it, I recall the language didn't want an obstruction of an above-ground pool either, either below ground you obviously couldn't or above-ground as I recall. I think it was prohibited to put an above-ground pool on top of the easement.

Mr. John Mattis stated that would have been an alternative.

Mr. Paul Feliu stated that was mentioned the last time I was here I was thinking about putting it on that side there.

Mr. John Klarl asked you don't happen to have the easement language? You haven't looked at it lately have you?

Mr. Paul Feliu responded no I have not.

Mr. John Mattis stated we haven't seen it so you might want to take a look at that to see if it's specifically prohibited. There's a possibility that it isn't.

Mr. Paul Feliu asked placing an above-ground pool on the easement side?

Mr. John Mattis stated I would suspect that it isn't allowed but you might want to take a look at the language of that and if it's questionable come in and ask for the Town to take a look and Interpret it.

Mr. John Klarl stated I think Batey & Watson firm worked on those easements?

Mr. John Delano stated I don't recall the wording of it but I recall the sewer project, but typically the Town Engineer at the time was against structures...

Mr. John Klarl stated you wouldn't be surprised, John, if it had a prohibition against an above-ground pool?

Mr. John Delano responded I would not be surprised if it were prohibited. Again, to check the records.

Mr. John Mattis stated we can't get relief for that? Could the Town Board get relief from something like that?

Mr. John Klarl responded the official that grants the easement can release.

Mr. Paul Feliu stated I'd be willing to put it on that side.

Mr. John Mattis stated you can write a letter to the Town Board and explain your hardship and it's possible that they can – they have the power to do that. They set the Code and they can amend that easement possibly.

Mr. Paul Feliu stated I'll certainly take that into consideration.

Mr. John Klarl stated the answer to the easement agreement with you and they have the ability to relax that restriction if they wanted to but we'd have to take a look the easement language.

Mr. James Seirmarco stated they may ask you to take it down at a moments notice.

Mr. John Klarl stated the Chairman indicated the Town Board may have the problem that this Board faces about setting a precedent they'll say "well, I'll tell you what the families with the last name that begin with F-E-L-I-U they have an above-ground pool, why can't I?"

Mr. Paul Feliu responded the precedent's already set by the lack of enforcement technically because there are – I gave you at least eight or nine and we've found more, not just here.

Mr. James Seirmarco stated we did too.

Mrs. Feliu stated on Oregon Road that are directly on the main roads.

Mr. Paul Feliu stated it's very visible there, kind of hard to miss. My wife just pointed one out on Westbury Drive just the other day as we were going by and said "look at that, that's about five feet off the property."

Mr. John Mattis stated I'm sure your radar's out to look at those and I wouldn't blame you.

Mr. Paul Feliu responded actually no, my wife's the one whose been spotting those. Mostly my daughter's been doing some research on these.

Mr. John Mattis stated and we only deal with the cases that are brought to us but if there are complaints about those that Code Enforcement will be out and issue citations.

Mr. Paul Feliu stated again, I'm not doing this for the purpose of...I did it as thinking 'okay, so I go out and I look and all these other people are doing this and I figured.'

Mr. John Mattis stated a done deal.

Mr. John Klarl stated the Board has to look at the law and the equities to the case and I think they see the equities are on your side but the law is a stumbling block for them.

Mr. Paul Feliu responded it can be changed and there are ways to...

Mr. John Mattis stated and maybe you can get some relief from the Town Board. Is there anyone in the audience that would like to speak?

Mr. James Seirmarco stated I make a motion on **case no. 31-09** to close the public hearing, seconded with all in favor saying "aye." I make a motion to deny the Area Variance...

Mr. John Klarl asked would we like to close and reserve? I think we talked about that.

Mr. James Seirmarco stated excuse me I make a motion to close and reserve to prepare the document for denial, seconded with all in favor saying "aye."

Mr. John Mattis stated what that means is we have 62 days to vote on that and issue our Decision and Order and we do that to get the correct language and everything else. But, the public hearing is now closed.

Mr. Paul Feliu asked the letter or note is addressed to which department within – just the Town Board?

Mr. John Mattis responded yes. Address it to the Town Board. Good luck with that.

\*

\*

\*

## **NEW PUBLIC HEARINGS**

### **A. CASE No. 33-09                      Steven Kahn for an Area Variance from the total allowed signage requirement on the property located at **3061 E. Main Street, Mohegan Lake.****

Mrs. Adrian Hunte asked Mr. Kahn would you please explain to us what you're trying to do with the signage?

Mr. Steven Kahn responded we're trying to get a Variance for the sign which I believe is slightly over the size allowable by our linear footage in the store. Our goal with the sign was just to make it so it was – the sizing of the letters were similar to what was on the property already with other signage; Blockbuster, Panera and Jennifer Convertible signs are already up and the height of the letter is really the key of what we're looking for. The letter sign size that we want is 21 inches which is very similar. Panera ranges from, in the front of the building, Panera is at 26 inches, Blockbuster is 36 inches and Jennifer Convertibles is 21 inches. So we wanted something that sort of fit in so it looked very similar to everybody else's sign. The rear of the building is slightly different depending upon but it also it fits very much within it. Jennifer is 21, Panera is 20 and Blockbuster's 24 inches – height of the letters in the back. Again, we wanted something that kept in – we know our sign's a little bit longer because of the name. I can't really change that but the height of the sign we want it to be so that it's similar. Also, the raceway is at 20 inches. So, smaller than that tends to look funny because there's some raceway showing on each side of the sign. That sign looks very small in that area.

Mrs. Adrian Hunte asked if you don't have signage on the back it's difficult for individuals coming in from Route 6 to know that your store is in that....

Mr. Steven Kahn responded I believe there's a standing Variance on that building that allows signage both front and back because of that property.

Mr. John Mattis stated subject to our approval yes.

Mr. Steven Kahn stated being how it is, were not on any of the marquis and we're not on any of the indicators on the property. Without the signage in the back, the way the building is facing, it's hard to see any of those stores otherwise. The back of the building signage is as key as the front.

Mrs. Adrian Hunte stated I tend to agree with you. Does anybody else have a comment?

Mr. David Douglas stated I agree with the fact that you need the signage in the back because of the location of the building but the fact that it's consistent with the other signs, with Panera and Jennifer Convertible to me highlights part of the problem and why it is that I have voted against most of the Variances that the Board had granted at the Town Center over the last – well I've been on the Board for five or six years, whatever it's been. What's of course happening is because we granting Variances for one and we're not granting for the other and we're in effect changing – the entire Town Center has Variances. I think that's improper. I've voted against them and that's one of the reasons why I've been voting against them because somebody comes in here and says "what I want to do is a substantial" – I can't do the math in my head but it's between 35% and 30% of Variances you're seeking as something like that, and you reasonably say "well it's basically the same as Panera and Jennifer Convertible," and you're right. To be fair we should grant you the Variance but, to me, that's why we should never have been granting those Variances across the board in the first place.

Mr. Steven Kahn stated it's a cascading effect. I agree with you. Our goal is not to be ostentatious about the size because of the sign. We're not looking for that bigger is better but just again in the whole look of the Center and keeping that in mind and that's something that's very small.

Mr. David Douglas stated I'm just saying, generally I will probably vote in favor for this one because it is fair to you that you have something that's consistent with Panera which is right next door. I'm just expressing my concern and I have managed to convince nobody, perhaps on occasion Mr. Seirmarco up here. The two of us have been outvoted on this all the time.

Mrs. Adrian Hunte asked any other comments?

Mr. Raymond Reber stated just for the record as to why of this outvote to Mr. Seirmarco and Mr. Douglas. Some of us believe that the reason why we are allowed up to 100% leeway on giving Variances is that the sign Ordinance has to be written to cover the entire Town and it's understood that when stores are on regular streets and particularly in residential areas you're very concerned, you don't want big signs especially if they're lighted and what have you in that situation. I would concur with Mr. Douglas that in those cases we should be very reticent in granting any kind of Variances but I think that the reason why we do have this flexibility is that a place like the Cortlandt Town Center is somewhat unique. There's no residents that can see these signs that could be affected by them. I think it serves a purpose for identification because the whole purpose of people coming into that area and so I believe it's a logical use of the Variance there but I understand the restrictions and I would hold to those restrictions if it was not for something like the Town Center. I'm in favor of voting for this.

Mr. John Mattis asked any other comments?

Mr. Wai Man Chin stated actually when we were talking at the work session I happened to believe that the sign has to be – I think the Variance they're asking for is something that is justified so I would give that Variance because of the height of the signs next to it and everything else I think it would just read better.

Mr. John Mattis stated I agree for the reasons stated by the others particularly Mr. Reber. I look at the Town Center as slightly different than signs on the street for example. This is a shopping center. None of these signs are visible from the road so people driving up and down Route 6 are not aware of these and you do need a certain size so that people can see them because as I said before the road traveling through there is tricky if you don't know where the stores are and you're looking and with the different cuts coming out for the cars and everything it's a safety issue too that you can see these signs. It's certainly is not a proportionate to any of the others. There are reasons again why we have the ability to grant these Variances and I think it's very appropriate in this case.

Mr. David Douglas stated I'm going to vote in favor of this case just out of fairness to the applicant but I think that it's the wrong thing to do in terms of the overall strategy.

Mr. John Mattis asked is there anyone in the audience who would like to speak?

Mrs. Adrian Hunte stated on ZBA **case no. 33-09** for Steven Kahn at 3085 E. Main Street, Mohegan Lake for an Area Variance for the total allowed signage requirement, I make a motion to close the public hearing, seconded with all in favor saying "aye." On ZBA **case no. 33-09** for an Area Variance from the total allowed signage requirement from an allowed 68.8 square feet up to 110.62 square feet on the above referenced property I make a motion that we grant the Variance, this is a SEQRA type II action, no further compliance is required, seconded with all in favor saying "aye."

**B. CASE No. 34-09                      Hiram Tirado and Glenda Torres** for an Area Variance from the front yard setback requirement on the property located at **10 Mountain View Road, Cortlandt Manor.**

Mr. Hiram Tirado stated we're here to try to get this house fixed up. We need a Variance. We're looking for a Variance. I submitted the plans for this property and they shot it back, they brought it back to us stating that the setback requirement is 40 feet. The house, little did I know, is 34.4 feet. We just want to add another floor to it, put the bedrooms upstairs. We're not increasing the bedrooms. We just want to make it look nice for the neighborhood and for us and change the appearance from the road. So, that's what we're here for and hopefully it will be accomplished.

Mr. Wai Man Chin stated I happened to drive by the house during the weekend and of course I looked at the drawings and looked at the house and I said "wow, that's a big difference."

Mr. John Mattis stated but it's a good big difference.

Mr. Wai Man Chin stated I think that it would not be a detriment to the neighborhood. I think it would make the neighborhood even better. I would not have a problem with the Variance that you're asking for only because also that the house was built prior to zoning. The house was built on that property with the house already in that setback. Again, I would have no problem with that second story also with the overhang. I think it would look 100 times better than what it is.

Mr. Hiram Tirado stated I think our neighbors will love that too.

Mr. John Mattis stated I agree with that. I was out there and looked at it. Basically, you're going straight up for a second floor and because the house is within the footprint of requiring a Variance and you're adding a little porch which is only 4' x 8' it's only an area to get out under the rain, under the snow before you go into the house and this is certainly going to be a nice addition to the neighborhood. I agree with Mr. Chin and I would vote in favor of this.

Mrs. Adrian Hunte stated I agree as well.

Mr. James Seirmarco stated I agree also.

Mr. John Mattis asked any other comments? Anyone in the audience?

Mrs. Shenary Arcy presented herself to the Board and stated I'm the owner of 12 Mountain View Road directly next door and I was just curious to see what the plans were.

Mr. Hiram Tirado presented Mrs. Arcy with the plans and stated this is what it would look like from the front and we're here and these are all the sides here. This is what you're going to look at on your side and this is the front from the road.

Mrs. Shenary Arcy stated it's a lot nicer.

Mr. John Mattis asked anyone would like to speak?

Mr. Wai Man Chin stated I make a motion on **case 34-09** to close the public hearing, seconded with all in favor saying "aye." I make a motion on **case 34-09** to grant the Area Variance for the front yard setback requirement that pulls front overhang for a required 40 feet down to 34.4 feet and an Area Variance for the front yard setback requirement for a second story addition for a required 40 feet down to 36.3 feet for the above referenced property, this is type II under SEQRA no further compliance required, seconded with all in favor saying "aye."

Mr. John Mattis stated your motion is carried, your Variance is granted.

\*

\*

\*

## **ADJOURNED PUBLIC HEARING FOR TELECOMMUNICATION FACILITY**

### **A. CASE No. 32-09                      MetroPCS New York LLC for a Special Use Permit to co-locate a wireless telecommunications facility on the property located at **51 Scenic Drive, Croton on Hudson.****

Mr. Tony Joffrey presented himself to the Board and stated I'm a member of the Law firm Cutty and Fader. We were last month with respect to a proposal for a Special Permit for MetroPCS to co-locate on the existing facility at the subject premises. As you recalled there was an issue with respect to the public notice that was sent out that was since corrected and re-sent out to those affected property owners that needed the additional notice and also in the interim we had the opportunity to speak with staff, particularly with Mr. D'Angelo to address the comments raised in his memorandum that were provided to us at the meeting. I did speak with Mr. D'Angelo on a number of occasions. We did address his comments. We corresponded back and forth with e-mail as well and I would just like to submit for the record the original structural letter that he'd advised me by voicemail today that satisfies his concerns also raised in the memo with respect to

the structural issues and the certifications. If I may approach and just present that for the record.

Mr. John Mattis stated we have an e-mail from him that says there aren't any issues with your responses and your correspondence back and forth. There are some open items but they're all construction items that will be taken care of during the construction phase before...

Mr. Tony Joffrey responded that's correct. They will be incorporated. They'll be submitted as part of the construction plans that will be submitted during the building permit application process.

Mr. John Mattis stated that's correct.

Mr. Raymond Reber stated there was also an issue about an environmental impact but I think the detail plans that have been submitted certainly indicate that it's a minimum factor. That doesn't seem to be an issue in terms of changing what currently is on the site now. I think the issues that we had been concerned about have been addressed and I see no problem with granting a permit for co-location.

Mr. John Mattis asked any other comments? Anyone in the audience?

Mr. Raymond Reber stated I make a motion on **case 32-09** for MetroPCS NY, LLC for a co-location of transmitter on a cell tower that we close the public hearing, seconded with all in favor saying "aye." I make a motion on **case 32-09** that a Special Use Permit be granted to provide co-location of a wireless telecommunication facility on the existing tree pole at 51 Scenic Drive, this is a type I unlisted action, seconded with all in favor saying "aye."

Mr. John Mattis stated motion is carried.

Mr. John Klarl stated I know you were looking at the fact sheet and it said SEQRA type I unlisted action. It's one or the other. It's an unlisted action here. By action they listed both choices.

Mr. Raymond Reber asked I said unlisted didn't I?

Mr. John Klarl responded yes, but I think we said "type I and unlisted," but it's unlisted, you're right.

\*

\*

\*

Mr. John Mattis stated now we'll recall **case no. 27-09** Brie Gallagher.

**H. CASE No. 27-09** **Brie Gallagher** for an Interpretation/challenge of Steep Slope Permit No. 20090271 on the property owner by Kyler Cragolin on the property located at **222 Mt. Airy Road West, Croton on Hudson.**

Mr. Dan Adams presented himself to the Board. We've submitted an application to the Board which I hope each of the members has a copy of it in advance. That included a few exhibits with it and what we tried to be was a fairly thorough description of what our purpose is in approaching this Board tonight. We also though, Mr. Chairman, would like to make a more complete record. We have more information to provide the Board which we think would be beneficial to them and we'd also like to be able to make complete record for ourselves to preserve any rights we may need down the road. I'm not sure what the rules are here. Do we just approach this gentleman over here to present these exhibits?

Mr. John Mattis responded yes.

Mr. Dan Adams presented himself to the Board and stated I'm an attorney with the firm Lewis & Greer in Poughkeepsie, N.Y. and we are here tonight for an Interpretation of the Town's Zoning Code; the **Chapter 259** and in particular, what we consider to be an erroneous issuance of a Steep Slope's Permit by the Code Enforcement officer for the Town. I'd like to put this in a little bit of context if I can. Ms. Gallagher owns about 36 acre parcel here in the Town and within that parcel, at least around three sides of that parcel is about an acre and a third owned by Mr. Kyle Cragnolin. We're here because we believe that Mr. Cragnolin was issued a Steep Slope's Permit in error and that he did not even come close to complying with the various express requirements contained in your Town's Steep Slope Permit Chapter. Again, just for a little bit of context if I may, I have with me John **Delano**, I think many of you know John from Batey & Watson. He's here to assist me tonight and I have with me a drawing that Mr. **Delano** and his firm prepared. I'll turn this into you but as you can see up here at the upper left hand portion, this is a section of Ms. Gallagher's 36 acre parcel. What I've done here in red is just marked off the approximate location of where Ms. Gallagher was cited for tree cutting violation which is still the subject of some discussion and that's not why we're here tonight but I just wanted to point out that about 800 feet away is the approximate location of where Mr. Cragnolin's work went on and we feel it's unlawful work and the reason why I think it's important and to put context to that is that that happened in approximately March of 2008, the tree cutting violation. Unbeknownst to Ms. Gallagher at the time, but we subsequently learned that during the review of that by your Zoning Code Enforcement Officer, a letter was issued under the Town of Cortlandt letterhead from the Open Space Committee and it was signed by David S. Douglas Chair who I believe also sits on this Board here tonight. I thought especially pertinent is that in discussing this violation.

Mr. John Mattis stated we don't care about that violation. It's totally irrelevant.

Mr. Dan Adams responded I don't either it's not irrelevant of the context. The purpose of the context Mr. Chairman is this:

Mr. John Mattis stated before you read it, yes please.

Mr. Dan Adams continued I think I have a right to make a record Mr. Chairman. This is going to go beyond this Board perhaps and I have a right to have some record that I can rely on at the next level if I have to go there.

Mr. John Mattis asked but what is the purpose of explaining the violation?

Mr. Dan Adams responded if you allow me about another minute I think I'll try to make

Mr. John Mattis interrupted because a violation on a property is irrelevant to our case.

Mr. Dan Adams responded understood but in describing the area of land where this violation took place. It was turned out that, as I believe you know "the Gallagher property is one of the property's the May 2000 Open Space Report designates of their very highest priority for preservation. As we noted in the report the Gallagher property is part of an extremely environmentally sensitive area. As the report points out the MCA's biodiversity report declared that area "a biodiversity hub and a crucial element of an important wildlife corridor." I'd like to present this as well. I think it's important to have context of the land and area that we're talking about that was very important in March of 2008 and the way the next land owner was treated a year later and that's the reason.

Mr. John Mattis stated that part of it is irrelevant.

Mr. David Douglas stated I just want to make it clear that what we're considering today is the permit that was issued to Mr. Cragolin and the violation or not violations involving Ms. Gallagher aren't relevant. I'm obviously very familiar with that letter because I wrote that letter on behalf of one of the Town's Committees but the focus of this is a narrow one. I'm aware that there's a dispute between these neighbors and there's different aspects of the dispute. We're not concerned as a Board with the overall fight between the neighbors. What we're concerned with and we're also not concerned with whether or not Ms. Gallagher may have or may have not violated some Town Ordinance earlier. What we care about is simply this particular issue involving Mr. Cragolin's property.

Mr. Dan Adams stated I understand you'd like to limit to this Mr. Douglas. I understand that completely and 100%.

Mr. John Mattis stated we will limit it to that.

Mr. David Douglas stated it's not that we wouldn't like to, what's before the Board – that's what's before this Board. That's all that's before. It's not what I would like the Board, the Board would like anybody would like but that's the limited issue before us and that's all we're looking at.

Mr. Dan Adams stated the reason why it's brought up is because the Zoning Code Enforcement Officer in the Building Department and whoever else was involved in this decision waived whole sections of your Steep Slopes Permit application process. I don't know why I can't speak.

Mr. John Mattis stated that's relevant. The other violation – we are not going to discuss the other violation.

Mr. Dan Adams responded I don't want to discuss at all. I just want to make sure that your Open Space Committee felt this was the highest priority land that this was a critically important corridor biodiversity corridor. I just wanted the Board to keep that in mind when they're interpreting whether or not this waiver was proper.

Mr. Raymond Reber stated we certainly understand the problem and this Board has no intentions of agreeing to any disturbance of land improperly or what have you and we are working with the Engineering Department and Code Enforcement to get the facts and to understand the issues. That's what we're trying to do. It is very possible that in fact what they did and I'm not saying this is a conclusion but it's possible that the work that was done there was done in a way that does not detrimentally affect the overall, the biodiversity and wildlife and preservation of that natural site. That's what we have to find out. And, if in fact that's what Engineering in waiving some of these requirements were able to convince themselves and us that those were sensible decisions consistent with the desire to preserve that area than it was valid. If it wasn't than it was invalid. We will have to determine that. We understand that. What happened with other cases are irrelevant so don't try and confuse us with that.

Mr. Dan Adams stated it seems to me that, I just heard the Board talk about a sign permit and they took a look at the Town Center versus other parts of the Town.

Mr. John Mattis stated excuse me I'm cutting it off there. You stick to the case in front of us.

Mr. Dan Adams stated I'm done with that part of it. I've asked Mr. Delano to assist me with the rest of the presentation and to go through the specific requirements of your Zoning Code, your Steep Slopes Permit that were waived without notice to any of the other adjoining neighbors.

Mr. David Douglas stated this is based on tone. I don't think it's anything you actually said. Don't assume that we are prejudging anything that we're on one side or another. We have a completely open mind as we do with every applicant here. I am an attorney also. I know about advocacy. We're not fighting with you. We are not prejudging anything. Don't take an adversarial approach. It's probably not productive for your client because it just gets people upset.

Mr. Dan Adams stated I'm not assuming any bad motivations but I had a right to put into context how this land was viewed.

Mr. David Douglas stated I'm just saying let's not fight with the Board. I think it would be more productive for everybody to just go ahead. Let's run through the facts. Find out what they are rather than fencing back-and-forth, okay?

Mr. John Delano stated I'm not an attorney. I'm a professionalized dean at the firm of Batey & Watson. I just handed to Mr. Hoch, if you could be kind enough to distribute it across the Board. Some information that's not in the Town's files. It's a set of digital photographs which I dumped at the color printer. They were provided to me by Ms. Gallagher. They were taken on or about March 30<sup>th</sup>, 2009 from around the perimeter of the Cragnolin property. It was, I believe, Ms. Gallagher attempt to document the beginning of some work on the property. I don't know how it was brought to her attention but nonetheless we did speak subsequent to her taking these pictures.

Mr. John Mattis asked is there a reason we didn't have this for our work session? This puts us in a situation where we're getting...

Mr. Dan Adams responded as the attorney's up here know there are extremely close timelines that we need to meet in order to preserve our client's rights within this administrative process and what happened was we had asked your Building Department to provide us with timely notice as to whether or not they issued the Steep Slopes Permit that they then took under review. We were never provided with that notice whatsoever. The only way we found out was by us continue to badger the Department and we finally got a wind of it on e-mail. And so, I think other attorneys will tell you this as well.

Mr. John Mattis asked when did you get the e-mail?

Mr. Dan Adams responded I don't remember. I can pull it out from here.

Mr. John Mattis asked is there a reason why this came in on Wednesday and not for Monday? Quite honestly, I'm not going to look at this tonight. That's too much to look at. I can't draw a conclusion. But, we should've had this for our work session on Monday. If there was a timeline that was too tight that we couldn't get it on Monday please tell me.

Mr. Dan Adams responded no there's no timeline that could have been too tight then. There was a timeline of when I had to do it originally because I had to meet certain **article 78**.

Mr. John Mattis stated I just as soon adjourn this until I get a chance to look at this.

Mr. David Douglas stated this application was originally brought several months ago. I think the Chairman is just simply asking why we weren't provided with these photos on Monday?

Mr. Dan Adams responded I have no reason why.

Mr. John Delano responded the contents of the envelope you received this evening are copies of all documents. I put them in chronological order. They should all be readily available from the Town's file. You should have, I would have thought been provided those by the Town in support of their case. Those are all documents that I believe are somewhere in the public record.

Mr. John Klarl stated John, I believe that's a good faith statement that you made but we don't receive the – the Board doesn't receive the Town's documents. We accept things from the applicant's and opposition. I certainly can understand how you think that we would get the flavor of the file but we get what's filed by the applicant and what's filed by people.

Mr. John Delano stated it wasn't my intention to come here tonight and force your decision. My purpose here is to just lead you through the documents as they exist generally in the Town's and draw you to my conclusion thinking the logic of an Engineer. The photographs which were loose from the envelope, I just thought to print those out. They were not of my taking. They were from the applicant. If you could just flip through them quickly they will show you fresh track marks. Show you piece of heavy equipment up to find the Cragnolin residence in several frames. These were taken, I said previously, by Ms. Gallagher on or about March 30<sup>th</sup>, 2009 where she became aware of this work and was not aware that there was any Permit issued for it. You can sort of just thumb through those and about halfway through it you'll see that there's also some work being done to the structure of the house. There's a wall missing in the back section of the house. That is also documented in several of the photographs. Once we get past those you'll see there's a documentation graphically of a couple of trees which appeared to be of significant diameter that appear to be cut and they are off the end of some material stockpile which shows up in another photograph. I won't belabor those but I think if you spend a little time between now and next time perhaps that this Board meets in this matter you'll get a flavor of the applicant's concern.

Mr. John Klarl asked whose truck is that and where is this truck located?

Mr. John Delano responded the brown truck is that of I believe Mr. Cragnolin and I'm going to speculate – yes the truck is located in front of his garage structure which is the second structure on his property. I don't know how many of you are familiar with the site. I don't believe that structure is indicated on the survey but we'll get to that in a minute. If you would proceed next to the – open the envelope and I'll walk you quickly through those documents and they are generally in timeframe order.

Mr. Raymond Reber stated I think we can make better use of time, we can read the documents offline at our leisure. You put together a very detailed challenge item-by-item on behalf of your applicant to the decisions that were made by the Engineering Department as far as granting the Permit.

Mr. John Delano responded that's not exactly true and your previous statement you took the subject matter of this hearing, at least as I understand it passed the point in time that we're dealing with. You took the matter to conclusion. What my report and documentation was a

review of the Town's file and a review of the application makes it to the Town up to a certain point in time.

Mr. Raymond Reber stated but we have a document that goes item by item and I believe you were behind it where it says "**295-7a**: files do not contain indication and submission of any blah, blah, blah," "**section 259-2h**" states and it goes on and on and since then there's been a response from the Engineering Department and I assume that...

Mr. John Delano responded but since that time there was no communication back to the property adjoiner for her consideration in reviewing the application is our position that she's entitled as an adjoiner to get notice when there's a complete application. It is our position that the application was never complete and she never assumed that the notice and then an application was issued.

Mr. David Douglas stated I think you wrote a letter on May 13<sup>th</sup> which you laid out a detail list of what you thought what you believed to be deficiencies. As I understood it that's the crux of your complaint here. I think that's a very useful letter and what I personally, I can't speak for the rest of the Board, but what I personally would find most useful is for you to go through those points in that letter.

Mr. Raymond Reber stated exactly, that's what we want to hear.

Mr. David Douglas continued and tell us because I think that's very useful and what I'm going to do and what I've told the Town already, asked that the Town be told is that I want to hear their response to each – you made a number of discrete complaints about the process and I want to hear your support for those complaints and I want to hear what the Town has to say in justification for what it did. That way we can weigh things.

Mr. John Delano stated as do we and Ms. Gallagher. We never received that formal response or the courtesy of that reply.

Mrs. Adrian Hunte stated we didn't get a chance to.

Mr. David Douglas stated this is the first -- this matter is before us for the very first time now. We've been doing this for 10 minutes or 15 minutes alright. What I think would be most useful for us and therefore would be most useful for you I think would be to go through your May 13<sup>th</sup> letter and the points there and walk us through it. What I'm going to ask for the Town to do is to respond to each of those points and walk us through their justification.

Mr. Dan Adams stated and just so the Board is aware this letter is cc-d to all the various Town folks.

Mr. John Delano stated in my package I identified the letter in the upper right hand corner as number 9 and going through the letter you should keep next to you the next document which was identified as number 10 is a copy of the Steep Slopes Ordinance so we can refer back to all the

different points. There's also maybe a need to refer to some of the previous documents and there's wads of maps in there as I go through the items.

Mr. David Douglas asked why don't you start with the one that says "**259-7.a**: the files do not indicate correct indication that submission of any of the information required as part of a Permit application under this Code Section has been waived by any approval authority."

Mr. John Delano stated correct. Ms. Gallagher received notice as a property adjoiner, I believe she received it on May 4<sup>th</sup>, it was dated on May 1 and mailed on May 2 and it's simply this notice and one 11' x 17' thing so she called me up and asked me to see what was going on. I made arrangements to come down to the Zoning Code Enforcement to review the file and the Permit applications on record and what I found on there were some of these other documents that you have in the envelope along with series of maps all of which we've reviewed and found to be deficient. What I didn't find in the file was any record that the Town was intending to waive any of the requirements of the Steep Slopes Ordinance. At that point in time where the adjoiner was invited in to look at what was supposed to be, according to the Code, a complete application. That's what the first item is about. The second item is a continuing and ongoing problem. The owner applicant continually seems to use the incorrect address.

Mr. David Douglas stated but you know what the address is.

Mr. John Delano responded I always have trouble remembering it but now I think I'll remember this one as 222. There was an error there. The statement

Mr. John Mattis stated the response from the Town is that the Post Office delivery address is 226 that they use. That's why they used what they did.

Mr. David Douglas stated I don't want to get caught up... let's get to the subsequent ones.

Mr. John Delano stated we believe that the statement and moving on to **a5**, "the statement proposed work and purpose thereof as presented on the application and as one interprets from reading the documents that were submitted are inconsistent." That's a professional judgment. The plans, this is on to **a6**, "the plans for the proposed regulated activity were not signed and sealed by the appropriate licensed professional as is required."

Mr. David Douglas asked as required by what?

Mr. John Delano responded that's required specifically by this section of your Code.

Mr. John Klarl responded **section 6**.

Mr. John Delano continued that's required by New York State Law, Education Law, a copy of which I gave to Mr. Hoch. There's a couple of white pieces of paper with a little red ink on them. This is the New York Education Law as it applies to the Professional Practice of

Engineers, Land Surveyors and in positions in imposes upon public officials who receive and review those documents and issue Permits on them.

Mr. David Douglas asked does the Steep Slopes Ordinance say that there has to be a licensed professional involved in any application.

Mr. John Delano stated let's go to **259-7.a6** and **exhibit 10** "such plan shall be signed and sealed."

Mr. John Klarl asked does it require a professional to absolutely comment on the work?

Mr. John Delano responded in reading the Zoning Ordinances when plans are called to be signed and sealed it's my understanding as I think it is that of the members of the Town staff that means they be signed and sealed by a licensed professional. A professional license to New York State.

Mr. James Seirmarco stated it would seem to me though that would depend upon the degree of complexity of those things. If they've chosen not to require that you can't have them sign it.

Mr. John Delano responded New York State Education Law...

Mr. James Seirmarco stated I understand.

Mr. David Douglas continued you're right about the Education Law requires.

Mr. John Delano stated "no official of this State, City, County, Town or Village, they're in charge of enforcement of the Laws, Ordinances, or regulations shall accept or approve any plans where specifications that are not stamped with a seal of an architect, a professional engineer, or a land surveyor."

Mr. David Douglas stated I'm not sure that answers whether or not those plans are required under the Town's Steep Slopes Ordinance in this context. That's what we're going to look into. We understand what the Education Law.

Mr. John Delano stated I appreciate it and I would just advise you don't beat me up that I'm taking something from him but we did some plans for Ms. Gallagher in connection with a previously mentioned violation.

Mr. David Douglas interrupted I don't care. It doesn't matter.

Mr. John Delano stated and they had to be signed and sealed. It was asked that they be signed and sealed.

Mr. David Douglas stated again, stay to this.

Mrs. Adrian Hunte asked does the **exhibit 10** have a specific reference to the requirement of the such in this piece of legislation? Where is it?

Mr. Dan Adams responded **259-7.a6**.

Mr. James Seirmarco stated we understand that the signature's required.

Mr. Dan Adams stated I don't know what stamped and sealed could mean, signed and sealed other than.

Mr. John **Delano** stated these are just the deficiencies you go through the letter you have there. "The proposed regulated activities don't show the relationship to the sewage disposal system or any wells within 100 feet of the property." There's no way to tell from looking at the plans whether or not the proposed work would be a conflict with or interrupt or disturb or damage the existing sewage disposal system.

Mr. David Douglas stated we'll see what the Town says in response, understood.

Mr. John Klarl asked that's **6a** you just read?

Mr. John **Delano** responded that was **259-7a.6a**. Onto the next page.

Mr. John Mattis stated now it's **6b**.

Mr. John **Delano** stated that's estimated quantities in our opinion in looking at the documents that were submitted and in looking at the numbers posted that there's dramatic misrepresentation of the total amount of material to be moved. Onto **6c**...

Mr. James Seirmarco stated let's back up for just a second. You say there's a dramatic difference. Give me some idea of how much.

Mr. John **Delano** responded the plans are so poor in quality that's it's really next to impossible, it's impossible to measure or make an accurate estimate of the amount of materials. There's no proposed topography on the plans so one can't make an evaluation of what the grade is and what the grade's going to be and calculate an answer.

Mr. James Seirmarco stated I understand.

Mr. John **Delano** stated someone put a number 6 cubic yards down on there. Based on the amount of disturbance and the typical detail we believe that that number is way short. Again, an engineering or plan reading evaluation. Any other questions on **6c**? We go to **6d**: "The existing plan showed contours of the plan of the proposed regularity are not representative of topographic condition on or about the disturbed area as they exist prior to the violation." There are no proposed contours shown on the plans in the area of disturbance and to a 100 feet beyond the

area of disturbance. The contours provided are inaccurate and not presented in the National Geovertical Datum as required by your Code. I provided also in the package copies of the Town's topography which will show you or are better indicative of the steepness of slope immediately behind the house and the misrepresentation of the contours on the plans that were provided by whom we don't know. Only one cross section of the steep slope area was provided. There were more than one steep slopes area indicated on the map for disturbance yet only one cross section was provided. The Code says that cross sections of the steep slopes areas for each area should have been provided as the inference of the Code. Onto **6f**; "there's a stone wall which by your definition in your Code is a structure is constructed on the property without benefit of a Building Permit."

Mr. David Douglas asked do you know when that stone wall was constructed?

Mr. John **Delano** responded the stone wall, in my familiarity of the property, about 10 years now. The stone wall has been a continuing work of art. It's been an ongoing thing. There's no Building Permit for it in the file that I reviewed.

Mr. James Seirmarco stated it could be 50 years old.

Mr. John **Delano** responded it couldn't be 50 years old. I've been watching it being partially constructed for about the past 10 years. I go to the property regularly or somewhat regularly.

Mrs. Adrian Hunte asked was there nothing there when you started to look 10 years ago?

Mr. John **Delano** responded 10 years ago there was the beginnings of a formal wall that we see now that appears to be near a completed state. Our point again is that this is a structure by your Code definition it's a structure, construction of a structure requires a Permit. There's no Permit in the file.

Mr. John Klarl asked so you're saying the wall has grown over the years?

Mr. John **Delano** responded what may or may not have been is not clearly indicated an old form wall is now a very formal structured stone masonry wall. "An erosion and sediment control plan was not provided as required. That's a specific document or it's a specific information to be incorporated into a document wasn't provided."

Mrs. Adrian Hunte asked that's **259-7a.6g**?

Mr. John **Delano** responded yes. Onto **6i**: "the application doesn't contain a SEQRA environmental assessment form upon which a list of applicable County, State or Federal..." there was no SEQRA documentation in the application.

Mr. David Douglas asked does the Steep Slope Ordinance require a SEQRA EAF for this sort of work?

Mr. John Delano responded the SEQRA determination is required prior to the issuance of any Permit or any approval by any government agency in the State.

Mr. John Klarl stated SEQRA is triggered by an approval or a Permit one of those things.

Mr. John Delano stated at a minimum the applicant should have at least filed a short AEIF and the determination may well have been a type II but nonetheless.

Mr. David Douglas asked so you're saying that there was no short – there was nothing filed?

Mr. John Delano responded there was no SEQRA filing done whatsoever. Onto the next item which was **259-7a1.7c** which has to do with notice.

Mr. David Douglas stated you said because they didn't submit everything they needed to of Laws and complete a notice.

Mr. John Delano responded "notice is triggered upon receipt of a complete application."

Mr. David Douglas asked and you're saying it's not completed.

Mr. John Delano responded she got notice and we determined that the application was not complete in our colorful words called it woefully incomplete. We question the validity of the notice additionally there's a notice requirement for posting on the public right-of-ways around the property. There was no notice posted out on Mount Airy Road.

Mr. David Douglas asked was Ms. Gallagher in fact aware? Are you saying that because the...

Mr. John Delano responded Ms. Gallagher was aware of activity on the property from the photographs.

Mr. David Douglas stated I'm just trying to understand is this a technical objection or this is a substantive of one? I'm not saying there's anything wrong with technical objections.

Mr. John Delano responded it's technically substantive. Technically notices should have been posted on the public right-of-way. I went through the Code, I dot the i's I cross the t's the way I'm used to doing work and the way that people expect me to do work.

Mr. David Douglas stated I understand what your answer meant.

Mr. John Delano stated as a result of the condition of the application it was our belief that we should have been subsequently re-notified or contacted once the applicant was advised that he was deficient and need to make things complete. If the course of action on the Town was to do whatever it is that they've done it would have been nice if they sent Ms. Gallagher a notice. We

didn't find out until after the fact that the Town basically after calling me up and asking me for a word document of this so they wouldn't have to type as much as I had to type so they could prepare the memo that you probably have in the file somewhere, that I haven't even reviewed, that we would have at least gotten a notification of that. That basically gets me through my letter. All the other stuff is either before or after.

Mr. David Douglas stated understood. The letter is very helpful and to me that's the crux of it. I can't speak for anybody else but I would like now, you're obviously entitled to continue your presentation and any other points you want to make but when you're finished what I'd ask is that the Town run through each of these points and tell us their response.

Mr. John Klarl stated since it's fresh in our client minds, David, do you want to do it now. He just went through his little list. Do you want to have that response?

Mr. David Douglas stated procedurally the applicant gets to make their presentation. I don't want to cut them off.

Mr. John Delano stated there's just a couple of other concerns that I'd like to point out which are getting glossed over or unequal treatment under the Law in certain regards. In connection with this application in your file there's this little cluster of maps which you can look at later but it has a copy of his application and the documents that I complained about that aren't signed or sealed but the outside document also an unsigned and sealed document is a 1954 survey. This is older than I am, not as old as most of you but it's older than me. It's not signed and sealed by a licensed surveyor. The gentleman who prepared it in fact is dead so he's unable to sign and seal it and it doesn't show the garage where we saw the truck park and it shows it's one-story frame residence but it doesn't post the offset to any of the property lines. This particular part of the residence in the back if you see in Ms. Gallagher's photographs was being partially demolished. There was no Building Permit in the file. I don't know if one was subsequently applied for. When this Permit was applied for the Steep Slopes there was no request made for a Building Permit but the Town did full well know, as best I'm aware, that there was also some construction that was going to take place on the building because it was mentioned in the application that the property had eroded down and it was up against the building which was part of the urgency or perceived urgency to do this although things didn't transpire urgently. Whatever Permits he got he got – whatever reconstruction he did, he did but we don't know if this was legal, pre-existing, non-conforming. We don't know if the non-conformity was increased.

Mr. David Douglas asked is this something that's relevant to the Steep Slopes Permit or is this something separate?

Mr. John Delano responded normally you expect to as an applicant to submit some sort of a survey document signed and sealed by a licensed land surveyor showing where the house is on the property.

Mr. David Douglas stated all that we are going to consider is whether or not this Steep Slope law was complied with. I don't want to hear about the overall fight between the neighbors and who did what to whom and who corrected what violations when. I'm aware of some of the personal background.

Mr. John Mattis stated we have somebody here from Code Enforcement. They will look into the matter of the building.

Mr. John Delano stated this matter is not a fight between neighbors. This is a matter of legal technicality and what happened with the Building Permit and whether or not someone was permitted to create or further substandard...

Mr. David Douglas stated that's a Code Enforcement matter.

Mr. John Mattis stated and we have Code Enforcement here and they will look into that.

Mr. John Delano stated I will tell you that I did have a sneak preview of the letter that the Town wrote and they basically blew off the requirement for a survey even though they knew that the building was going to be under construction. That's not right.

Mr. Dan Adams asked I'm assuming that with the information you have now that we're going to keep this hearing open? Is that correct?

Mr. John Mattis responded yes.

Mr. Dan Adams asked and then we'll get notice of when the next month's hearing?

Mr. John Mattis responded that would be November 18<sup>th</sup>.

Mr. David Douglas stated we're not finished. Maybe other people who want to speak today.

Mr. Dan Adams stated I have no problem for us to talk at all, Mr. Douglas, I want it all open and fair whoever wants to talk can talk. We're not asking to referee any fight between the neighbors at all. We're asking to look at your statute and look at the facts that we've provided you with and give us an interpretation based on your.

Mr. David Douglas stated fine Mr. Adams, we know what we're supposed to do.

Mr. Wai Man Chin stated the next meeting is November 18<sup>th</sup> and the work session is the Monday before that.

Mr. John Mattis stated and I know we have at least one person in the audience that would like to speak.

Ms. Brie Gallagher presented herself to the Board and stated Mr. Douglas, I don't know why you would sit at a meeting like this and you would let everyone know what you know about something that I don't know. I have written a letter that included the letter that John Delano submitted to the Building Department. I will document four years the absolute irrational behavior towards me. That's what we're addressing. What you know you wrote the letter about me without sending it to me.

Mr. John Mattis stated no we're not. That's irrelevant. Ms. Gallagher you're out of line.

Mr. David Douglas stated what she says are you referring to the Open Space Committee's letter?

Mr. Dan Adams stated no, you have what you need in front of you we've presented to you.

Mr. David Douglas stated I'll just state for the record that I don't know what Ms. Gallagher is talking about when she says "I wrote a letter."

Mr. Dan Adams stated we presented a record to you and we think it's pretty compelling and we would ask that you take it under consideration and take a look at your statute and what is typically required and if in fact that property has any special significance to this Town, I hope that would also help you to make your decision about whether or not a waiver, a blanket waiver of all of these different requirements was rational and reasonable.

Mr. John Mattis asked anyone else in the audience that would want to speak?

Mr. Kyler Cragolin presented himself to the Board and stated it should be eminently apparent what this whole deal is about. Again, I won't mention the various issues that are a matter of contention with Ms. Gallagher and myself. I wanted to say that some of you have heard me speak before mostly other venues. I've never been before the Zoning Board of Appeals before always on environmental issues. I contributed to and I would like to think I commented on contributed to both the Steep Slopes Ordinance and the new tree Ordinance when that was drafted two years ago. Environmental issues have always been of the utmost importance to me. I would never to anything that would in any way would impair or damage the environment in this Town.

Mr. John Mattis stated I don't think that's the issue. The issue is whether or not there's deemed to be proper documentation.

Mr. Kyler Cragolin continued I think that very basically in this democratic republic that we're all participants in. There are three branches of government. On the local level it would be the Town Board which makes the laws, the Zoning Board of Appeals that interprets the laws and the Department of Technical Services among others that applies and enforces the laws. The way the system works is that the executive branch has that very important discretion in their administering and applying the laws and I think that's what's happened here. Also, looking at the Steep Slopes Ordinance and the legislative intent therein I think the first paragraph is clearly

stating what the intent of this law is. It is basically geared towards controlling development on unimproved property in the Town of Cortlandt. It may apply and should apply in other instances as well but principally and primarily as is stated in the first paragraph this is the intent. I think that the Department of Technical Services did far more than their due diligence in this case. They were on site a total of four times of their own doing and once was a time that I requested, a third time I requested the environmental consultant, Mr. DiSanza, to come out. I did that immediately after the Town received the letter which you should have in your packets sent by Brie Gallagher possibly that was the letter she was referring to in which many accusations were hurled at me. I think you should also have my response to that.

Mr. John Mattis interrupted again, that part of it's irrelevant.

Mr. Kyler Cragolin stated pertaining to my application I think it's important to note that I made every effort to provide the Town with whatever information they asked for. Had they requested more I would have complied with that. I certainly think that there's a world of a difference between the application of this statute and a large unimproved lot situation where it's being applied and some fellow that has an acre and is working within 20 feet of his house and doing some grading and landscaping work, this is about 3 or 4 days work we're talking about. It's been blown up into a very big deal. In my mind it's not. I think if the situation were any other but this particular thing, which we're not talking about that's not going on, this never would have gotten a second look. As I said, the Town was out on numerous occasions. The second time that Mr. DiSanza came out was to confirm that indeed the sill fences and everything else that was specified by him functioned flawlessly. There was no soil moved onto anyone else's property. There were really no outstanding issues and I think you saw that; no trees cut, no deposition of soil on anyone else's property. A fairly cosmetic piece of work with the exception of the back corner of the building where by erosion over the years the soil had actually – this was a structure on piers that actually had filled in right under the corner of the building and there was extensive damage of which initially I had no way of gauging until I was able to open that up and look at that. No alteration to the building was done and I think that was confirmed by the Department. As I said they were on site on a regular basis most likely because of Ms. Gallagher's protestations they were out.

Mr. Raymond Reber stated you indicate that the second visit was to check to make sure that you had put in place the necessary fencing and what have you on the site.

Mr. Kyler Cragolin responded one of the Town Engineers was out as well to measure the square footage because it was dubious. Initially, I didn't think that there was 500 square feet of steep slopes area but it is a steep area and as it turned out it was a hair more, it was slightly more.

Mr. Raymond Reber asked when was the first time a Town employee came to your property?

Mr. Kyler Cragolin responded when a "stop work order" was issued.

Mr. Raymond Reber asked you're saying that no one came to that site prior to issuing you a Steep Slopes Permit?

Mr. Kyler Cagnolin responded no. They were out initially.

Mr. John Mattis asked you applied after the "stop work order?"

Mr. Kyler Cagnolin responded after the "stop work order" and before the application was made. We discussed the work scope. They saw what the situation was what talked me regarding what I was hoping to accomplish.

Mr. Raymond Reber stated you began work believing you were under...

Mr. Kyler Cagnolin responded I followed their direction explicitly as far as the sill fences. When the sill fences were moved hay bales were put in place.

Mr. Raymond Reber continued so you had started the work believing you were within that 500 square foot.

Mr. Kyler Cagnolin responded I did. When it was questioned I was more than happy to cooperate with the Town in any respect. Again, this is really not about my scope of work here and I think that's very apparent.

Mr. Raymond Reber stated for us it's a key issue. The issue for us is very specific. There's a Steep Slope Ordinance. It has rules and the issue for us is, as a court, is to decide was that Ordinance complied with by the Town and that's what we have to evaluate and determine whether or not and I think that's what the applicant is challenging. Everything else that you folks throw in here to us we have to ignore.

Mr. Kyler Cagnolin stated beyond the fact that I've said that I felt the Town was out there and on top of this project on a regular basis, they monitored it and I felt that their due diligence was well performed.

Mr. James Seirmarco asked just for the record could you elaborate for one minute on what your goal was when you first put the shovel in the ground? What were you trying to do?

Mr. Kyler Cagnolin responded remedy the situation on that back corner and should have a photograph of that.

Mr. James Seirmarco stated I do.

Mr. Kyler Cagnolin stated where the dirt actually – that's the one. The dirt was up to the second clapboard. The leaves would blow in there and it was something that definitely needed attention. I thought it was a no-brainer that there were some large rocks in the backyard that could be used

to terrace that back corner and that's what the plan was. Incidentally, the individual that did the plans for me is a design professional. There are licensed engineers in that company. She did not have those sealed in order to save me a few dollars. It was a relatively small project. The Town seemed happy with the plans. If that had been an issue I could have remedied that.

Mr. John Klarl asked who submitted the plans? What was the firm?

Mr. Kyler Cragolin responded Melanie Sotomedina has a Master's in Engineering.

Mr. John Klarl asked where's her office?

Mr. Kyler Cragolin responded in Manhattan. But, she's a friend and she did this for me to help me out. Any other questions?

Mr. John Delano stated just for the Board's information a few points from Mr. Cragolin. The documentation in your files, in several of the photographs, it's painfully apparent that this sill fence was not installed in accordance with State standards. I don't care what the environmental inspector said. I challenge whoever in the Town said it was because it's clear in the photographs that it was not. There was in fact soil, although it may be a small amount, but there was soil transport or the transport of sediment off of the Cragolin site onto Brie Gallagher's property which in fact is the driveway over which Mr. Cragolin takes access easement to his domicile. That also is documented on several occasions in the photographs. Mr. Cragolin said that "no trees were cut." Several trees were cut aside from the two that I mentioned in those photographs you will see another photograph which we didn't explicitly review tonight, you will see fresh cut, small diameter, in my opinion more than 4 inches, subject to the tree Ordinance, cut on the property. Mr. DiSanza, his name was mentioned several times as coming to the site, and I really don't care what Mr. DiSanza may or may not have looked at in the way the building. He's not a Building Inspector, he is the Town's Environmental Monitor. I'm sure you're aware of that, if you're not than you're aware of what I'm aware of for the record. I don't understand for the life of me if these plans were prepared by a licensed professional why they would charge you more to sign and seal the plans. That's what we do for a living. We're licensed and trained to do things to put them onto paper and we put our assurance on there by signing and sealing the plans to protect you the client and to protect your neighbors and to protect the Town and the people that review the plans. If there's ever a problem with it you know where to go back to the guy that signed and sealed or the girl that signed and sealed the plans.

Mr. Raymond Reber stated I would only make one comment as a PE myself. If a friend of mine came and said "could you just give me a rough sketch or something?" I'd say "look, as a friend I can give you a sketch like any neighbor could. I'm not going to do it as a PE. I'm not going to sign it, seal it or certify it. I'm just doing you a little favor." That does happen which means I'm not committing myself to saying that this is a professional Engineers approved anything. I just did a little favor of a friend of a sketch. That can happen. I don't commit to anything. I don't charge for it. I do something for a friend. That could be the situation here.

Mr. John Delano stated it was a favor for a friend.

Mr. Raymond Reber stated that could have been a favor but that doesn't mean I'm doing it as an Engineer. I'm just doing it as somebody who can...

Mr. John Delano stated that is correct that whoever prepare these documents did it as a favor for a friend not as an Engineer as we believe is required.

Mr. David Douglas stated the issue before us is either required or it's not required for a statute.

Mr. John Delano stated we'll see what DOTS comes up with.

Mr. David Douglas stated maybe, we're going to hear from DOTS.

Mr. John Delano stated that may be a new revelation.

Mr. John Klarl stated we stipulate with Mr. Delano and with Mr. Irish who is a long time mentor of this Board, the Planning Board, and the mentor of your firm.

Mr. John Delano interrupted and myself.

Mr. John Klarl stated your firm and he used to tell us for the last 25 years that any that we take in a document on behalf of the Town it has to be signed and sealed so we all agree with that. The question is whether or not a design professional who it signed and sealed was the only person who could submit the documents. But, we agree that Mr. Irish used to tell the Board and tell you and tell your firm all documents submitted to the Town should be signed and sealed and they should. The question is whether or not a licensed professional had to be the person involved here. We'll look for a determination.

Mr. John Mattis asked any other comments?

Mr. Ken Hoch presented himself to the Board and stated Town of Cortlandt Code Enforcement. I'm quite familiar with this. I actually wrote the response to Mr. Delano's May 13<sup>th</sup> letter after we had a staff meeting. Just in terms of a timeline. I actually received a call from Ms. Gallagher on March 30<sup>th</sup>, 2009 stating she thought there was a violation of the Steep Slopes Law going on on Mr. Cragnolin's property. We sent Mr. DiSanza out there. His initial review was he questioned whether Mr. Cragnolin actually needed a Permit based on the size of the area he was disturbing. We discussed it at a staff meeting and in light of the previous action with Ms. Gallagher and the history of the neighbors we decided to err on the side of caution and Ed Vergano, the Director of the Department of Technical Services said "we're going to require Mr. Cragnolin to get a Permit." Mr. Cragnolin was served with a "stop work order." Subsequently, on April 6<sup>th</sup> and April 26<sup>th</sup> Rich DiSanza visited the property to check on run-off protection and he deemed that it was adequate. We then did the required mailing to the neighbors.

Mr. John Mattis asked what do you mean by adequate?

Mr. Ken Hoch responded that he was protecting the neighbor's property with his sill fence. We did the required mailing. Staff reviewed documents submitted by Mr. Cragolin and I would like to just briefly read one sentence out of the Steep Slopes Code which is section **259-7a**: "an application for a Permit to disturb or alter a Steep Slope shall be filed with the approval authority and shall contain the following information and such other information as required by it except when waived by it as not pertinent or necessary for the proposed disturbance." It was judged by Mr. Vergano that Mr. Cragolin did not need an Engineer for the work he was proposing. It also had been the subject of a site visit by Mr. D'Angelo, Jim Flandreau, Deputy Director of Code Enforcement and Arty D'Angelo one of our staff Engineers. On June 11<sup>th</sup>, 2009 the Town issued a Steep Slopes Permit. The day before I have a note that Mr. Vergano called John **Delano** to advise him that the Town would be issuing a Permit. On July 13<sup>th</sup>, I received a call from Mr. Adams's office and I faxed to him a copy of the Steep Slopes Permit. In terms of the Town's response on the fact sheet that was distributed to the Board, we tried to be as comprehensive as we could if there are specific questions about any of the items – what staff does on applications like this for Steep Slopes and Wetlands is we look at the proposed work to be done and in a number of cases the proposed work is small and we believe the intent of the Law was not to unfairly burden a homeowner with a requirement to get Engineering drawings when staff believes site visits, staff review, staff knowledge of the property means we can do our job, we can cover the work that's being done without being onerous. This is not a huge, major development. This is a homeowner trying to correct a problem. So, if the Board does have any questions about specific items that Mr. Delano referenced I'll try to shed some additional light.

Mr. David Douglas stated I do Mr. Hoch and I don't know if you're the one that would be responding to it or it would be somebody else. What I would like to do is go through each of the points in Mr. **Delano's** May 13<sup>th</sup> letter and hear the Town's response. Now, the Town gave us in our fact sheet certain responses and there's some that I think need to be explored further. I just picked the very first one he sites to section **259-7a** and he said "the files did not contain indication that submission of any of the information required as part of a Permit application under this Code section has been waived by any approval authority." And the Town's response was "applicant submitted information deemed acceptable." My question is going to be what specifically did they submit? If you're prepared to tell me every item that they submitted now and respond to it, that's great. If you're not prepared than we'll do it next month.

Mr. Ken Hoch responded we can certainly put that together for you.

Mr. David Douglas stated what I would like is – you of course have a copy and again, I don't know if it's you or somebody else in the department. You know what the issues are raised by Mr. **Delano's** letter and you know what the Town said in response. Some of these responses I think hits squarely their square responses and answer it fully. Some of them such as the one I just read, that's pretty conclusatory saying that "the applicant submitted information deemed acceptable." That's obviously the conclusion that you like but we need to have the facts. We need somebody from the Town to run through each of these points and respond to them. To me

that is a key thing to do. There's a series of them. Another one is about "the volume of excavation of fill," and it says "Town staff review of the site found the excavation reasonable for the intended purpose of the work."

Mr. James Seirmarco stated we need to embellish upon that.

Mr. David Douglas stated you've got to explain what, where that conclusion came from.

Mr. James Seirmarco asked what area did you look at? How did you judge or guesstimate how much was going to be removed and give us some relative numbers here?

Mr. John Mattis stated there are several of them that says "this requirement was waived as it was not relevant to this application," and I would suggest that you say "because" and give some factual reasons why. There's one that I'm not sure of and it's underlined here "there was no building construction or reconstruction and no trees were removed." Just going through there quickly we really didn't have time to review it but it looks like some trees were cut down.

Mr. Ken Hoch stated when Mr. DiSanza was out there, not only is he the Town's Environmental Analyst he's also a Certified Arborist, he said there were no trees cut down that he could see.

Mrs. Adrian Hunte asked Mr. Hoch or Mr. Cagnolin, do we have an estimate as to the cost of this project? What is the square footage of the house or the structure that's being, according to this photo, repaired?

Mr. Kyler Cagnolin responded the side wall was opened enough for the machine to reach in there and remove the soil. There's no work being done on the house. The house is as it was. There's no construction going on. There was an opening in an area of the wall and it's been closed.

Mrs. Adrian Hunte asked what is the square footage of the house?

Mr. Kyler Cagnolin responded I don't have that exact figure.

Mrs. Adrian Hunte asked is it under or over 1,500 square feet?

Mr. Kyler Cagnolin responded probably under.

Mrs. Adrian Hunte asked is the cost for this project under \$10,000 or over \$10,000?

Mr. Kyler Cagnolin responded oh yes, under. In fact, I think I put down \$5,000 on the application. Much of the work was done by myself and with the machine that was loaned to me.

Mrs. Adrian Hunte asked for our representative from Batey & Watson or Mr. Adams would you then please concerning this section **72-09** of the Education.

Mr. John **Delano** explicitly with the preparation of building plans nothing to do with plans with land development.

Mrs. Adrian Hunte stated I refer you to **section 7** “nothing in this article shall be construed to apply to.”

Mr. John **Delano** responded that’s correct. The way the State Law’s written, although it’s superseded by most local Ordinances, the way the State Law’s written if you’re going to do a barn structure, a farm structure, agricultural structure or small residential structure under 1,500 square feet you do not need professionally prepared engineered or architected building plans. That’s for a structure. This Town in fact requires them regardless of the size of the structure. They’ve made the requirements stiffer. This Town also requires certain land development projects to be prepared by surveyors and/or architects, and/or engineers to be stamped that have nothing to do with a physical structure so don’t read too much into it.

Mrs. Adrian Hunte stated excuse me don’t tell me what I should read or not read into it. I was asking for an interpretation.

Mr. John Mattis stated we did have a question that I asked about trees. Were any trees cut down?

Mr. Kyler Cragolin responded the trees that you see in the pictures there were dead trees that were cut between 3 and 5 years ago. They were not cut in conjunction with this work as I’ve stated in my letter “no trees were cut.”

Mr. John Mattis stated I’m not going to review them all tonight but I happened to see one and it looked like it was pretty fresh, it looked like a fresh cut. I will look at that.

Mr. Kyler Cragolin responded there was a small tree of about 4 inches which was a Catalpa, this was not on the steep slope and it was not...

Mr. John Mattis stated it doesn’t matter where it is. There is a tree Ordinance about removing trees. It doesn’t say on steep slope or not on steep slope.

Mr. Kyler Cragolin responded on a lot developed for single family homes I believe you have a right by law to cut three trees a year. You must write a letter to the Department of Technical Services if it’s over 4 inches in caliber which this one wasn’t. It was a small tree on level ground and I was well within my rights to cut that. It had nothing to do with the work that the Steep Slopes Permit whatsoever. It was a separate area.

Mr. David Douglas stated whoever the Town representative is, I think it could be preferable if somebody's here live. What I have in mind is not just a written submission to the Board in response to things. I want somebody to be here live so just as we did with Mr. Delano, we can have some give-and-take rather than have it written. And, again I don't know if it's you or somebody else.

Mr. Ken Hoch responded the response you're reading was a result of a staff meeting but I'll discuss that with Ed and we'll see.

Mr. John Mattis stated I think that the response we'd like a much more detailed written response and someone here to answer questions.

Mr. James Seirmarco stated I think this tree issue is a very important one because we have a discrepancy here.

Mr. John Mattis stated that's not a steep slopes issue but it is an issue for the Town but it's not an issue for this case. The tree Ordinance is the tree Ordinance and the Steep Slopes is a Steep Slopes.

Mr. David Douglas stated another thing that I personally would find useful is perhaps to have a site visit so that we can get a first-hand look at what the scope. We're having these debates about the scope of this work was. I'd personally find it useful to see in person what was done and what's involved here.

Mr. Dan Adams stated whatever you need in the way of easements, whatever you need in the way of access just let me know.

Mr. David Douglas stated I assume we don't need anything from you because I assume it's on Mr. Cragolin's property and he's got the right to go through the driveway.

Mr. Dan Adams stated yes he can let you in, that's fine. At Hyde Park we say "yes, we'll give you a call and we'll let you know when you're coming in."

Mr. John Klarl stated the point is Mr. Cragolin is going to give us permission and you'll give us permission as the applicant. Mr. Delano would be able to point out where the property line is for the Board?

Mr. John Mattis stated we generally schedule those for the Saturday before our next meeting which would be the 14<sup>th</sup> of November and generally around 10:00 a.m.

Mr. John Delano stated staff had to tell me I'll put it on the calendar. I'm not going to be there.

Mr. John Klarl stated they're announcing it now. They're going to send a separate letter you said staff should contact you.

Mr. Dan Adams asked a week from Saturday John?

Mr. John Mattis responded November 14<sup>th</sup> at 10:00 a.m.

Mr. John Delano asked November 14<sup>th</sup>, at?

Mr. David Douglas responded 10:00 a.m.

Mr. John Mattis responded if that's the Saturday. Let's see if the meeting's the 18<sup>th</sup> on a Wednesday that would be the 14<sup>th</sup>.

Mr. John Klarl stated this is your notice.

Mr. John Delano responded got it.

Mr. John Mattis stated personal notice.

Mr. David Douglas stated one other thing. At the next meeting, I would find it useful and again this is directed to you since this is more a legal question, if you could directly to speak about what you understand the provision of **259-7a** to mean when it says "except when waived by it being the approval authority as not pertinent or necessary for the proposed disturbance." If you could address, and I'm not trying to put you on the spot tonight, but next time to address what you think the parameters or limitations or whatever it might be on that.

Mr. Dan Adams responded I would think, at a minimum just standing here tonight, I would think at a minimum our public official should probably have to put that in writing so that everybody who is a beneficiary of that Zoning Code has an opportunity to review that as opposed to having them try to read the mind of whatever that Zoning Code official – I mean, you're right I'll give you a full memo.

Mr. David Douglas responded I'm trying to be fair to you.

Mr. Dan Adams stated I just want to make one point if I could. The sign and stamped drawings, the sealed drawings, one of the issues for the applicant is the fact that there was, we feel, a significant amount of dirt was moved, a lot of fill was moved around there. One of the things the drawings give us and what your statute calls for is a relationship of the work to the septic system and/or water lines that are there. We don't have any idea where Mr. Cragnolin's septic system is. He borders right up against our client's property and we have no way to knowing whether or not what he did endangered that, impaired it, somehow created – I can't think of the word right now, but compromised that system, we don't know. I think that one thing a professional would do before he put his name on it, even if he was doing it as a favor, I think he would locate that infrastructure for us so that we would know whether or not it was okay to go ahead and bring

that equipment and do that digging. That's one of the things were concerned about Mr. Seirmarco.

Mr. James Seirmarco stated there are some trigger points that start some of these things and I think that one of the trigger points is: is it greater than 1,500, is it bigger than this, is it so on. If those things so you don't make it onerous on the applicant, if you don't exceed those trigger points than it's hard for the Town to require those things when it says that they're not required under 1,500 square feet or so on and so forth. I agree what you just is important and those things are important if you do happen stance to influence those things. They put those figures in place because someone has decided that under 1,500 square feet it should have no effect on septic system, it should have no effect on this. There's trigger points on certain things, I think. If the applicant doesn't exceed those trigger points than we can sit here and debate all night long what you think he should have done but he has to follow the procedures. I have a problem with reviewing all of the things he might have done and might have done this, and he might have done that. I think it's either he has to do it if he's exceeded the trigger points or he doesn't have to do it and he's below those trigger points. That's the way I look at it.

Mr. Dan Adams stated I understand but don't get confused by the 1,500 that has to do with Educational State Law **72-09** not yours.

Mr. James Seirmarco stated I understand.

Mr. Dan Adams continued one thing we were talking about was the equities of the situation is what I'm kind of sensing from you which I'm sensitive to as well but I would also point out that many intelligent people have said that justice is applied uniformly, that's what the definition of justice is: the law applied uniformly. I understand there's waivers. I'll give you a little memo of law to the Board on what waiver is and how public municipality conducts itself when applying waivers and hopefully not in a discriminatory manner. I'll provide that with you and hope that'll be helpful too. I certainly appreciate your time tonight. You've given us a lot of time and I'm sure you're tired and everything else and I appreciate it.

Mrs. Adrian Hunte stated one, we all know that there are intelligent people but the law is not necessarily applied in terms of equal justice. The other is if you're going to give us examples of or pieces of law or legislation that you're providing and you're relying on than you should also, and you're circling certain aspects of it, than you should also circle the other aspects that also may make some sort of exemption to this and if you're relying on something else than you should also provide that as well and highlight that in red if that's going to help us particularly if you're giving it to us at the last minute. The other is, Mr. **Delano**, that girls to my knowledge do not stamp any plans.

Mr. Dan Adams stated I think we've provided with you folks with a fair amount of information. Anything else you think you need to make your task a little easier we're happy to do that for you if you think it's beneficial I'll provide the memo of law to the Board. We've tried to provide you

with documentation of what we found out there and you also have Mr. Cragolin's not testimony but he's telling you his description of what went on out there and we obviously disagree.

Mr. John Klarl stated just for the three gentlemen in the audience, I just want you to know this Board handles a lot of applications every month but this is the first time that this Board has handled a challenge under **section 259-7** of the Code which "allows any party agreed by decision with the Director of Technical Services or the Deputy Director of Code Enforcement to approve conditions or disapprove an application and they appeal decisions Zoning Board of Appeals." This is new ground for us. We've never had that challenge and we've never gone point-by-point through the Code so the Board's doing this for the first time.

Mr. Dan Adams responded I appreciate your difficulty.

Mr. John Mattis stated one other comment for Mr. Hoch. **Section 259-7a.6a** that refers to "wells or sewage disposal systems or septic, you state that information from the applicant, a site visit by staff, existing septic and well were not deemed to be impacted by the proposed work." We don't have anything that shows us the location of those. I'd like to see where the location of those are, the well and the septic.

Mr. John Klarl asked would you like Mr. Cragolin to be prepared to point out to the Board at the site visit?

Mr. John Mattis asked I don't understand how they can say that they weren't deemed impacted when we don't see anything that says where they are. I was a little disappointed that there was nothing that showed it to us. And, I'm not sure that there is anything that the Town has and I'd like to see it. Any other comments?

Mr. John **Delano** stated just like to concur on that note I was up here to make mention of that and then there's no magic trigger size when it comes to doing land development work with regard to a septic. If you can disturb a small amount area and because you believe you fall under a trigger, if you don't know where the septic system is, you're proposed disturbance could actually be destroying the septic system. That's why I don't honestly believe that the requirement to show that is subject to a trigger and it's State Law and local Health Department Law that there's no excavation, no cutting, or filling permitting to take place within 10 feet of a septic system or an area reserved for septic system expansion or a construction of a future septic system. I think it's very important some knowledge be known about that. If no one knows where it is you can send a snake down there, you can trace it for you to plot it out. I apologize to Ms. Hunte for my...

Mr. John Mattis stated that's why I wanted to see the relationship of where they are to the work that was done.

Mrs. Adrian Hunte responded duly noted.

Mr. David Douglas stated I move that we adjourn this to the November meeting with a site inspection on November 14<sup>th</sup> at 10:00 a.m., seconded with all in favor saying "aye."

Mr. John Mattis asked is there any other business? Do we have a motion to adjourn? So moved, seconded with all in favor saying "aye."

\*

\*

\*

**NEXT MEETING DATE: NOVEMBER 18<sup>TH</sup>, 2009**  
**November 18, 2009**