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, April 16, 2008. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

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

Raymond A. Reber
Adrian Hunte
David Douglas
James Seirmarco
Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.

Also Present: John J. Klarl, Deputy Town Attorney
James Flandreau

ADOPTION OF MINUTES: 1/16/08 and 2/20/08.

Mr. Heady made a motion to approve the minutes for 1/16/08 and 2/20/08 seconded by Mr. Chin with all voting "aye."

CLOSE AND RESERVED DECISIONS

CASE NO. 23-07 CONGREGATION YESHIVA OHR HAMEIR for an Interpretation of Code Enforcement Officer's determination that the dormitory housing its' students is a pre-existing, nonconforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at 141 Furnace Dock Rd., Cortlandt Manor.

ADJOURNED PUBLIC HEARINGS

CASE NO. 31-07 BEST RENT PROPERTIES, LLC for an Interpretation that the Town Attorney's determination that the property at the southwest corner of Westbrook Drive and Oregon Road cannot be developed as a retail shopping center is incorrect.

Mr. David Steinmetz, Esq. appeared before the Board. He stated I am a member of the law firm Zarin & Steinmetz, and I have here with me my colleague Brad Schwartz, Esq. representing the applicant. Also, with us, part of team, Ralph Mastramonaco from Ralph Mastramonaco Engineering, as well as the property owner, Mr. Herman Poritzsky. Before I get into the substance of the application, and tonight Brad, and I are going to kind of tag team this. So we're both going to be presenting different aspects of the application. When Brad was here before you last month I know we communicated to you that there was a request for an adjournment, and that was going to be a meeting with neighbors of the property. We did have a meeting with neighbors, many neighbors in the community. The meeting did not allow us to report to you tonight that this matter has been withdrawn, and resolved. The sum, and substance of that meeting really is not relevant to tonight, because tonight is not about a number of things. Number one, tonight is not about the design of my client's proposed retail shopping center. It's not about the size of my client's proposed shopping center. It's not about the types of stores, about ingress, and egress to it. It's not about the types of issues that are the issues that were already before the Planning Board, when we were processing this application before the Town of Cortlandt Planning Board. In fact, what this application really is limited to is a review, and deliberation by your Board with regard to the validity, and forcibility of Tom Wood's memo dated April 3, 2007. A memo that he wrote to the Planning Board in connection with inquiries that were made when we were processing our site plan application pursuant to the New York State Environmental Quality Review Act before the Planning Board. So the easy thing for you tonight is tonight

is not about you deciding whether you like the size of the shopping center, or the types of stores, that is really not before you tonight. What we are however, presenting to you is what we think is in essence a relatively straightforward legal interpretation, and it can be heard in two different ways. First, and foremost, I want to step back, and just remind all of us that this application starts with a subdivision that was approved back in 1960. The subdivision that I displayed before you tonight, the Colonial Heights subdivision map, it's dated 2/15/60. It is a residential subdivision with cul de sacs, and a lot, lot 40, and another lot, lot 41 that are separated, and distinct, and we are going to get to why I say they are separated, and distinct from the balance of that subdivision, and most importantly a note that seems to have provided the source of a lot of question, and consternation of what is allowable on lot 40. Now let me remind us all that we're here tonight with regard to lot 40. Lot 40, a critical corner lot at a major intersection that all of you are extremely familiar with here in the Town, and the note that I referred to, and everybody got a copy of that. The note is somewhat difficult to decipher on the reduced versions of the plat that you may have seen. It's even somewhat difficult to decipher on the enlarged version, and it has some handwriting as well as just the surveyors actual description. So what we did was we simply transcribed the note, and put it in legible English so that it would be in front of us all tonight. Quite frankly, I don't think we are going to need to spend an awful lot of time with the note itself. The note is significant, because the note references Section 281, the old cluster provision of NY State Law, and it references the fact that after a public hearing was held that the Zoning Regulations in the Town of Cortlandt are hereby modified in that the existing R-20, single family residence district classification of lots 40, and 41, the two lots that I referred to, and the one that is the subject of this, is changed to the classification of C1 neighborhood business district, and then it goes on to the list the number of what I'll call bulk requirements that are prescribed by the note. So the purpose of our enlarging the note is so that there will be no difficulty in reading it. It's here before your. It's legible, and it's clear that what your Planning Board did, as the chairman's signature is here. So what your Planning Board did was put forth to make clear their intention to create a residential subdivision with two carved lots.

Mr. Klarl stated the Planning Board of 1960.

Mr. Steinmetz stated yes, that is correct, lots 40, and 41, and what's perfectly clear from the note is that there was an intention to make this a neighborhood business district. Now, you all know that Mr. Wood in his most recent memo of April 3, 2007 has questioned whether or not the Planning Board in 1960 had the legal authority under then Section 281 to in effect change the zoning district from R-20 to C-1, and that's the essence of the beginning of his memo. To a large extent I think some of his memo has some credibility. I think there are some real technical issues with regard to the Hiskock case, which is the subject where he refers to the Town of Smithtown, it's the Hiskock case, but quite frankly although the note is valid, and though the note is finding, and though there is more recent case law, which we can talk about later, the O'Mara Court of Appeals case, which was actually decided in November 2007 about the enforceability, and binding effect of notes on a filed subdivision map. I told you there were two paths, that's path A. I can abandon path A, and you folks can review, and deliberate on this application, and go down a much simpler path. You actually don't need to review the issue of the enforceability of the note, because it is quite clear that the essence of why we're here is the conclusion of Mr. Wood's memo. The conclusion of Mr. Wood's memo is that lot 40 is the open space parcel of a cluster subdivision that was created in 1960. Let's talk a little bit about why that conclusion is wrong, because that is path B. The conclusion is wrong. The record is clear, 48 years of history here in the Town of Cortlandt, that parcel is not an open space parcel in a cluster subdivision. It's a commercial parcel, and it's been a commercial parcel for 48 years. First, given the cluster subdivision. Now I don't know how many of you are familiar with the details of cluster subdivisions, but I've done them. I've done them here in the Town of Cortlandt. What's a cluster subdivision? A cluster subdivision under now Section 278, then Section 281, you take a parcel of land, we decide that we want to preserve certain features. NY State Law says we need to try to preserve certain environmental areas, open space, scenic vistas, areas of importance for open space, and park land. Critically when we do that we do these areas, as we've done here in Cortlandt, as we want to protect, and preserve a usually set back, and in an area that would be worth of protection. Typically, you don't create an

open space parcel at two of the major intersections of roads where four, or five different roads convert. Moreover, the most fundament aspect of clustering, whey do we cluster? We cluster so that we can take a piece of property that we would otherwise have to cookie cut into one acre lots, and you take all of those lots, and you have the ability to make them smaller. For example, if I'm in a one acre zone, and I want to cluster, I no longer have to create one acre lots with one acre set backs in the front, one acre set backs in the rear, one acre set backs on the side, I can in effect cluster, or squish those lots into a defined area at the parcel, and create an open space. So what we did, we closely examined the subdivision. Let's figure out if it's a cluster. It doesn't look like a cluster. If any of you have seen a cluster, a cluster doesn't look like that (referring to the drawings), that's a conventional subdivision even for me to see, but I want to go through the math, and then show you because of that. So we ask Mr. Mastramonaco to go through the bulk criteria that was valid, and binding in 1960 based on the 1951 Zoning Ordinance, and Mr. Mastramonaco found that in the R-20 zone there were only two qualifications. One was lot area, 20,000 square feet, and the other was width, 85 feet. So before I even do this math, I said I've got to determine how many of these lots in the Colonial Heights subdivision plat, I've got to find how many of them don't meet the 20,000 square foot minimum, and don't meet the 85 foot width, because that is going to tell me this is a cluster. It should be essentially every lot in there, may not be every single lot, but let's see what we found. Every single lot in the subdivision met the 20,000 square foot minimum. Every single lot in the subdivision met the 85 foot width. Now even in 1960 they knew how to do cluster subdivisions. That would not have accomplished any creation of smaller lots, but ironically the two lots in question, they jump right off the statistical analysis, and we highlight that. Lot 40, lot 30 is 211,904 square feet, and it's 615 feet. Lot 41, 40261 square feet, and 220 feet wide. What that tells me as a land use lawyer is those two lots are really big, but every other lot in the subdivision is conforming to the R-20 use, that means that Colonial Heights was a conventional subdivision. There is no magic about it, it's patently obvious for a few reasons. One, all the bulk is satisfied. Two, there's no open space parcel. You search this plat, and we've done that, high, and wide, there isn't any reference on this plat to the creation of open space. Now I can assure that in 1998, 2008, and anytime in between, the Planning Board can certainly ensure that the plat references open space, but maybe in 1960 they weren't thinking to designate it that way. Well, then they certainly should have put some reference somewhere on the plat to the fact that the plat itself is cluster subdivision. Again, there's no reference to the fact that this was a cluster subdivision in any way by the Planning Board. So what happened? The Planning Board appears in 1960 to review Section 281 for one purpose, and one purpose only, and that was to change the use on the property. That is what they definitely appeared to have done. They used 281, as many boards did apparently in 1960. It was a commonplace thought by Planning Boards that they could actually use 281 to deal with usages. That is what was done here. In 1960, two parcels were created at two critical intersections in the Town of Cortlandt. They were created for an express purpose, retail, stores, and commerce, and in fact just go back to the note so you can see what your fellow board members 48 years ago were thinking. They knew exactly what they were talking about, because they talked about permitted uses being one story, local retail stores, and professional offices, and they wanted to make sure that they carved out excluding gas stations, and other unspecified uses. So historically, it's 1960, your Planning Board has adopted a subdivision plat. There's no evidence whatsoever that it's a cluster. There's no evidence whatsoever that there's open space, and the only thing that there is evidence of is that there was an intent that we have commercial property. Pick up now with the history in the Town of Cortlandt for the next 48 years…

Mr. Brad Schwartz, Esq. appeared before the Board. He stated I would like to spend a few minutes on taking your board through a series of zoning maps that were enacted by the Town Board in Cortlandt starting in 1961 that confirm, and upheld the Planning Board's destination in 1960 that show this lot here as a commercial use property. The first map presented up here, which is dated June 26, 1961 approved by the Town Board, Town of Cortlandt. This is the parcel up here highlighted in yellow, and there is a note under this plan that says business use approved pursuant to Section 281. Let's forward to 1968, again approved by the Town Board, Town of Cortlandt signed April 2, 1968, this is a zoning map showing the north Cortlandt area. Here is the parcel, the words Colonial Heights are designated on the plan, and again, a note business use approved pursuant to Section 281. February 2, 1971, again, a comprehensive revision of the

zoning map, Town of Cortlandt signed by the Town Board. Here's the parcel, and again, a note business use approved pursuant to Section 281. So far from 1961 to 1971 you can see the Town Board adopted a zoning map designating part of this parcel as commercial use. June 17, 1980, Town of Cortlandt zoning map, the parcel is now C-1. There is still a note, business use approved as pursuant to Section 281 in the lower left hand corner on the ledger, C-1 is neighborhood business. So now the 1980 is consistent with the note referred to in 1961. This is now a zoning map that was last revised November 1993, the parcel again, is highlighted in yellow, designated as CC. CC stands for Community Commercial. That is the present zoning classification for this property. So again, you can see the current zoning map also shows this parcel designated as CC. So the purpose of this exercise was to demonstrate that since 1961 every single zoning map adopted by the Town is imposing that this property is for community commercial use. Most significantly, and most tellingly, about this 1993 zoning map is a box that is shaded, and next to this box in a ledger says Section 281, cluster subdivision. You will see that there are various sites within the town that are shaded referencing that those lots were approved for cluster subdivision pursuant to Section 281. Look at our property, parcel 40, it is not shaded. It is our position that this zoning map is really the most compelling, and most conclusive that this is not a cluster subdivision, and that really negates one of the fundamental points in Mr. Wood's memo.

Mr. Steinmetz stated now interestingly the first time Mr. Wood was called upon to au pine this property, and this note, and this plat, and we attached this to the exhibit. The first time Mr. Wood was asked to comment, Mr. Wood was in fact twice using the phrase the map, and the note is valid and binding, and is in full force, and effect regardless to any subsequent area of rezoning. In 2002 the Town Attorney was certain, he was certain that that note creating a commercial zone was valid. Mr. Poritzsky, the property owner, certainly was aware that it was found, and always classified this on the zoning maps as commercial, and certainly could have been aware of a letter that the Town Attorney had written. Curiously, only after our application with…..

Mr. Reber asked you are referring to the letter dated February 11, 2002?

Mr. Steinmetz replied yes, thank you for clarifying that for me, for the record that is exhibit I through our written submission. It was a letter dated February 11, 2002 written to Dan Posey, who I assume was the attorney representing somebody who was interested in doing at that time a residential development on lot 40, and he was told quite definitively, by the Town of Cortlandt through the Town Attorney. He read, "It is clear from the note that the entire subdivision was originally considered by virtue of authorization granted to the Planning Board. A view of the statute in effect at the time, the granted authority shows a restriction placed on the map is fully enforceable, and continues to be in full force, and effect." Somehow, for some reason, when we began processing an application for the commercial use, a different opinion was forthcoming. All I can say to you is a couple of things are absolutely clear. There's no reference anywhere that I can find in the record that this was a cluster subdivision for the purpose of creating cluster residential lots, and permanent open space. Secondly, there's absolutely no evidence that I could find in your town's records that this town, your Town Board, your Planning Board, your Zoning Enforcement Office, have ever classified this on publicly available maps as anything other than commercial property. It's been rezoned, and rezoned, and carried periodically for the last 48 years as commercial property, and interestingly, and I don't think mentioned this, but we certainly made sure to put this in our written submission, most recently when the town went through its' Master Plan review, and it's been through Master Plan reviews quite often over the last number of years. What Brad is pointing to is the colored map that was made available to the public as part of the Master Plan review so that you can actually download that from the website, the Town's website, it is classified as commercial property on the website, and the Town's Master Plan makes something very clear, and very obvious as said in the outset. Like it or not, this property is located at the convergence of several roads. Now with the new turnabout it is next to what I will refer to as the old Carvel parcel, utilized for I don't know how many years that property unquestionably was used for neighborhood retail purposes. It is our position that the issue is pretty straightforward. You don't even have to believe that the note is valid, and binding, and we're prepared to go that route. If you want we can certainly

elaborate further on Hiskoss, on the most significant decision of the NYS Court of Appeals in November, O'Mara, which I know the Town Attorney's office is aware. It's a decision with the NYS Court of Appeals in a case up in Dutchess County which was dealing with an old subdivision map that actually had notes on it about the property being, ironically, open space, and some developer bought that property, and the town processed an application, and they actually thought they should be able to develop this property, and the Court of Appeals said no, that old note on that subdivision map was capable of being rotated by you, if you had done your due diligence, and you pulled the plat, and you folded in open, and you look at the note on the plat, and that note under the O'Mara decision is valid and binding, and again, it is something like 30 or 40 years old, maybe even older.

Mr. Klarl stated it was like in 1963, or so, and it was against the Town of Wappinger, and the original sub divider's son brought it to the attention of the town.

Mr. Steinmetz stated thank you John. The fact of the matter is we can go Path A. I don't think we need to go Path A. I think it is much easier, and patently obvious, and quite frankly I think you whole Town Board knows it. I think the town's professional staff knows it. The Wood memo of April 2007 is diametrically inconsistent with the Wood letter of February 11, 2002, but regardless of the why the what is clear. The what is clear that every map, every resolution, every document that we've gotten a hold of here in the Town of Cortlandt tells us, the property owner, and my client on thing, it's commercial property. You don't have to decide how big, what it looks like, what the circulation is, whether it's Starbucks, Carvel, or Dunkin Donuts okay. That is just not the issue before this board. It is a defined legal issue. We've tried to present this in a straightforward, I don't even want to call it simplified. It's a straightforward fashion. We'd be happy to get into any of nuances if you want of any of the issues decided, but it is as simple as that. I hope we've made our written submission clear. I hope the maps that Brad and I have brought before you have kind of brought this to light. It's 48 years of history, but condensed it's real simple, it's commercial property, and the Town knows it. Thank you.

Mr. Reber stated Mr. Steinmetz you indicated lot 41 was developed as commercial. Your indication is lot 41, and lot 40 are under the same rules and restrictions, and it's very clear that if you treat one lot one way, the other lot should be treated the same?

Mr. Steinmetz stated that is an excellent question. I can't find any reason to distinguish between the two lots. The only thing I know is that this town, the Town of Cortlandt carved those two lots out, and treated them differently in the note, on the subdivision map.

Mr. Schwartz stated on every plan I went through, I didn't point out that the CC also highlighted lot 41 as well. On all of those zoning maps, lot 41 is also designated CC.

Mr. Reber stated so in the beginning on that original subdivision those two lots were given special consideration. They were given identical consideration. There is no way of distinguishing those two lots from each other, only from the rest of the lots that were residential?

Mr. Schwartz that is correct, both on the plat, the note, and also in the minutes that are attached in exhibit F, which discussed the commercial portion, or commercial area of the subdivision, lots 40, and 41 are always grouped, and talked about together.

Mr. Douglas stated I wanted to ask about Mr. Wood's April 3, 2007 letter, and as I read it he seems to have two basically points. One is that it is a cluster subdivision, which I think you have addressed. He then talks about a series of cases that from my understanding is that he seems to be saying that under those cases the Planning Board did not have the right to turn this into a commercial usage. Can you address that?

Mr. Steinmetz stated well that is Path A. So Mr. Douglas is taking us down Path A, so here we go.

Mr. Schwartz stated the question that some of the cases such as the Hiskoss raises was whether Town Law 281 was a cluster provision, and was it being correctly utilized by both the Planning Board in this town, as well as other Planning Boards to accomplish zoning use changes. That is the question that Hiskoss raised, and the NYS legislature then discusses that issue, and a couple of years later adopted what is now Town Law 278, which is a cluster provision.

Ms. Hunte asked can you explain that last sentence?

Mr. Schwartz stated 281 was the "cluster provision." Hiskoss raised whether Planning Boards could correctly use that to make zoning use changes, and then when the NYS legislature adopted Town Law 278 it included a provision, bear with me one moment…He continued it raised the question as to whether a cluster provision had been used, again to accomplish a use change. Town Law 278, subsection 6 entitled "Effect". He read, "The provisions of this section shall not be deemed to authorize the change in a permissible use of such lands as provided in the Zoning Ordinance, or Local Law typical to such lands." So the legislature made it clear that this cluster provision, 278 would cover that.

Mr. Steinmetz stated so there was a need for some more clarity. The legislatures of the state of NY did not know exactly what the legislature was going to do 3 years later. In fact, Planning Boards throughout the State of NY were acting as if 281 gave them the ability to change use, and when we dug for legislative history on 278 out, they know that Hiskoss came out, and just so that everybody knows Hiskoss came out of the Supreme Court, which is the lower court of Suffolk County. It is not an Appellate Division decision. It is not a NYS Court of Appeals decision.

Mr. Klarl stated it is a trial court.

Mr. Steinmetz stated yes, it is a trial court, and what Hiskoss did, that case came out with the reasoning limited to the facts in Hiskoss, and it created some concern out there in the land use area over the next couple of years. So when we looked at the legislative history, the legislature in 1961, 1962 decides we think that use determination need to be made by the Town Board. I am going to step aside for a second. For the next 48 years the Town Board of the Town of Cortlandt kept classifying this as commercial property. So I don't care what the note says, Path B. I'll go back to Path A now. Path A is 1960, Hiskoss is decided, if you read Hiskoss there is some great language in Hiskoss that actually makes it clear. It seems to be limited to certain types of cases. I'll go down that path, if you want to go further Mr. Douglas, and read you the quotes from Hiskoss. It talks about how it really should limit the ability to rezone "large tracks of land." It doesn't say again, and this is the detail that I told you I would avoid, but I'll be happy to go, because it's fascinating. It doesn't say that we're going to take out every single track of land, and say you can't rezone it. What that one Supreme Court Judge said is if you live in a really large track of land, then maybe you shouldn't be able to rezone it, Mr. Planning Board, that's got to go to the Town Board. Secondly, there is another line in this decision that says, "The court therefore holds that the power to make reasonable changes in the Zoning Ordinance does not confer the power to amend the Zoning Ordinance by rezoning large tracks of land." Why is that sentence important to us? Because we think your predecessors on the Planning Board 48 years ago, they knew exactly what they were doing. They were making an extraordinarily reasonable reclassification of land. In fact, Path B, your Town Board has made the same classification for last 48 years, mainly these two parcels are located at a critical intersection in the Town of Cortlandt. So to classify them as commercial makes reasonably good sense.

Mr. Douglas stated I understand the Path B. I just wanted to see if I could understand Path A, because it may be that we might conclude that following that Path B doesn't necessarily get you to where you are. So I want to make sure that I understand where Path A gets you. So are you saying that in 1960 or 1961, the Planning Board did have the legal power to do what it did?

Mr. Steinmetz replied yes.

Mr. Douglas stated okay.

Mr. Steinmetz stated earlier I said I do believe this note is valid, and binding. I acknowledge that a lot of what Mr. Wood says in this letter was right. There was some courts, Smithtown, meaning Hiskoss, did question it on the facts of that particular case, but the legislature when they amended the law they made it very clear that there were a lot of other municipalities doing exactly what Cortlandt was doing, which to me means it was lawful, it was confusing, and as I think you all know the black letter doctrine of the Zoning Law, if there is any ambiguity or confusion, then any such ambiguity, or confusion is resolved against the municipality, and in favor of the property owner. So to that extent, even if you go with Path A between the Hiskoss decision, the amendment in 1963, and the O'Mara case, it is very clear that these notes are both valid and binding even 48 years later. Even Path A, Mr. Douglas, gets us to the conclusion that Mr. Wood's second memo is incorrect. His first memo was correct.

Mr. Seirmarco stated I have some observations. I understand your chronology of events, but I am going to take a more simpler approach to this. In 1960 the rule was Section 281, it was clustering. Now I understand that you say that there are 30 lots there, there are 20 lots there, and none of them are substandard lots according to your calculation, that doesn't surprise me. They don't have to be substandard to be clustered. They can be 20,000 square feet, or more, and still cluster. So if you look at the law that day in 1960 under 281, and I am not disagreeing that subsequently there was some ambiguity, and things were changed by the State legislature or whatever. In 1960 this Colonial Heights subdivision, there is a possibility that those two lots would be open space, because the lots are 20,000 square foot or larger doesn't suggest to me that they are necessarily not under the cluster zone. It doesn't necessary say that those two lots are not open space. I'm just saying I understand what you said for the next 40 or 50 years that there was some change done with 278, and the other thing is I've been around a long time. I have been on two, or possibly three Master Plan Committees in the last 30 years, mistakes are made, the committee finds them, they're supposed to be changed, and they don't get changed. So again, it does not surprise me that it continues to perpetuate the same information on each zoning map, and it doesn't get corrected. So that doesn't surprise me either.

Applause.

Mr. Seirmarco stated I don't mean to be disrespectful here, but it doesn't surprise me that it wasn't changed. It doesn't surprise me that laws after that were changed, and it doesn't surprise me that because those lots are a regular 20,000 square feet that they still didn't intend to cluster. I am not sure yet.

Mr. Steinmetz stated I hear your comments, and I understand why you are saying what you are. All I can tell you is the following, there is absolutely nothing in the minutes of that Planning Board in 1960 that indicate that anyone on the board had, what you believe ,might have been what they were thinking. There's no evidence that they were creating, with all due respect, open space. The only evidence in the minutes is that they were, as Brad eluded to earlier, they say in the minutes, the board members present at that meeting say they were creating commercial parcels.

Mr. Seirmarco stated let me ask you a question, how old was 281 in 1960?

Mr. Steinmetz stated I can't answer that off the top of my head. Come on John.

Mr. Seirmarco stated the point I am trying to make is that it wasn't that old, I believe, and Planning Boards at those times were not familiar with how to enact the perplexity of 281.

Mr. Schwartz stated in Town Law 278 it references that section 281 was added in 1932.

Mr. Steinmetz stated so it was 30 years old.

Mr. Schwartz stated and secondly just again to read it from the minutes, which is exhibit H in the packets, the Planning Board seems to be very clear that it was using 281 to create commercial space. The minutes read, “Discussion was held relevant to the commercial area, which is being developed with conjunction with the subdivision portion under Section 281 of the Town Law.

Mr. Steinmetz stated so the only evidence that you have before you, and your are bound by your own method, the evidence you have before you is the Planning Board knew what they were doing, and they were creating commercial parcels. Even though, I understand that when you look at the chart you can say well maybe these were really open space parcels. You’re right, open space parcels are usually large, but also with all due respect, look around your town, open space parcels are not created at the corner of a major intersection across from the Carvel.

Some members of the audience asked why not?

Ms. Hunte asked did you check the legislative history of Section 281 concerning that there would be other Planning Boards to make these changes in the zoning regulations? Were there any others?

Mr. Schwartz replied no we didn’t.

Mr. Steinmetz stated we didn’t go back on the legislative history of 281, because it was far more relevant in analyzing what Hiskoss, and Mr. Wood were saying. There is no question that 281 was designed to provide Planning Boards with this latitude to create cluster subdivisions, and to relax certain things, typically bulk. As history has shown, apparently by the time the 1960’s came, the Planning Boards were going beyond law.

Ms. Hunte asked do you recall the Hiskoss decision made a tentative reference, or definition of large tracks of land?

Mr. Schwartz stated it did not.

Mr. Steinmetz stated no, just in one passage they use the phrase. I would submit to you that in 1960 large tracks of land were larger than large tracks of land are today.

Ms. Hunte stated also with this decision, if that were a Supreme Court level case, but since it is the only case in the State of NY that addresses this issue, is it binding on the rest of the state?

Mr. Steinmetz replied no, it is not binding on the rest of the state. It’s informative, it obviously was written in such a way, I would gather that probably commentators in the 1960’s started writing about it. That’s how legislation changes, town attorneys out on Long Island were probably reading the case, and town attorneys probably wanted to protect their Town Boards, and made sure that there Town Boards had the legislative authority, which quite frankly is appropriate legislative authority, and someone wrote to Albany, and the Assembly, and State Senate into very clear legislative history. There’s a lot written about what was going on in that two years, they decided to refine it, and as Brad said, very significantly they carve out this one subsection right at the end of 278 to make it very clear to all the Planning Boards out there, no longer do you have the power that you thought you had to change uses.

Mr. Douglas asked would you mind making a copy of that so we have that?

Mr. Steinmetz stated absolutely.

Mr. Mattis stated okay thank you, are there any more comments from the Board? Okay then, we will now open it up to the audience.

Mr. Jim Farrell appeared before the Board. He stated I live over in Hollowbrook Mews. I didn't get a chance attend the last presentation. I have a couple of questions. The 1960/61 cluster changes to Sections 278, and the legislative discussion that took place at those, I am assuming that you got those from bill jackets?

Mr. Schwartz replied yes.

Mr. Farrell stated so if somebody went up there, and they pulled them all off, and I would imagine it was about that thick (making an indication with his hands), and you pulled out the ones that you needed out of there, or you went through all of them, because I'm sure that in those bill jackets, you're going to see both sides.

Mr. Schwartz stated at the Board's request we will submit to your Board the complete bill jacket that we received.

Ms. Hunte asked can we have the bill jackets from 281 as well?

Mr. Schwartz stated as was stated earlier not all of the bill jackets from 281 were used?

Mr. Farrell stated also in the minutes, it is my understanding that minutes are record of actions taken, and not discussion. All I heard was the minutes talked about discussing an issue. You can discuss an issue until you are blue in the face, but unless you are actually voting on it, there's no impact. You can talk about anything you want, but until there is a vote, all of that discussion means nothing, and in any training that I've had, if you're going to take minutes, you're going to take minutes of actions, that's all.

Mr. Klarl stated minutes are actually of all that is taking place, but your are correct that in the end the vote is what counts.

Mr. Farrell stated yes, exactly that's what I meant. The other thing that I wanted to mention about the fact that it's shaded, it's not shaded, it says CC, it doesn't say CC, just as a point of tact, in 1950 the New York Public Library lost its' incorporative status, and didn't even know it until 1955. It happens, mistakes are made, eventually they find the mistakes, and correct those mistakes. Now I think here you have a case where a mistake was found, and corrected. Even though it is a correction that we feel should be retroactive. Thank you.

Applause.

Mr. Peter Weinbaum appeared before the Board. He stated I am a resident of Hollowbrook Mews. I just wanted to bring up a couple of points. Obviously, it is difficult for me as a layman to discuss a lot of the legality against a team of attorneys, but one thing that I have learned in coming to these board meetings as well the Planning Board, and sitting in on meetings with the builder, as well as my own community, is that I've learned a lot about the process. Now the issue again here is simply one of the letter written by the Town Attorney, and the appeal by Best Rent Properties, and the two issues that appear to come up is number one, the ability of the Board at that time to change the zoning, that's clearly the major legal issue. What appears to be here, and the intention of the Town Attorney is that they deny our legal ability, and my understanding of their arguments is that was Path A, and Path B was something around the intent, or sort of ability granted to the boards at that time to make zoning changes, and those 278, and 281 were issued to

allow reasonable changes made allowing latitudes to existing zoning regulations, and my argument to put before the Zoning Board of Appeals is basically in 1960 clearly I find it a weak argument to discuss the

decision of the board in 1960, because clearly you look at the area now, and we have no Wal-Mart, Home Depot in the traffic circle, and abandoned Carvel, and things of that nature. So I think if you really want to address issues of intent that certainly the intent would not be to have that environment, and then you go back to the ability of the boards to actually make that change. I also wanted to come back, and report……

Mr. Reber stated I am totally confused, what did you just say?

Mr. Weinbaum from what I understood of Path A versus Path B, Path A is about strictly the ability of the board to make a zoning change at the time, and Path B was about abilities granted to the board based upon their intent to make reasonable changes to the zoning designation. Unless I misunderstood, and then so my point around that was that certainly the intent in 1960 I don't see the bearing currently because of how much the area has changed, and I think certainly if you're going to talk about intent that that certainly wouldn't be there based upon the current environment in Cortlandt.

Mr. Reber asked what's changed?

Mr. Weinbaum stated well since 1960 in the area? The point that I am making is around intent, and I think that intent to zone that property commercial, whether or not they were legally permitted to do so, I don't believe it would necessarily reflect the intent today to make that property commercial based upon the existing area on that traffic circle. Also, I just wanted to, only because I believe it was Mr. Douglas who requested a report back from the meeting that we had with Best Rent Properties, and their architect, and attorney, from the dinner that was provided. I just wanted to point out that about 70 people plus attended. We reviewed the plans, and I am only bringing this up, because you mentioned you would be curious to hear the results of that meeting, and there were many points raised from the community against the development of the commercial property, although we did listen to their full presentation on what they had planned to do with the area, and no one spoke in favor of the existing plan. However, 70 plus people did attend, and listened to their proposal. So that's our report, and we learned a lot about the process there, and that is pretty much it. Thank you.

Mr. Steinmetz stated I just want to make sure that when the gentleman mentioned intent, I just wanted to make sure, because the gentleman may not have heard me say that the Town's 1991 official Master Plan states, "the intersection of Oregon Road, Red Mill Road, and Westbrook Drive is seen as a focus point for small neighborhood oriented, commercial centers." This is clearly articulated the intent Town in 1991. If you forward to now, 13 years later, the most recent public policy statement of the Town, the Town's 2004 Master Plan provides that, "one of four community commercial areas would be located in the vicinity of Westbrook Drive and Oregon Road", and there is a map accompanying that. So I just wanted to make sure that if any of you are concerned, or curious about evidence of intent that we found in the Town's records the only evidence of intent is 48 years of maps, and 2 critical Master Plan policy statements.

Mr. Ralph Pedraza appeared before the Board. He stated I live at 10 Priscilla Ct. I just have a simple question here. Is there a statute of limitations if an error was made by the Planning Board in 1960 to correct the error?

Mr. Klarl stated if you want to challenge something there is, but in terms of a legislative board, the Town Board if they look at something that think went astray, then they can change it at any time, but in terms of someone challenging something there is a statute of limitations.

Mr. Pedraza stated to me the Town Attorney's finding is sort of like DNA so if there were an error in the 48 errors of history later based on whatever opinions they may have had as to what could be built there, that's a non issue, if an error was made in 1960.

Mr. Klarl stated speaking about statute of limitations. There was a statute of limitations to challenge the administrative determination of this letter, and that's why the applicant here commenced an application

before this Board. They had to do so in a certain period time, as they did.

Mr. Jerry Underwood appeared before the Board. He stated I live at 2 Priscilla Ct. First, I would like to thank the Board for their extreme patience in the past year, and half in dealing with this. I'd also like to applaud all of the audience that are here, because of this issue, and all of the people on the rest of the sheet that are waiting for us to finish up so that they can start their business. We all have bosses, and I know that Tom Wood, the Town Attorney has rendered an opinion, whether it is right or wrong, good or bad, he had rendered an opinion, and I hope that your Zoning Board can at least make a decision relatively soon based on his opinion. Should they go to a Court of Appeals so be it, if it doesn't, and they change their mind with respect with what they want to do with the property that's fine too. That is all I've got to say, I'd like a decision.

Mr. Douglas stated I just want to say I don't know what we all the bosses is in reference to. Tom Wood is not anybody's boss on this Board.

Mr. Underwood stated well why did he render an opinion then?

Mr. Douglas stated this is something that I have tried to explain particularly last time. We are not a "town" in reference to what this Board is doing. Essentially, Tom Wood is the Town Attorney, who rendered a interpretation, which the applicant has appealed. The process is that appeal is to us, as a board. We are almost like a court to decide what the law is. He is not anybody's boss. We don't treat Mr. Wood's opinion any differently than we would treat your opinion, or anybody else's.

Mr. Mattis stated we are like a third party in this. The Town is one party, the applicant is the second party, and we're the third party that has to decide on it.

Mr. Underwood asked where does that put all of us?
Mr. Mattis stated you are part of the community that is part of the process. So there is a process here, and you are part of the process.

Mr. Underwood stated it seems like we're last all the time.

Applause.

Mr. Maria Liotta appeared before the Board. I live at 48 Augusta Drive. We would like to submit to the Zoning Board of Appeals a petition that was signed by well over 250 residents from Cortlandt Manor. It states, "We the undersigned, residents of the Town of Cortlandt, are vehemently opposed to the zoning change to lot 40 on the corner of Westbrook Drive and Oregon Road. This was the original designation as residential, and confirmed by the Town Attorney, Thomas Wood." I would like to also recognize that there several members of the community opposing this application here tonight. Would you please stand? Thank you.

Applause.

Mr. Mattis stated so there are about 50 to 60 people here in the audience tonight. Okay, are there any more comments from the Board?

Mr. Douglas stated we were given a letter from Mr. Wood dated April 15, 2008 which says, "Procedurally, I am not required to present anything further with respect to the above matter." He then encloses a copy of

the O'Mara decision, and concludes in saying, "As petitioner will only now be presenting his case, I will preserve any other comments." I would just like to request to the Town Attorney that if he is going to submit anything, then he should submit it to us. I personally would find it quite helpful to hear what the Town Attorney has to say in response to what the applicant has said. Essentially, we have only heard one

side, and just like an other issues, there are always two sides. So personally I would ask him to please send us something.

Mr. Klarl stated I spoke to Mr. Wood after our Work Session on Monday, and he said he wanted to hear the presentation of the application from the applicant, and then respond.

Mr. Steinmetz stated just a point of order. If, in fact, Mr. Douglas' request is granted, and Mr. Wood does provide something, it would be great if we could receive that as well, and then have the opportunity to comment on it, and have a meaningful discussion at any further meeting.

Mr. Douglas stated I think it would make more sense if Mr. Wood could give something to us, and copy the applicant as soon as possible. We have another meeting four weeks from now. As soon as he can do it, it would be better for me, and I think for all us.

Mr. Klarl stated why don't I tell Mr. Wood to have it seven to ten days before the next meeting.

Mr. Mattis stated that would be great. Are there any other comments from the Board? Mr. Steinmetz do you have any further comments? Okay, we've heard from the audience so can we have a motion to adjourn?

Mr. Reber made a motion in Case No. 31-07 to adjourn the case to the May meeting for the sole purpose of permitting the Town Attorney to respond in writing no later than 10 days prior to our next Zoning Board meeting seconded by Mr. Seirmarco with all voting "aye."

Mr. Mattis stated the public hearing will still be open, so that is not the sole purpose of the adjournment.

Mr. Reber stated we're leaving it open for one more month for that purpose, if we don't get that, then we have the right then to close the public hearing at that time.

* * *

CASE NO. 45-07 MARK & ELIZABETH HITTMAN for an Interpretation that granting a Special Permit for a Medical Office Building does not require abandonment of the residential use in the building on the property located at 1989 Crompond Rd., Cortlandt Manor.

Mr. Mattis stated I will turn this over to our attorney

Mr. Klarl stated the application had been referred from the Planning Board to the Town Board for a zoning text amendment. It was added to the most recent Town Board agenda, and should be resolved by our next meeting. So I would recommend that we adjourn the case one last time.

Mr. Seirmarco made a motion in Case No. 45-07 to adjourn the case to the May meeting seconded by Mr. Douglas with all voting "aye."

* * *

CASE NO. 53-07 HILLTOP NURSERSIES, LLC for an Area Variance for parking spaces

associated with the proposed commercial business in the R-40 portion on the property located at 2028 Albany Post Rd., Croton-on-Hudson.

Mr. Mattis stated I will turn this over to our attorney for his comments please.

Mr. Klarl stated on that application there is a pending application before the Planning Board. This has been adjourned to tonight, but the applicant is not here, because he is in a holding pattern for now. So I think we should adjourn it until the May meeting, and let the applicant know it has been adjourned until May.

Mr. Mattis stated we are really just holding this over in case there are some changes from the Planning Board that would require him to come back.

Mr. Seirmarco made a motion in Case No. 53-07 to adjourn the case to the May meeting seconded by Mr. Chin with all voting "aye."

* * *

CASE NO. 05-08 GRACE PRICE for an Area Variance for a front yard set back on the property located at 27 Brandeis Avenue, Mohegan Lake.

Ms. Grace Price appeared before the Board. She stated I was here last month for a front yard variance, and I was asked to come back with new plans showing the septic, and the septic fields, which I've submitted, and met with Mr. Flandreau the next day. I am here asking you for some extra footage.

Mr. Heady stated we talked at the Work Session that bringing any closer than it is now, because the neighbor next to would be totally blocked, if you move out that far into the road. You could go out to the side, and give some more room to the living room there is also an option for you.

Ms. Price stated I need that side yard, because that is really the only yard that I have. So I was just coming out a little bit further in the front.

Mr. Heady stated the other problem you have is the parking there. There is very little parking for your car there also.

Ms. Price stated I can park right in front of my house.

Mr. Heady asked it would be in the road then right?

Ms. Price stated everyone else parks in the road. I mean I can make a small driveway in the future, but I'm not at that point yet.

Mr. Mattis stated I think one of our concerns was that you couldn't go to the side, because we didn't know where the septic fields were. We now see them on here, and it's apparent that you do have the ability to move to the side rather than coming out front. One of the things we're supposed to do is look at if there are alternatives, and do they minimize or eliminate the variance, and in this case moving to side can do that.

Ms. Price stated I am trying to come forward to bring the kitchen out, and give me more dining room area, and living room area. I don't want to go out to the side to gain just more living room area. I am looking to bring it forward. I don't think I'm asking for too much, and when I talk to Mr. Flandreau I thought I was doing the right thing, and now.

Mr. Mattis stated Mr. Flandreau does not make the Zoning Board decisions.

Ms. Price stated no, I'm not saying that. I understand that. I've been to an architect three time already with this.

Mr. Mattis asked are there other comments from Board members?

Mr. Heady stated the bay window coming out front is also making it more of a variance.

Mr. Chin stated well right now with the bay window you are 23 feet from the front property line, and it is a required 30 feet. So you would be coming out 7 feet more than what is allowed.

Ms. Price stated that's what I'm asking, I'm asking for 7 feet.

Mr. Chin stated well we feel that is quite excessive. All of the houses along that area do not come out that far. Based on looking at your plan, if you cut this back 5 feet to the 30 foot set back, there is no reason why you can't do the living room to the side yard, or make a dining room in the side area, and still have plenty of space there in the side yard. The septic fields are set toward the back side of the yard. You have plenty of room there based on the survey, and the floor plan.

Ms. Price stated that is not what I wanted to do. I just wanted to go forward, and then leave the side yard the way it was so I could have the yard, and as far as the neighborhood there was no opposition. No one opposed to this, and as far as the gentleman that lives off to the right side he's set back. Just like you said last week I could put up 20 foot hedges, and block the view either way. The Colony Board came up there, and they saw how far it was going to be, and there was no opposition. I am the end house also. So it's not like it will be sticking out, and there is going to be two houses set back. There are 6 foot porches that come out that almost will meet where I'm coming out to.

Mr. Reber stated I went out to see the property, and the neighboring areas, and none of the houses in that neighborhood would come as close to the property line as you are proposing. I looked at the neighboring houses, and my estimate is that you could come out from where your porch ends about 5 more feet, and that would put you in line with the neighbor, and the 5 more feet without the bay window would then be 30 feet back, which means you wouldn't need a variance then. What we are required to do is one, give variances when there is no logical alternative, and when a variance in fact would not change the nature or the character, or be in any way detrimental to the character of the neighborhood. What I'm saying is on your plan you say you want to have the dining room next to the kitchen, and the living room. You can still come forward from where your porch is by approximately 5 feet, then as my colleague said earlier if you go out somewhat you can put the dining room next to your kitchen, and then the living room next to that. You would have all the space that you have right now, but you would have to go out to the side somewhat to keep the same square footage. It looks like you can easily do that without interfering with the septic system. Therefore, we don't have any justification for saying that you need a variance. You have an alternative. You can get the square footage you want with a reasonable lay out within the zoning requirements. So I don't see how we could grant you a variance.

Ms. Price stated well I am planning eventually to put some sort of garage there on the side.

Mr. Reber stated well that's irrelevant.

Ms. Price stated well I really don't want to go out to the side right now until I decide about the garage. I want to come forward. Like I said, when this is all said and done it is only 750 square feet. I'm asking for 5 feet, that's all I'm asking for is to come out 5 feet.

Mr. Reber stated no one else in the neighborhood is out that far. No on your street, or the other streets around that neighborhood.

Mr. Heady stated if you took the bay window out you wouldn't need that much of a variance in the front.

Mr. Chin stated no, she would still need 5 feet.

Ms. Price stated take the bay window out, I'm just asking for 5 feet.

Mr. Mattis stated one of the things that we have to look at is are there alternatives that minimize, or eliminate the variance, and there is clearly an alternative here. That is one of the reasons we wanted to see the septic. Your septic is positioned is such a way that will allow you to come out to the side. So there is an alternative that can eliminate that variance.

Ms. Price stated so that means I have to go back to my architect and spend another $1500 to $2000 to redesign the whole thing again. I'm already tapped out here.

Mr. Reber stated the architect should have considered the zoning, and then did his best to try, and comply with the zoning, and then you wouldn't have a problem. You are just choosing to want to keep the side open, and that's not a valid justification. If we conceded to that, people would be coming forward for all kinds of variances in the town. That is not a logical answer.

Mr. Mattis asked are there any other comments from the Board?

Mr. Chin stated well she has the alternatives to do it the other way, and maybe you would want to adjourn this, and come back, or withdraw the case, and just go back the 30 feet where you don't need a variance. This is something that you have to decide. Unless you want us to vote on it the way it is.

Ms. Price stated I am just asking for the 5 feet. I may want to go out for a garage later on. I want to have the option to be able to do something like that.

Mr. Chin stated you hear what the Board is saying.

Ms. Price stated yeah, I understand what the Board is saying.

Mr. Chin asked so do you want us to vote on it, or do you want to withdraw it, or try to do something else.

Mr. Klarl stated you can adjourn it for a month, and consider the Board's comments.

Mr. Reber stated the other alternative is if you have a small house the other possibility is to put a second story on, and make the living room, dining room, and kitchen on the first floor, the bedrooms on the second floor, and then have the extra room to do with what you wanted.

Ms. Price stated I know I have that option. I know I can go up. I know I can go out. It is just not what I wanted. I wanted to just go forward a couple more feet.

Mr. Douglas stated that is the root of the problem. We're governed by various criteria, and one of the criteria is that the benefit that you are seeking cannot be achieved by another method that is feasible not simply because you don't want to. You don't have to want to do them, but there are other methods, and there are other alternatives here. We can't really grant a variance when there are other alternatives.

Mr. Mattis stated and you would be protruding out more than any other of the buildings there so if we grant

this variance, like you said no one in your neighborhood association is against it, then your next door neighbor comes in, and he wants the same variance, and on what grounds can we turn him down, and then the next person wants it, and then all of a sudden we've effectively changed the code, because then we would have to allow everybody out as far as you are. Is there an adverse effect on the neighborhood, and the adverse effect is yes, you come out much closer to the road than the other people, if we grant this variance, and that is something we would consider, if you didn't have an alternative, but you have an alternative, and that is one of the most telling things that we have to look at. If there is an alternative, and

there clearly is in this case. Are there any other comments? Is there anyone in the audience who would like to speak? So if you want to talk to your architect, and adjourn this, and maybe come up with a solution, or you can withdraw the case, or we can vote on it tonight, that is really your choice. I would suggest that you take a time out, and take one more month to look at your options.

Ms. Price stated okay, that is what I will do then.

Mr. Heady made a motion in Case No. 05-08 to adjourn the case to the May meeting seconded by Mr. Chin with all voting "aye."

* * *

NEW PUBLIC HEARINGS

CASE NO. 08-08 JOHN AND DEBORAH CRUIKSHANK for an Area Variance for a front yard set back for a proposed addition on the property at 2 Giordano Dr., Cortlandt Manor.

Ms. Deborah Cruikshank appeared before the Board. She stated I live at 2 Giordano Drive, Cortlandt Manor. I am requesting a variance to put an addition on the side of my house for a two car garage, and a room above it. We are on a corner lot so the construction will be over the 15 feet from the road on the side there on the Furnace Dock side.

Mr. Douglas stated there were a few problems with your plan. As you mentioned it is for the side facing Furnace Dock Rd. What you are seeking is quite a substantial addition. You are required to be 50 feet back, and you are cutting that almost in half, 40 percent. That is a large variance. That is much larger than what we generally grant. It also doesn't seem really consistent with that part of Furnace Dock Rd. If I go up and down Furnace Dock Rd. all the houses in the neighborhood are in fact set back substantially. If you go down to the other part of Furnace Dock, it's a different story, but in your neighborhood it seems to me that this expansion would be out of character with the neighborhood. It is quite a large garage. Some of the same sentiments that you heard with the last case would apply here as well. I would not be inclined to grant such a substantial variance.

Ms. Cruikshank stated I was hoping that the addition would actually make the property look better. It is not very appeasing on the Furnace Dock side of the road. I was thinking about the windows, and everything would just make the property look nicer, and appeasing.

Mr. Douglas stated I understand for better, or for worse, aesthetics is something that we do not consider. Sometimes people come before us, and say aesthetically that would be better, but if it's not in compliance with the zoning requirements, and not within the statutory factors, we do not consider aesthetics.
It might be that aesthetically it might look better, but then again there are reasons for set backs including that we don't want houses along close to the road.

Mr. Reber stated again, the same would apply in the sense where if you're granted this, then others in that neighborhood could decide well we want to start building out toward the road, how would we say no, you can't, if we granted this. So again we would change the whole character, as Mr. Douglas indicated, and I

likewise went through the neighborhood. Everything is set way back, there is a lot of space from the road to the houses on that section of Furnace Dock Rd.

Mr. Seirmarco is there a reason why you are asking for a 38 foot wide garage, that is quite wide? Would you consider making it smaller so that you don't have to ask for such a large variance?

Ms. Cruikshank replied I could try. The whole thrust of the project was to give a playroom/recreation room to the children, and a basement from the current two car garage. The basement is very small,

because the two car garage is next to the basement. So we need a garage, and we need a two car garage just so we don't have the cars outside, and we also have a lot of lawn, and garden, and snowblowing equipment. We don't hire out for that, we do that ourselves. So we need the space to store that. So I guess if we made the garage the smaller, the whole thrust, like I said, was the recreation room. I wouldn't want to go up to do that. We have a three story house now, and I wouldn't want to go to a fourth story. So we thought the best place for the recreation space would be in the current two car garage.

Mr. Mattis stated what you are asking for is 38 foot garage with a doorway, an entrance way, a vestibule with storage, and the portion on the right where the second car would come in, we don't have the exact dimensions of that. It is much more substantial than we generally see in a garage. A two car garage in general is about 24 feet. You are asking for 38. Now I know what you said you want to store you equipment for doing your lawn, and stuff. You can put something in the back for that. You can put a shed in the back for that where you would not require a variance to do that. It is one thing to have a standard size two car garage, which would cut 14 feet off, and then the variance instead of 30 down to 16, or something, and we would certainly look at that, but a 20 foot variance, you would almost cut the variance up. You are required 20 feet, if you cut that down to 24 feet, you would just require a very small variance.

Ms. Cruikshank stated okay, so then I could come back with revised plans?

Mr. Mattis stated yes.

Mr. Douglas stated that is not to say they will necessarily be approved. We would have to consider the new plans to see what they entailed, but you would have a better shot at it. I think you know where this is going.

Ms. Cruikshank stated yes, I do. I do know part of that extension, the vestibule storage, part of that was because of the way the original stone wall is, we were trying to use that, but I can see if we could shrink that down.

Mr. Mattis stated you could still achieve above that with 21 feet that you would want for the room above that too.

Ms. Cruikshank stated well that was just secondary. That was more for aesthetics, because I didn't want a flat structure. So I will see what I can do.

Mr. Chin asked that room up above the garage, for a great room, that is 20' x 20', that is 400 square feet, that is pretty large.

Ms. Cruikshank stated like I said that was secondary. That I don't mind shrinking, it is more maintaining the garage to be.

Mr. Klarl asked your architect is from Massachusetts?

Ms. Cruikshank replied well he was originally from this area, and he is semi-retired, but he does certain

projects here.

Mr. Mattis stated if you could bring this down to the 24 feet instead of 38 feet, that would then be only a 6 foot variance so it would shrink it down substantially.

Ms. Cruikshank stated okay.

Mr. Mattis asked are there any other comments from the Board? Is there anyone in the audience that

would like to speak?

Mr. Douglas made a motion in Case No. 07-08 to adjourn the case to the May meeting seconded by Mr. Seirmarco with all voting "aye."

Mr. Mattis stated the next meeting is May 21st.

*   *   *

CASE NO. 08-08 ELIZABETH AND PAUL PLATKO for an Area Variance for a side yard set back for a proposed addition, Area Variance for a rear yard set back for a proposed addition and an Area Variance for a rear yard set back for a proposed open stairs on the property located at 11 Dickerson Rd., Cortlandt Manor.

Mr. Christopher Borchart appeared before the Board. I am the architect for Paul and Elizabeth Platko, 11 Dickerson Road. We are in front of you tonight asking for relief from Section 307.17, there are two different variances that we are requesting. So the first one is in the front of the house, it's 1' 4" off of a 30 foot set back for a column and pier with a pergola that would extend across the front of the garage. The second variance that we would be looking for is actually around the back of the house. There is an existing deck. When the houses were built the builder took advantage of the provision of the Zoning Code where you could with an open deck have it set back up to 6 feet, and so we wanted to take the existing porch, not change the footprint of it all, and basically just turn it into a screened porch. It is the west exposure of the house, and there's a lot of sun issues, a lot of heat on the back deck, and things of that nature. The final variance that we are asking for is for an open set of stairs coming off the side deck. There is an alternative for that, perhaps, which would require taking the steps off to the side yard, but they are trying to link the house to the backyard, and access to the landscape there.

Mr. Chin asked do you mean the side yard, or the front yard.

Mr. Borchart stated that is actually a very good point, it is in actuality the side yard, but considered front yard. We are asking ultimately for a 2 foot variance there. I do have five different letters that I could read into the record, of just hand them in. The homeowner went through a very strenuous process with her neighbors, and presented the project to each one, three of the neighbors that will be most immediately effected, the people directly behind them, and then the other neighbors have written letters stating their approval. We also have two letters from other people that drive by each day, and have no problem with it.

Mr. Mattis stated I don't think it is necessary to read them into the record, but thank you.

Mr. Borchart handed in the letters, and stated so that is basically it.

Mr. Chin stated I guess there is one question that I have. In the back, the 1.4 feet variance that you are asking for. I look at the survey, and for some reason the corner of the house is beyond that 30 foot set back already. I can't tell from this the dimensions.

Mr. Borchart stated it appears that they basically set the corner of the house right at 30 feet.

Mr. Chin stated I am just saying that based on the site plan right now, it seems like the corner of the house is right at the 30 foot existing set back based on the scale of the drawing over here, it may be a foot and a half. I don't know if that is true or not. How can you determine that?

Mr. Borchart stated short of hiring another surveyor to verify the original survey, I don't know.

Mr. Mattis stated the original survey indicates the 30 feet.

Mr. Borchart stated it does show the exact dimension of 30 feet.

Mr. Mattis stated I thing we can accept that. We were concerned that maybe when they built it they went over a little, and as part of this process we would have just cleaned that up, but it doesn't appear to be a problem.

Mr. Chin stated the house is kind of cocked to the property line so that is why it looks a little beyond the 30 feet. Is there any way you can eliminate that 1.4 feet there?

Mr. Borchart stated well one thing we did look at, and I hate to bring up aesthetics, but we did look at actually just doing a straight 4' x 4', 6' x 6' post there, which just because of the geometry, and the angle that it sits there we felt like we could just slide that in there. If push came to shove, we could still get the pergola up there, and the column on the left would have to shift over.

Mr. Chin stated well I am not too concerned about that, the most important thing was that the set back in the corner of the house was definitely at 30 feet.

Mr. Reber stated there is a technicality on the plan under the Zoning compliance table, you have listed minimum size of the property line set backs, first category 50 feet front yard, and you list the applicant being at 85 feet existing, that is not correct. The closest point is at 73 feet, when I did the other corner, it was even closer.

Mr. Borchart stated okay, I see, that is correct.

Mr. Reber stated that is all front yard there.

Mr. Borchart replied yes, that is right.

Mr. Mattis asked are there other comments from the Board? Is there anyone in the audience who would like to speak?

Mr. Chin made a motion in Case No. 08-08 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Chin made a motion in Case No. 08-08 to grant Area Variance in the side yard from 30 feet down to 28.8 feet, and Area Variance for rear yard set back for a porch addition from 30 feet down to 25 feet, and an
Area Variance for the rear yard for a proposed open stairs from 24 feet to 22 feet. This is a Type II Sequa with no further compliance required seconded by Mr. Heady with all voting "aye."

* * *

CASE NO. 09-09 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE

ENFORCEMENT for an Interpretation if the screening for a pre-existing contractor's yard was installed as per Zoning Board of Appeals Case No. 05-03 and the Interpretation if the property know as 0 Van Cortlandt Place is part of the pre-existing contractor's yard and an interpretation if the vehicles on 14 Van Cortlandt Place which have not been moved can stay as part of the contractor's yard on the property located at 14 Van Cortlandt Place, Cortlandt Manor.

Mr. Charles P. Heady, Jr. recused himself from this case.

Mr. Flandreau stated we sent an application to the Board for three Interpretations. The first Interpretation

is for the screening for the pre-existing contractor's yard that was installed as per Zoning Board of Appeals Case No. 05-03. The second Interpretation is for the property adjacent to 14 Van Cortlandt Place know as 0 Van Cortlandt Place is part of the pre-existing contractor's yard, and the third Interpretation is if the vehicles that are on 14 Van Cortlandt Place have not been moved, and can stay as part of the contractor's yard.

Mr. David Wright appeared before the Board. He stated I am 1820 Commerce St., Yorktown Heights appearing for the applicant, Mr. Gardner. Mr. Gardner couldn't be here tonight, he works from 8:00 in the morning to 8:00 in the evening most days, and this came up a little quickly on us, but I think I can cover 99 percent of this, if there is an issue, we would request that the matter be held over, but I think I can answer most of things, because it is an Interpretation. It is an Interpretation of the code not so much an application of the facts as they are. The first Interpretation is that of the prior decision of this Board, Case No. 05-03, and that was a decision in which the Board granted a Special Permit, I see you have it attached here so I won't go through it, but from the property owner's perspective the Town came out, and told him where to put up the fence. He put up the fence, the Town approved it. I understand it wasn't your Zoning Board approving it, but it was the Town Code Enforcement officer approving. I believe the fence that was put up was the maximum height permitted by your code, but if anyone would require a variance, perhaps a substantial variance. You have seen the photos of the truck, and the neighbor's topography it would have to be a 12 to a 15 foot fence to adequately screen given the fact that the complaining property owner is well below the lot. I don't know if all of the Board member went out to look at it, but the property owner down the hill on Stevenson Avenue is well below so he looks up, and it kind of extenuates what you see there, and it is an 18 wheeler. It's a large septic truck. We would argue that the screening that's there does in fact comply with the code, it does substantially conceal the operations on the site, and I say that even after you've seen the photographs, because there's about a thousand linear feet of fence that these people had to put up, one feet of that doesn't conceal the operations, 20 feet out of 1,000 linear feet. I would argue that the 98 percent compliance is pretty substantial under any interpretation of any code anywhere. I would also note that to the best of our knowledge, and maybe I'm wrong, but I believe that no other neighbor has complained from any other angle. It is just this one vantage point, again, because of the unusual, unique nature of the topography. We've also tried to accommodate the neighbor. I actually wrote him a note, and called him. We had a good conversation. I thought we were going somewhere, and we were going to exchange surveys, but that offer was declined, and I was hoping we were leading toward a resolution of some of these things. Sometimes property owners, I've found, when it come to fences especially makes people the worst possible neighbors, and I thought I could come in here, and say well let's look at our surveys, see where the property line is. There is a question where the property owner down below says well Mr. Gardner put the fence on my property, and Mr. Gardner says no, your fence is on my property, but whatever it is we could work all these things out by talking. I had hoped that we could work them all out. The message that I want to give is that we do want to cooperate. I have been involved in this for about six months now with Mr. Gardner, and I thought that the feedback he had actually gotten from Code Enforcement was that we had really made a lot of progress on this property, getting things cleaned up, getting screening put in, getting a little better communication from the Town on what needs to be done. It is a long pre-existing, nonconforming use, for about 50, 60 years, something like that, and I certainly know how Zoning Boards, and Code Enforcement officials feel about pre-existing, nonconforming uses especially an industrial type contractor's yard in the middle of what has become a fully developed residential zone,

which was there when the complaining property owner bought the property, but I guess that is not a factor that would considered in an Interpretation. Mr. Gardner was in fact prosecuted concerning insufficient screening, he has since complied. The Town, I think in a memo confirmed this. They went out there, and were considered as complying. Certainly from the property owner's perspective, it would be at least unfair to now basically come under a second prosecution after he has been prosecuted once from not putting in the required screening. Having said all of that, we stand ready to reach out to you, and make some kind of an understanding with the neighbor, with the Board. I don't know that it could be done in a room like this with cameras, and all of you people at a formal podium, but as I said, we tried to reach out to this neighbor to see what exactly it was that we could do to accommodate him, to agree on where the property line was would have been a great start.

Mr. Mattis stated that is really not the issue. The issue is the Interpretations, that property line only takes a survey it doesn't take an agreement between people.

Mr. Wright stated well they each have surveys supposedly. So that is what I have to say on the first Interpretation. The second Interpretation is 0 Van Cortlandt Place part of the pre-existing contractor's yard. I don't think that the owner of the property intends to take the position that it is, but I haven't had the time to go through the notes of this Interpretation, quite frankly, to go through all of the Town records, and go through the records with due diligence, and the property owner is requesting the time just so we can verify, but I think the intention is to say that it's not. There were some items stored there, and the property owner did in fact clean it up. He hasn't fenced it in, and again I don't think there is an intention to claim that as part of the contractor's yard, but he does need a little bit of time on this one. This has been used this way for 50 or 60 years, and for us to have less than two weeks, and with Mr. Gardner's schedule being what it is, not even being able to be here tonight, we would be asking for some additional time just to respond to that. The third, and final Interpretation, as I understand it, is whether a vehicle that has not moved in 3 ½ years is permitted to remain as part of the contractor's yard. I think we have to be precise about what the Interpretation is that is being requested. I don't think there is proper evidence that it has not moved in 3 ½ years. Mr. Gardner, if he were here, would say it has moved in 3 ½ years, not often for sure, but it is certainly moved once a year or so. It is a large tanker truck, and it is only needed for major commercial properties for septic pumping.

Mr. Mattis stated are you saying he takes it off the property?

Mr. Wright replied yes. Mr. Matthews came out, and we offered to start it up. The first time he came out, it had been sitting over the winter so we had to recharge the battery, but we offered to have him come out, and start up the engine for him to show him it runs fine, it has a current valid NYS registration, and I thought that was the end of it.

Mr. Mattis stated stop right there, registration. Is this the registration that we have submitted to us?

Mr. Wright stated I believe so. I sent a copy to Code Enforcement.

Mr. Mattis stated yes, that's a temporary registration. That is a temporary registration that expires in June. That is not a permanent registration. That means it hasn't been inspected. Is he going to take it off the property, and get it inspected?

Mr. Wright replied yes.

Mr. Mattis asked he will do that?

Mr. Wright replied yes.

Mr. Reber asked what did he do for the last three years?

Mr. Wright replied I don't think anyone can say that they have watched that property for 3 ½ years every single day, and that truck has not moved. I don't think anyone can say that.

Mr. Reber can the applicant show us proper registration for a three year period, and inspections?

Mr. Wright replied I believe so, he is not here, so I can't answer that for sure.

Mr. Mattis asked then why is it only a temporary registration?

Mr. Wright replied this is the first time I am hearing this so.

Mr. Mattis stated that really raises a red flag with us.

Mr. Chin stated also, you indicated yourself that they moved that truck once a year.

Mr. Wright stated that is what I believe, yes.

Mr. Chin asked well he moved that truck once a year to do what?

Mr. Wright stated to pump large commercial septic tanks, that is what I was told by him.

Mr. Chin asked and he just goes there once a year?

Mr. Wright replied well he doesn't have that many clients for that part of his operation, unfortunately.

Mr. Mattis stated let's take this one point at a time, we're getting ahead of ourselves. I'll turn it over to Mr. Reber, because this is his case.

Mr. Reber stated for the record let's clarify some issues. What we have here is as the applicant has indicated, the contractor's yard has been there for many years, it predates current zoning. Current zoning has that as a residential neighborhood, and the specific section of the Zoning Code, Section 307.82, the effect of such zoning on lumber yards, building supply yards, and contractor's yards. It says, "Regardless of any other provision of this Town, the owner of every noted building supply yard, contractor's yard, or lumber yard after the adoption of this provision exists as a nonconforming use in all districts, and shall apply to the Zoning Board of Appeals for a Special Permit to establish, and maintain appropriate screening for such use. Such screening may consist of vegetation, solid walls, or fences, and shall be maintained for as long as nonconforming use continues. Such screening shall substantially conceal from the judgment of the Zoning Board all operations of such building supply yard, contractor's yard, or lumber yard throughout all seasons of the year from the view of pedestrians, motorists, as in such property on public, or private road, and from the view of any existing or future residences within the district within 300 feet of such property." Now I think that is very clear as to what it states. So on that aspect, we then go to the decision in 2003, and it's very clearly there again reinforces the argument that the purpose of such screening is not to mark a donkey line, or any property line, that is irrelevant to the issue. It is very clear that they are too strictly provide screening. There was discussion at those meetings, and it was agreed that an 8 foot fence in the appropriate position could do that screening. Now it doesn't take a great deal of science to say that that fence should not be at the bottom of the hill, because it doesn't screen anything. The intent was for that fence to be at the top of the hill, and any equipment should be set back far enough from that fence so that any view from those neighbors looking up past that fence would not see the truck. That is the intent, it is virtually worded here, and it is obvious that fencing does in no way comply. So that fencing does not comply with the issue. There was also a stipulation at that time that as far as granting that Special Permit, and it was again restated in the court decision that, and I will read the court stipulation, which came

following the decision of this Zoning Board. He read, "Whereas the above captioned action with respect to several violations of the Zoning Board of the Town of Cortlandt has been pending in Justice Court. Whereas the defendant has obtained certain approvals from the Zoning Board of Appeals, Town of Cortlandt with respect to clean up, and screening of his property, and whereas the property owner desires to resolve the outstanding criminal charges, therefore, it is agreed as follows: That the defendant shall comply with the provision set forth in the Resolution of the approval of the Zoning Board of Appeals, Town of Cortlandt within sixty days from this order, and that the property will be subject to a complete clean up as agreed to before the Zoning Board of Appeals within sixty from date of this stipulation." Then it goes on with some other issues. Now that brings up the issue of what do we do about clean up. Okay, again, go back to the code, and within the code you have a definition of a junk yard to distinguish it from a contractor's yard, and when you read about the junk yard it says, "307-4, a junk yard, a lot, structure or part

thereof, over 200 square feet in area used primarily for the collecting, storing, or sale of waste paper, rags, scrap metal, discarded metal, for the collecting, and dismantling, storage of salvageable machinery, or vehicles not in running condition, but for the sale of parts thereof in the said vicinity committing industry use of the lot. Two or more unregistered motor vehicles not in operating condition located on a lot shall be deemed to constitute a junk yard." Now I inspected that property, that truck to me had a temporary license, and I would insist that the applicant show us that from the time of that court decision until now that truck has had valid licenses, and valid inspections. Also, there is a dump truck on that property, I want to see the same documentation on that, and I would question whether the bulldozer that is sitting there that I can't believe have ever moved when they were there, to me would be considered scrap metal, I would like to see some certification that those have left the property, and have been used, because that was a contractor's yard is. It is for storing things that can be used by the contractor. We want to see all that material he has there, some evidence that he has used those vehicles for jobs. He has a septic truck, okay, show us the evidence that he had customers, and he had serviced that. Ultimately what I am saying is the applicant is not meeting the criteria, and clearly doesn't meet it, our decision was based on the fact that it is a contractor's yard not a junk yard. A junk yard would not be approved under these circumstances in this area, and the definition of a contractor's yard is different than a junk yard. A contractor's yard the equipment is utilized, it is not for storing nonusable things. So again, he has to prove to us by some evidence that in fact what he has on that property represents material and equipment that he uses as a contractor, and he has evidence to show that he has done so on a reasonable basis not once in the last 5 years. There is no way he runs a business, and makes a enough money to justify that as a contractor's yard.

Ms. Hunte stated also I'd like to see the manifests that he has provided to the NYS Department of Environmental Conservation concerning the septic.

Mr. Mattis asked are there other comments from the Board? I think the second issue that we need to address is the property know as 0 Van Cortlandt Place, pre-existing contractor's yard. I think it was very clear that when we had our decision it was only for 14 Van Cortlandt Place, it was not for 0 Van Cortlandt Place.

Mr. Reber stated that is correct.

Mr. Mattis asked are there other comments? Okay, there is gentleman here that looks like he would like to speak?

Mr. James McClean appeared before the Board. He stated I live at 18 Stevenson Avenue. I am the resident that is in the back of the contractor's yard, or so called contractor's yard, if you want to call it that. I think it should be classified as a junk yard. There are a couple of things that I would like to clarify that Mr. Wright had brought up. First of all it is kind of funny how a self employed person who ends his work day at 6:00 didn't show up at the meeting. I find that kind of funny, but that is besides the point. I would like to address a couple of issues that Mr. Wright talked about. First of all, the fence issue. I put up a fence in my backyard around September. The reasoning was because there was no way I could block the view of a

tractor trailer, which I see when I sit down and eat dinner, and sit on my porch. The reasoning was there was all neglected land there, there were trees that looked like they were eroding, and I wanted to kind of block the leaves from getting on my property. So I put up a fence. I looked at my survey, and I put up the fence about 6 feet in back of my property line so that if I need to utilize that area back there for branches or whatever, I could do that. What happened was a couple of months later Mr. Gardner put up a fence, and the whole point of the fence was to block the view not only of the 18 wheel septic truck, which is approximately 50 feet long, rusting, hasn't been cleaned in three years at least, because it was such an eyesore to the previous owner of my house made him paint it, or asked him to paint it.

Mr. Reber asked when did you acquire your property?

Mr. McClean stated in 2001. When I moved in I asked my next door neighbor how long that truck had been there. He said the truck hasn't moved in 10 years. It is now 2008, that's 7 years plus 10, that's 17 years on the average that that truck has been sitting there. It has never been moved, not once. I don't think it's capable of moving. I don't know what's in it, for all I know there could be septic material that has never been emptied, it could be toxic. It has never once moved, never. When I first moved in, I spoke to Mr. Gardner, and said to him all I want from you is to please put up a fence, and block the trailer, and he put up his fists, and told me to get off his property. That is what I got from him. A couple of months after I put my fence up, which had no bearing on what was up there, backhoes, dump trucks, garbage, you name it. I am sure you have seen the property, or at least seen pictures of it. The fence was put up gradually, he knows what hours I work, and the last two sections that were put up were done purposely when I was at work, and for spite he put beware of dog signs on my fence that I put up, to spite me. He actually connected his fence to my fence, and put up beware of dogs signs even though he doesn't even have a dog. It was just to piss me off.

Mr. Mattis stated are you saying he doesn't have a dog?

Mr. McClean stated no dog, nothing. That was the first issue with the fence. They needed to put their screening at least 10 feet tall to block that trailer, and in fact when the guys were installing the fence I said listen all I want is for the trailer to be blocked, can you put up a couple of sections, and block the trailer. It never happened so I went to Mr. Gardner, and said your fence is on my property, and you didn't block the truck that's all I ever wanted. A little bit later I got a letter from Mr. Wright saying that my fence was on his property. So there's a game going on here, and nothing got accomplished with the fence as far as blocking anything or serving any purpose whatsoever. Also, Mr. Wright made a comment about nobody else in the neighborhood complained. Well besides me, next door to me, across the street from me, and another house that is next to that person near that property is his family, his cousin, brother, whatever. They're not going to complain.

Mr. Mattis stated well in this case it is really irrelevant, because it is an Interpretation.

Mr. McClean stated okay. The other thing I want to talk about, and I sent you a letter, I don't know if you got it. He burns material. So besides looking at a truck that's not covered up, there is burning, anywhere from plastic, roofing shingles.

Mr. Reber stated that is something, unfortunately not relative to this, but that should be reported immediately to Code Enforcement.

Mr. McClean stated I have spoken to the DEC, the Health Department, and you name it.

Mr. Mattis stated well I suggest that you call the Town immediately, if he does that.

Mr. McClean stated well you know what it is, he's a little smarter than that, he does it while I'm at work,

and on weekends, when the Town is closed.

Mr. Flandreau stated there is an emergency hotline number for the Town that you can call after hours, if that happens again.

Mr. McClean stated this has been an ongoing thing, and I tried to do the right thing. It is ridiculous that this trailer has never been moved. It serves no purpose, besides that there are backhoes, I mean it's disgusting, and I tried to do the right thing, and I don't think it's fair that I have to look at that, when I invite my family over, and have a barbeque not to mention the fact that I believe he is dumping septic somewhere, because I hear trucks starting up at 4:00 a.m. on a Sunday night. I have contacted the Health Department I hear septic, I hear water at 4:00 in the morning like something is being dumped. That is

irrelevant to you, I know, but I really want this taken care of, and I don't feel that I should have to look at something like that.

Mr. Reber stated well back to the fencing, because that is really part of this Interpretation. You're saying that part of that fencing is yours, are talking about the fencing that is on top of that stone wall?

Mr. McClean replied yes, I looked at my survey, and I drew a straight line.

Mr. Reber stated right. So that is your fence there.

Mr. McClean stated it is different if you look at it, he put a stockade fence up, and mine is different.

Mr. Reber stated only because the neighbor made a comment about dogs, and for the record when I was on the property talking to Mr. Gardner, he is not very conversant, but he noticed that I had a dog in my car, and he did say to me don't let that dog out, because my dogs are loose. I didn't see a dog around, and I didn't hear a dog, but obviously I think he was trying to threaten me out of his property, which also raises a question about how accountable he is.

Mr. McClean stated I've never seen a dog, and I have never heard on dogs on the property. I think that was a spiteful act basically saying this is what I am doing, and I am going to leave my property the way it is, and that's it. That is what I got out of it. I feel like it's unsafe to live there. To be honest with you I feel like the property value of my house is worth nothing, because of that.

Mr. Reber stated my concern is the condition of the truck, it is an old truck, it is rusting, and I don't know what's in that truck, but I know if I were you, I would be very nervous, because if that ever leaks, it's going to come right down into your yard.

Mr. McClean stated well exactly, it was used for septic so chances are it has hazardous material in it, and it is on the end of the property, and there is a chance it could fall backwards, and it will go right down into my property. I am tired of looking at it, not to mention when people come over, a real estate agent came over, and looks out the back, and there is a 50 foot truck, and there is no reason for it to be there, it's not operating. There is just no reason for it.

Mr. Reber also to say nothing of the bulldozer that is sitting behind.

Mr. McClean stated the bulldozer behind has rust that is so bad that it's almost just going to be dust in the wind, and there is also a truck behind that on the next yard. There are dump trucks, I mean you name it, it's there, and then you have the burning, and the dumping early in the morning, and this smack dab in the middle of a residential neighborhood. You have beautiful houses surrounding it, and in the middle of these beautiful houses you have a junk yard.

Mr. Reber stated and that is an issue that I've raised. This is supposed to be specifically a contractor's yard

that is properly screened, and functioning as one. It has obviously not been shielded, and the question becomes whether this is a junk yard, and not actually a contractor's yard.

Mr. McClean stated well it is not right, and I am especially being effected by it. I have presented my side of the case, and I would appreciate if there could be some kind of resolution to this.

Mr. Mattis asked are there any further comments?

Mr. Wright stated I don't have the knowledge about the dogs, and beware of dogs signs. I saw no trespassing signs, but I didn't see beware of dog signs. The DEC, the Health Department, the DEP, and

the Town of Cortlandt have been out there by a rough estimate between 18 and 20 times through the last few years on all these different complaints about the smell of smoke, somebody must be burning toxic substances, and there is a wood stove in the garage, that is all that they discovered on that, sewage dumping, and that kind of stuff, they have been all around the property, many, many, many times, and trucks rolling down the hill, this is really ….

Mr. Mattis asked can you provide any records of that?

Mr. Wright replied the inspections, sure, absolutely.
Mr. Mattis asked are there any other comments from the Board? Okay, I have one final comment, Mr. Wright it is obvious that you couldn't respond to very much because you came in, and presented your case, but there were questions, I think you have to go back to your client. Based on that, we have 5 weeks until the next meeting, I would like to see your client here, because I don't want for you to come back next month, and we ask questions, and then you have to go back again. I would like to see him here, if possible. I mean we can't require that, but I am suggesting that.

Mr. Wright stated understood.

Mr. Klarl stated well we can require it.

Mr. Mattis stated we can, okay then I would like to make that a requirement.

Mr. Reber stated I am concerned about two questions. Have you complied with the screening requirements, and are you operating as a contractor's yard? We also need documentation to certify that what's on that yard has been used as a contractor, and all the valid evidence to show that.

Mr. Mattis stated I think it appears to some of the members on this Board, and to a layman's eye that some of those vehicles have not been moved in years, and that is why we want to see that evidence.

Mr. Wright stated sure.

Mr. Mattis stated it raises a red flag, when there is a temporary registration, if that was inspected every year, there is no reason for a temporary.

Mr. Reber stated and if it is actually being used for a contractor's business.

Mr. Mattis stated the purpose of a contractor's yard is to store the equipment overnight, and then it goes out, and not once a year either.

Mr. Seirmarco stated we are not asking for anything unusual. We have required this from other people who have contractor's yards. We have asked for manifests, and bills, and the activities of where they have done work, invoices, etc.

Mr. Wright stated I understand.

Mr. Mattis asked are there any other comments?

Mr. Reber made a motion in Case No. 09-08 to adjourn the case to the next meeting with the requirement that the applicant appear at that meeting, and the applicant provide the necessary documentation requested by the Board seconded by Mr. Chin with all voting "aye."

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CASE NO. GALILEO CORTLANDT LLC for an Area Variance for the total size of signage for the tenant space on the property located at 3105 E. Main St., Mohegan Lake.

Mr. Steve Chester, Signs Inc. appeared before the Board. He stated we are representing Allen Carpet and Mohawk Floors, and they moved from next to Blockbuster in the Cortlandt Town Center to where the Bombay store is right now. We want to take the Bombay signs down, and put up the signs that they had at old store, and just move them over, but they are bigger that what it is allowed. It is under the 100 percent, which I guess you sometimes use as a guideline, and basically the calculations were given to you, and it is a pretty straightforward case.

Ms. Hunte stated just to clarify this you would be using the signs that currently exist on the other site.

Mr. Chester stated they're there now right next to Blockbuster, and we want to take those, and put them where we moved to across the street.

Ms. Hunte stated so the difference is the frontage on the existing property is wider than where you are moving to.

Mr. Chester stated right.

Ms. Hunte stated so because this space is narrower you are putting the Allen Carpet sign on the top, and the Mohawk sign underneath.

Mr. Chester stated there are two bars there now that are already in place.

Mr. Mattis stated so you are going to use the existing bars?

Mr. Chester stated yes, we are not changing that footprint.

Ms. Hunte stated and you just handed up these photographs.

Mr. Chester stated yes, I just wanted to show you what is around there. The signs in that area are much larger than what we're proposing. The letter that he has proposed is 30 inches, Linens and Things are 4 foot 6 inches, Home Depot is 5 feet, A&P is even bigger than that. I couldn't measure that one, but I know it is bigger.

Mr. Mattis stated his maximum height would be 2 ½ feet.

Mr. Douglas stated the reason why the other signs are bigger is because they have more frontage, and bigger spaces.

Mr. Chester stated what we would be allowed is to small, and the signs are existing on the other site already.

Mr. Douglas stated my personal view is your existing sign is 35.41 square feet, and I see no reason why you should put up more than that, when your space is a smaller location, smaller frontage. I know I am only one vote on this, but I just wanted to state my opinion.

Mr. Seirmarco stated and I concur.

Mr. Mattis stated when looking at this we have given up to 100 variances. This is not a 100 percent variance, but why do we have these variances, and what do we look at. One of the things is the identification of the store. The other thing is those stores sit back, and when you're driving through the

Town Center you have to be able to read what they are, and these signs even if we grant what's given, they are warped by the signs around them. When you see a lot of big signs, it's harder make out the small signs, and I think for safety reasons I think that this should be granted. I don't think it does anything to the aesthetics there in a negative sense. It fits right in. It's smaller than everything around it, and it allows you to have the proper identification for your business so that people can see it.

Mr. Douglas stated one of the reasons why the signs are so much bigger is because this Board keeps granting variances, and we shouldn't.

Ms. Hunte asked is the property next door to where you're moving to has an awning, do you know who that belongs to?

Mr. Chester stated that is Linens and Things. They use it for storage.

Mr. Mattis stated so it is actually not one long stretch, you are kind of inbetween them there.

Mr. Chin stated I know that the sign ordinance has given up permission to grant up to 100 percent, and I don't think we do it that often, but a sign like this is what we should give a variance for so that people can id a store, when they are driving by. So I have no problem with it.

Mr. Reber stated I often find it interesting that a large storefront can put up a sign probably as big as what is being requested here, but to me the visual effect I don't understand why they can put up bigger with a larger storefront. So to me the identification of the storefront is important. It is better to have the identification then to have people struggling to see where the store is, and maybe driving by the store.

Mr. Douglas stated well it is a little ridiculous that you disagree with what the sign ordinance requires.

Mr. Reber stated no, I don't disagree with the sign ordinance, but they gave us that right to increase the signage by 100 percent, and is some cases we have to take a look at it.

Mr. Chester stated the primary part of the sign is actually smaller than the existing sign that Bombay had. So it is actually smaller except for the bottom part of the sign.

Ms. Hunte asked did you need a variance for the sign where you are now?

Mr. Chester stated no we did not.

Mr. Mattis asked are there any other comments?

Mr. Heady stated I think Mr. Mattis stated it very well about granting a variance, if it is needed.

Mr. Mattis stated I would like to add to that. I look at signs in two different ways depending on the location. If they're on a street, and the store is near the road that you're traveling on you might need a slightly smaller sign, but when you're in the Town Center, and it sits way back from the parking, and you have to look, and there's traffic coming, and there is parking to your right, or your left depending on which way you are going, you've got to be able to see that sign, and you're quite a distance away, and this is what we give variances for places like Town Centers that are off the road. This isn't just a shopping center that sits back, and you see them. You've got to actually be in there to see them, and that is a mitigating circumstance in my opinion that would argue for me to allow a slightly larger sign in the Town Center for those reasons rather than on a regular road like Rte. 35, or Rte. 202.

Ms. Hunte asked is the new location more than 200 square feet?

Mr. Chester replied it is 4700 square feet.

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

Ms. Hunte made a motion in Case No. 10-08 to close the public hearing seconded by Mr. Reber with all voting “aye.”

Ms. Hunte made a motion in Case No. 10-08 to grant the variance on total signage from 30.5 to 66.5 feet. This is a Type II with no further compliance required seconded by Mr. Chin. The Board was polled as follows:

Raymond A. Reber	Yes
Adrian Hunte	Yes
David Douglas	No
James Seirmarco	No
John Mattis	Yes
Wai Man Chin	Yes
Charles P. Heady, Jr.	Yes

The motion was passed by a 5-2 vote.

* * *

CASE NO. 11-08 THOMAS AND STEPHANIE MULROY for an Area Variance for the front and side yard set backs for a proposed addition on the property located at 10 McGregor Lane, Crompond.

Mr. Ronald Garcia appeared before the Board. He stated I am representing Mr. and Mrs. Mulroy. We have a proposal for a two story addition that requires two variance, a side yard variance on the left side, which would be approximately 3.19 feet, and the front yard would be a required 50 foot set back. The current house sits back at 38.2 feet, and from the closest corner it would be about 31 feet. All the other set backs comply.

Mr. Seirmarco stated unfortunately I did not get a chance to visit that site, but by looking at the map it appears that the front yard set back would be more than the rest of the houses on the street.

Mr. Mattis stated well the house sits at 38 feet from the property line.

Mr. Seirmarco stated right, it is closer than any of the other houses on the street.

Mr. Flandreau stated what they are proposing for the side yard is 23.2 feet, encroaching 3.2 feet on the side.

Mr. Mattis stated since you couldn’t get out there, I was out there, and looked at the property. On the side yard you have another property far away, and they need a 3 foot variance, and certainly that doesn’t change the character of the neighborhood, and has very little impact. They’re still going to be much, much further away from your neighbor than most of the people on that street, probably twice as far away than the other neighbors on the street. You only need a 3 foot variance so you would be a considerable distance away. The only question I have on the front, you’re actually going to be 38 feet, right now your house is 38.2 feet, your angled a little bit, I question why you didn’t keep a continuous line?

Mr. Garcia stated the house is actually staying in the same corner space as the porch that creates the jet out in the front. It is really better from an aesthetic point of view.

Mr. Mattis stated okay so it is just the porch that is coming out, and it should be noted also that where it is

38 feet is only on the right hand corner of the addition there, and the rest is further back. It doesn't show it here, but it's probably I would guess another foot, or so.

Mr. Garcia stated the right corner is 38 feet, so it is pretty much in keeping with what is there now, and the left side is a little bit further back more like 40 feet or so.

Mr. Mattis stated right so it is not a continuous variance, it is a diminishing variance.

Mr. Reber stated I am okay with the side yard, but I do have a problem with that front set back, because you have beyond now what the set back is required, and certainly stands out more relative to the other houses in the neighborhood, and the house is slightly angled so it is really the corner. To me from an aesthetics point of view, and a neighborhood point of view I don't think that we should propagate that frontage, the wider, and wider the house gets when it is that close to the road, the more it stands it out relative to the neighborhood. So looking at what you are proposing, and the way it is set up, to me if you want to keep the aesthetics, and not have a straight line, why wouldn't you set it back 2 feet instead of forward 2 so it is actually further back from the road than the main part of the house by some minimal offset so that you are continuing to diminish the encroachment to the road, and still have the same addition there.

Mr. Garcia approached the dais, and spoke with Mr. Reber.

Mr. Reber stated I just said you have a house that is closer to the road than any of the house on this street, and now you want to add, and you are basically bringing it back to that same encroachment all along, and the more you do that the more it stands out. I am saying instead of jogging it outward, you want to aesthetically have an offset, jog it in a little, maybe move it back a couple of feet. You can do that, you've got room for it, and it takes away from the encroachment, it just fades away from the road. To me I would not approve this for that reason. I think you have an alternative.

Mr. Seirmarco stated unless there is a reason for jogging it out.

Mr. Garcia stated well there are some reasons for that, on the kitchen side the septic is in the back, but that's beyond the deck. We are working with the existing back wall of the house, and in order to get the kitchen, and the bathroom, and the small office space.

Mr. Reber stated well we don't have the floor plan here to see that.

Mr. Garcia stated I submitted a floor plan.

Mr. Mattis asked Mr. Flandreau do you have a floor plan?

Mr. Flandreau gave the floor plan to the Board.

Mr. Garcia stated that is the reason why I did it, because if you keep cascading in the back like your suggesting that would just not work out size wise, and then up above, when we go up to the second level, and you start making the hole going out, because the hole has to be in a fixed location, we would end up with about 6 feet up in the front of the house, that is the reason. We kept that section even with what is there now.

Mr. Reber stated okay, that addition that is going on, that is a two car garage on the first floor, and then the second story is a master bedroom. So I look at this plan, and I say obviously the garage, because the door is to the back, if you moved it, and you offset it 3 feet, so if you move it back say 5 feet, no problem, the garage still sits there, and it doesn't effect the rest of the house any, and you still have an offset. Then, when I go to the second floor, I look, and that wall is nothing but a walk in closet, again, the hall, and the

door are further back. So you can move that front back a few feet, have the same square footage, and still say in the hall. I see no reason why you have to keep encroaching forward with this house, when you can actually offset backwards, have an aesthetic house, and reduce the encroachment.

Mr. Garcia stated it doesn't work as simple as you say, you run into problems with the hallway, because the hallway is in a fixed location. If I moved the building back 5 feet, the front portion of the addition in front of the proposed hallway, because there is only one location where it can be, you end up with a 5 foot space, which is useless to create the master bathroom, and closets upstairs.

Mr. Reber stated I disagree with that.

Mr. Garcia stated well okay. He approached the dais, and spoke to Mr. Reber.

Mr. Chin stated I have no plans to look at here, right now it is hard to look at.

Mr. Mattis stated some of us did not get those plans, and I apologize for that, and I don't know what happened, but having said that, I don't think we're going to negotiate changes here. I'd like to have time to look at the plans, and obviously tonight is not the time to just look at them in a brief fashion, and try to reach a conclusion. So I think it is probably appropriate. You know what we're looking at. You have a month to think about it, and in the meantime we will get the plans, and we'll get a chance to look at them more appropriately ourselves.

Mr. Seirmarco asked how many sets of plans did you hand in?

Mr. Garcia replied whatever Jim required when we filed the application.

Mr. Flandreau stated I don't remember seeing any of the house plans.

Mr. Chin stated every Board member is supposed to have a set.

Mr. Mattis stated okay, are there any other comments? Is there anyone in the audience that would like to speak?

Mr. Seirmarco made a motion in Case No. 11-08 to adjourn the case to the May meeting seconded by Mr. Chin with all voting "aye."

* * *

ADJOURNED PUBLIC HEARINGS FOR TELECOMMUNICATIONS FACILITY

CASE NO. 48-05 CINGULAR WIRELESS SERVIES INC. for a Special Use Permit for a wireless telecommunications facility on property located at 451 Yorktown Rd., Croton.

Mr. Daniel Laub, Esq. appeared before the Board. He stated I am with the law firm of Cudey & Fader appearing before you on behalf of previously AT&T now Cingular Wireless. This application has been ongoing, and is for a wireless facility at 451 Yorktown Rd. After a series of hearings, we had pursued an alternative site, as you know, which is known as the Thalle property at 140 Colabaugh Pond Rd. After a significant time, and effort trying to obtain a lease at that property, we were unsuccessful. We were here before you last month. I know you had some outstanding questions on the original site. I tried to speak with Mr. Fisher to try to see what those were, and his recollection was not very clear of any outstanding issues the way that Board seemed to. So what we did is we provided to you in a supplemental submission regarding the 451 Yorktown Rd. site to try to re-establish where we left off at that time. Because we

pursued the Thalle property, and during the course of that time we were using a separate engineering firm, and during the course of coming back to this site we have to try to go back to the original engineering firm, and try to get the material, and the site plan. So that is why we have not been able to submit anything additional right now. It is something that got lost while we were in pursuit of the other site. I know you asked for it last time so that is why it wasn't submitted with the supplemental submission this time. We did notify the neighbors that we were coming back to this site looking to have further discussion.

Mr. Douglas asked are you going to now re-engage the former engineering firm.

Mr. Laub stated my understanding is that they are still in the process of getting them back on board, that is the ideal. We did submit a copy of the plans that we had previously submitted. The alternative is to have another engineering firm come in, but we ideally we would like to have the old firm back that has the experience of this site already. We are working on that.

Mr. Seirmarco stated just from recollection, there were probably a dozen issues with this property. There were questions about the manifold design, the utility building in reference to where it will be in reference to being on that site. It is a very site, there are tow trucks, and whatever, and a number of spaces that have to be allotted for the site business itself. There were a number of issues, and I think those issues went away when you went to the alternative site. I am sure we see the same people in the audience that had issues with the original site, and many of them I am sure will also remember the issues that were brought up at that time.

Mr. Laub stated well in terms of some of what you just mentioned. Not to labor the discussion, but I know that we had originally the manifold in a different location, but we moved it to a different part of the property away from the center of activity. In addition, the manifold was going to be investigated as far as a weak point in the manifold, which would reduce the fall zone in the event, or circumstance that it did ever fall. So my understanding was that the information on those things were already provided.

Mr. Seirmarco stated I think we discussed some of those things. I don't know whether the actual engineering information was provided to the Board to verify this information. So I think that is where we were, and then we switched sites.

Mr. Chin stated we did get a lot of information at one point on the fall zone, and everything else. The only thing is, again, when they switched sites we kind of lost focus of all of that.

Mr. Mattis stated so those are all things that we will need to re-address.

Mr. Laub stated well our problem is we don't have all of that. I think I am kind of lost as to what additional

information you are looking for at this point.

Mr. Reber stated to be honest with you I have lost some of the file. For example, I know one of the questions that is going to come up is the actual tests that were done for the RF signals, and all. I know there some certifications, and an independent tester to verify that. There was also questions about other locations such as the Con Ed towers had been looked at, and what the potential of those were. So my suggestion to you is after all of this time, I would suggest that you go back, and put together that packet again with whatever technical evidence you think is appropriate, and certainly we will hear from the neighbors who will give you other information. I would suggest that you re-submit it, because at this point we are at a loss.

Mr. Seirmarco stated there were booklets, maps, and a lot of other information that you are going to have to get.

Mr. Chin stated I am sure that Mr. Fisher probably has the information that was previously submitted.

Mr. Mattis asked are there other comments from the Board? Is there anyone in the audience who would like to speak?

Mr. Richard Boulder appeared before the Board. He stated I live at 64 E. Mt. Airy Rd. I have never been to one of these meetings before so this notice just sparked my interest to come. I don't know whether there have been prior hearings that would have involved my property, or with the same location, but this is the first notice I have received. I did get this one, I don't know if there were others.

Mr. Mattis stated yes, back in 2005.

Mr. Chin asked were you living there then.

Mr. Boulder stated I have lived there since 1989. I did want to just note a couple of things about this particular notice. Number one, 451 Yorktown Rd. for me, was a fictitious address. I looked it up on map quest, there's no such address.

Mr. Mattis stated I would suspect that is the legal address of that property.

Mr. Boulder stated okay, so I drove down to where there is a car shop type of place.

Mr. Chin stated it is Platinum Auto Body.

Mr. Boulder stated it was elusive anyway, and the business on the computer is known as Pony Motors, and when I went to Google, but there was no listing for Pony Motors.

Mr. Mattis stated the name on the building is Platinum Auto Body.

Mr. Klarl stated the property owner is Pony Motors Inc. not necessarily the business name.

Mr. Boulder stated so it is Platinum Auto Body.

Mr. Chin stated you must have been there when it was Bob & Ot's?

Mr. Boulder stated yes, I knew Bob and Ot very well. Okay, so now I know where you mean. The last thing, and this is probably a dumb question, but is there any way that these companies can put more than one on the tower.

Mr. Mattis stated that is encouraged by our code.

Mr. Klarl stated the code says that they should try to co-locate. Whenever a carrier comes along, they are supposed to join the existing manifold.

Mr. Mattis stated this is a Cingular application, which is now AT&T, if in fact this would be proposed at that location, or another location, it would have to go before this Board, up to four additional can co-locate on that so there are not towers all over.

Mr. Seirmarco stated as a matter of fact, this evening the public hearing after this is for co-location for the existing tower.

Mr. Boulder stated okay, that's it, thank you.

Mr. Bill Doughty appeared before the Board. He stated I live at 86 E. Mt. Airy Rd., and I do not really want to rehash all the problems with the previous site, but if you have a few minutes I can give a very brief summary for you. On the other hand, I would like to focus our attention on the alternatives. You heard earlier this evening that your body would first consider as to whether or not there has been an earnest effort to explore alternatives. In this case, as you probably know, we have provided suggestions for at least three alternatives, two of them alternative locations, and one of them is a technical alternative that being the possibility of the applicant providing smaller transmitter receivers on individual utility poles alongside of the road, that was one alternative. The other two were location. One of them is the Thalle property off Colabaugh Pond Rd. by the old emery mine, and the second one was the Con Ed towers on the top of S. Mt. Airy Rd. Let me first address the Thalle property. The applicant has indicated at the last meeting that the owner of the property was not responsive. Since 2007 there has been a number of postponements at the applicant's request to maintain a flow of negotiations, and at the last meeting they stated that the applicant was not responsive, and therefore tried to move for a vote from this Board. I appreciate the fact that you kept this open for a public hearing. Having heard that, shortly thereafter, I made an effort to locate the person, who is the principal speaking on behalf of that property, and that happens to be Mr. Glenn Pacciana. Mr. Pacciana is the spokesperson for the family that owns the property, otherwise know as Briarcliff Associates, and they maintain offices at Thalle Construction in Briarcliff. It is interesting to note that on April 2nd, I called Mr. Pacciana at his office, and his voicemail gave me a cell phone number, I called his cell phone number, and four hours later he called me back, and the next day we had lunch. On the 3rd of April as we were having lunch together, we over all of the details of the negotiations to date, and I do not want to be in the position of putting my words in his mouth, but I will paraphrase, and say simply that he is representing this, and the issue is still wide open. He does not feel he has been nonresponsive. He is more than willing to carry on discussion. He gave me permission to give to the representatives of the applicant the telephone numbers at which he can be reached, and he is anxious to have them come up with a meaningful proposal so they can present that to the family, apparently his parents actually own the property, but he speaks for them, and before I leave tonight I will convey that number to the applicant's representative. Now further into that discussion he indicated to me that as far as negotiations are concerned they are quite a crossfire from what you and I would probably consider to be negotiations. Apparently, from his perspective, some technical people came on site a handful of times, two or three, it's up to him to tell you how many, but very few times, and that the overall question was that they were not approaching this very aggressively. So that I would hope that when the applicant contacts Mr. Pacciana, they will have a more aggressive approach coming up with a meaningful proposal. So much for credibility on alternative site number one. Regarding alternative site number two, the Con Ed towers, I have personally been upon that location, and I have noted, and given the Board photographic, and topographic maps, which I am sure that the applicant has access to, which indeed show without a shadow of a doubt that from that point to every point on the area, which the applicant's maps indicate their coverage area, that we have line of site, forget about radio transmission, we have virtual line of site to every point along the roads, and areas, which the applicant's map would cover. Without going into further detail, you may recall seeing these maps, and I

am sure you are familiar with these. If you look at the one that says coverage area without the tower, and you go to the coverage area with the tower, it wouldn't take you an awful long time to draw the red line around the comparison of the two. The area in question is along Rte. 129 from Croton Ave. down to Batten Rd., and they also have added coverage to E. Mt. Airy Rd. approximately to Wallace Dr., and on Colabaugh Pond Rd., and possibly as far as the emery mine, but not very far. Now you have a 140 foot tower at the intersection of Mt. Airy and 129 would tend to make one think that they would reach up a lot further, which takes one more logical step to say that ladies and gentleman that is not a problem for the Town of Cortlandt, but for the Town of Yorktown, who should worry about the rest of it. The point that is coming back to site number two is the applicant has stated in previous meetings that they had looked at Con Ed towers. I personally…..

Mr. Mattis stated can I interrupt a minute. I am not sure what you mean about the distinction between the Town of Cortlandt, and the Town of Yorktown?

Mr. Doughty stated oh, okay let me clarify that. In other cases around the state, and around the country it has been found that sometimes an applicant may request a tower much higher than they would normally use for a relatively small area where they claim there's a gap, and when they put up a much larger tower, it is often the case that it is their intent to cover a little more than meaning going into adjacent communities, and experts have found that you would be in position to say you don't need a tower that high to cover our little area in the Town of Cortlandt.

Mr. Mattis stated I don't think we go on whether it's the Town of Cortlandt, or whether it's Yorktown. We go on what, I will call their hole, in their service coverage. They're trying to fill that. I don't think they look at geographic boundaries.

Mr. Doughty stated no, and political boundaries are not withstanding. My point is that expert advice might indicate to the Board that the tower height they are requesting is far in excess to cover what is needed to cover that particular small area, which I just described.

Mr. Reber stated Mr. Doughty are referring that since we represent Cortlandt that our concern only should be looking at the necessity for cell service within Cortlandt, and not necessarily feel obligation to put a cell tower in to service Yorktown?

Mr. Doughty stated it is not necessarily what I am saying to dictate, but it is a judgment of mine. The question would be why should the residents of our immediate area be subjected to a visual obscenity, if you will, to serve the residents of a different town? That's not the main issue here. The main issue here is the consideration of alternative site number two. Alternative site number two is on top of Con Ed towers, who currently has one carrier on it, it's Nextel. The elevation, which I have demonstrated in the past with topographic maps etc., and a direct line of site from the Con Ed tower at the top of S. Mt. Airy Rd. of every spot along the area, which they intend to cover, and we have seen no evidence that the applicant has provided the Board, or the public with evidence of good faith, examination, and attestment of that site.

Mr. Chin stated I want to ask a question. You say that Nextel has a cell site over there on one of the Con Ed towers, do you know how high that site is? Is it all the way at the top of the tower? Have you seen it?

Mr. Doughty stated yes, I have seen it myself, and I have a picture here. He gave the picture to Mr. Chin.

Mr. Chin stated that is Nextel, which is Sprint. I happen to have Nextel, and I get lousy reception on E. Mt. Airy Rd. If that thing is right there, it doesn't even reach me. I have no service. What I am saying is, I remember packages from AT&T indicating it was not feasible for a site, because they already tested it.

Mr. Mattis stated well we can get them to resubmit it, if that's the case.

Mr. Doughty stated that's the point, that's exactly the point.

Mr. Mattis stated I think the only issue is, if Cingular, AT&T put something there will it fill in the gap that they have, because carriers have different types of signals, and there are some different calibers. So they may have different areas of gaps. So all we have to do is have them look at that tower, and does it work, or doesn't it work?

Mr. Doughty stated that is precisely my point. Thank you very much. We would like to see that kind of radio transmission, or RF tower, or whatever, because on that site there is another carrier, and we don't know. I'm not here to say it's going to work, but I am here to say I have not seen a good faith effort of trying to find out if it would work, and I think we all should demand that of the applicant. Item number three is the if they are able to satisfy filling the gap of this relatively short nature by putting smaller transmitter receivers on the existing utility poles along the road. Now we brought this to the attention of the applicant, and the Board some time ago, and again I have not seen, we have not seen any good faith

effort on the part of the applicant to show technically speaking why this is, or is not feasible. We don't know if it is, or it is not. We haven't seen any evidence. Therefore, in conclusion, I believe that the demand for such information, and the need to have the ability to properly, and professionally have that input someone to verify this. I think it was January 2006 where we suggested to the Zoning Board of Appeals that you engage in a professional expert to be able to help you evaluate this, and we would like to repeat that request again tonight. I think it would be very helpful for all concerned. That is all I have to say. I would just like to give a brief enumeration of the problems of the old site to refresh everyone's memory. The site itself is roughly 1/3 acre that is too small for such a tall structure, and is already crowded as it is. Next, residential houses are immediately adjacent, and within the fall zone. Next, it constitutes a catastrophic fire, and explosion hazard since the auto body shop uses, and stores very volatile chemicals, propane tanks, and the presence of auto fuel tanks. It was pointed out that even on the tower that if lightning strikes that still poses a risk in the presence of such explosive materials. Next, it was found that the site's septic system fields over the years have been covered by blacktop, and would probably eliminate all the available space for the tower, and it's associated utility structures. Next, while the site is technically in a commercial zone this ignores the fact that this particular commercial zone unlike most others in the Town of Cortlandt is a tiny aberration in an otherwise predominately residential area. Next, the inappropriate visual impact at that location likely flies in the Town's plan for preservation of open space. We do not believe that the applicant's claim "need to fill in a coverage gap" ie..a limited stretch along Rte. 129 has been proven to be of sufficient import to justify adverse impact on the community. Thank you.

Mr. Seirmarco stated in summary there are three things. There should be some investigation of the Con Ed tower. Two, and this is a bit more practical, you have said that the applicant has not made good faith negotiations with the Thalle property owner. We have to go by what the applicant has said. They said that they have tried, they've come forward, and said they were unable to negotiate, or do whatever they have to do, and they want this particular site to be evaluated, and as a Board, we have to do that. I have no doubt that you are probably correct, but we can't get in the middle of that kind of negotiations. Thirdly, I agree there are a number of technical issues, and other issues that were brought up this evening about this site. We will try, and look into that. I think I have some of the information in my folder at home, but I think the applicant is going to go back to the original site, and pursue that application. Again, we cannot tell the applicant this is not an area that they won't cover. It is their judgment as to whether they want to pursue this site or not, or if they are trying to cover too big of an area. It is not our call. I believe that is not our preview.

Mr. Doughty stated I agree with what you said. As far as an opinion, our opinion, or anybody else's opinion as to the extent of which negotiations today have been held in good faith, that is nothing more than an opinion obviously, but it as least bring areas of concern, and question, and doubt that we feel if fair.

Mr. Mattis stated I guess Mr. Laub, based on what you said tonight about the Thalle property, and Mr. Pacciani, and getting his phone number, and if there is an opportunity to do something, then I would just suggest that you do that. Is there anybody else that would like to comment?

Mr. Jeff Weiss appeared before the Board. He stated I live at 103 E. Mt. Airy Rd. as far as requiring the applicant to seek alternatives, it seems to me that is what I heard the Board say all night, that there are alternatives to requesting a variance, then the applicant is obligated to do so. We also heard opinions from the Board as to why you grant a variance, or don't grant a variance having to do with aesthetics, and quality of life….

Mr. Mattis stated well this is a cell tower application, and it doesn't fit into variances at all. We are restricted on a number of things by federal law.

Mr. Weiss stated I understand that. In this case, however, they are requesting a variance, and there are some issues that specifically pertain to that.

Mr. Seirmarco stated I don't believe they are requesting a variance as of yet, it is just a request for a Special Permit.

Mr. Weiss stated but in order to get the Special Permit don't they have to request a variance?

Mr. Klarl stated there is a part of the code that says they have to come to this Board, and apply for a Special Permit.

Mr. Mattis stated in this particular incidence they might have needed a variance, I think, from the property line.

Mr. Weiss stated the property line, and side of the property, fall zones.

Mr. Mattis stated the fall zone is not a variance. It is something that we look obviously, but if the pole is closer than the required set back, then there would be a variance, but if the fall within the code in terms of where they put it, we still have to investigate to give them a Special Permit, but no variance will be required.

Mr. Reber stated my old notes indicate that originally there was an issue, because the Town has a regulation of 70 foot set back from any residential property to allow for a collapse zone, and they have to justify that. I believe it was somewhere around that distance.

Mr. Weiss stated I'd also like to point out that the applicant is in error to say nothing has changed to that site. There is an automotive repair shop there that has been there for about only 4 to 6 months.

Mr. Seirmarco stated that is just a new sign, I believe, they have done auto repair for over 30 years.

Mr. Mattis stated there was always a tenant there that did auto repair, and moved out, and now there is a new one.

Mr. Weiss stated okay, so there is a new business now. Also, there is the next door neighbor, who has applied for a permit to put up a building, not requiring a variance, but there are plans to put up a building on the property next door.

Mr. Klarl asked who is their neighbor?

Mr. Weiss stated Rinaldi, which has also changed, since the last discussions. At any rate, I'd like to just say that it seems to me as a citizen, as a resident of this Town would certainly want to say again what we have said before, and that is that the Board maybe consult with someone for some professional guidance here. We had suggested the name of a well known national consultant to the Board. Anyway we can supply that name to the Board, if necessary. It is someone who has been consulting with various boards on this similar issue. That is all I have.

Mr. Seirmarco stated we had not reached that point the last time, because at that point we switched our focus to the Thalle property, and we were considering at that time talking about that.

Mr. Weiss stated yes, I remember. We are just reiterating that we think that would be a good idea. Thank you.

Mr. Mattis asked is there anyone else who would like to speak?

Mr. Pete Seidman appeared before the Board. He stated I live at 10 Colabaugh Pond Rd. I am here to

speak in opposition to the placement of the cell tower at the Platinum Auto Body Shop. Our house is situated such that we would have a straight shot view of any such tower. So you know from the onset that I vested interest in this. I am here to say not in my backyard, and anything else that I have to say about it, like the fact that it would be in the middle of an bucolic area that is quite lovely, near the Croton Gorge, which is probably one of the largest man made structures in the country, the Croton Dam. All of these things, which I am sure that you've considered before. Now in contrast you have Cingular that has come before you seeking to place this in the middle of this bucolic area, and they do have a vested interest in doing this. They want their cell tower there. Now I don't know why this Board should believe anything that they say any more than they would believe that the gentleman with the 50 foot truck isn't running a junk yard at the earlier property this evening.

Mr. Mattis stated well I don't think you should get into that, because I think we believe what they say. I think your implying that they're lying to us, they're misleading us. I wouldn't even go down that road, because we don't want to hear that, okay.

Mr. Seidman stated well excuse me, if I'm being abrasive. I am not saying that they are lying. I am suggesting that they have an interest in this project.

Mr. Mattis stated well anybody that comes before us for any kind of application has an interest in what they want. So I think what you're saying would apply to anybody so let's get onto another subject, that's not really a subject that we're going to talk about. We assume that what they present to us is truthful, and we'll leave it at that. So I am going to cut that off, don't make any implications that they are giving us bad information.

Mr. Douglas stated if you believe that any of this information is incorrect, the best way to approach it is to come forward with other information that counters it.

Mr. Seidman stated I clearly have gotten off on the wrong foot here.

Mr. Chin stated you sure did.

Mr. Mattis stated well those implications are very bad implications, believe me. So we'll ignore that part of it, and you can go on with the rest of your presentation.

Mr. Seidman stated well I would just second the view of Mr. Weiss, Mr. Doughty about the independent consultant. I think this situation would be appropriate for that, because these are very complex issues, and

having an impartial view especially in the light of the magnitude of what is being requested, I think that would be a good suggestion.

Mr. Seirmarco stated this is a very narrow thing that we have to decide on. It's a Special Permit, it is also under federal jurisdiction. We have very little jurisdiction, and I don't mean to keep using the same word, but we have very specific things that we have to look at for the Special Permit, and we also have a very narrow set of things that we have to look at. So aesthetics is not one of them. The things you mentioned such as it being close to Croton Dam, is not one of them. A bucolic carrier is not one of them. We have no jurisdiction to ask the applicant to prove that it belongs in this area. There is a very narrow rule that the town has to follow, that every town has.

Mr. Mattis stated actually they are federal rules.

Mr. Seidman stated I understand that this is governed by the Federal Communications Act.

Mr. Mattis stated right, but they should prove that they need for it. The question is where is the location that would serve that need. Even to take it step further, if they are looking to put it on private property.

Maybe someone doesn't want it there even it is the best location. So these are the things that we have to wrestle with.

Mr. Seidman stated I appreciate that. Two years ago, myself, and Mr. Weiss, and Mr. Doughty, who are not responsible for anything that I said tonight, but we set forth many of our concerns, and also various legal basis for the Zoning Board of Appeals to potentially exercise authority over this issue. For example, like you just said, they have to establish if there is a need for this cell phone tower. It would seem to me that the need for the tower at the Platinum Auto Body site would be determined by whether they could put it anywhere else.

Mr. Mattis stated that is why we have them looking at other sites. I also think we are going in circles, because they could look at 10 other sites, and the owner's of those sites could say they don't want it on their property. So we're in a catch 22 where you've got to find a site that works, and then you've got to find an owner that will allow you to build it on that site.

Mr. Seirmarco stated they have to give us technical data that says this is the circle that we need to cover. You are right, we can bring in experts to say, yes, that data is correct, this is the area that needs coverage, but once that's proven now we could say we don't like this particular site, but it is up to the Town to find an alternative site. First, they have to prove that they need the coverage, and we can hire an expert that could agree, or disagree with that, and assuming that they're correct, then they say they want it on this site, the only thing we can do is say we don't like this site, we would prefer you to go this site. If we can't make the other site happen, they get this site. I don't know how much clearer I can put it.

Mr. Mattis stated I think you've made your point.

Mr. Seidman stated okay, I just want to say thank you very much.

Mr. Mattis asked is there anyone else that would like to speak?

Mr. Laub appeared before the Board. He stated I know it has been a long night here, but I just have a few brief things. I agree with the Board. We have identified the coverage area that they needed, and submitted that previously. I have said this before, radio frequency knows no political boundaries. Also, on the record we did send a certified, return receipt letter to the property representative that was unanswered.

Mr. Mattis stated I think it was brought up last month that the address you used was a problem, and now

you have a phone number, and you can get in contact with them.

Mr. Laub stated but I just want it on the record that the letter was delivered.

Mr. Weiss stated it was delivered to Art Radak.

Mr. Laub stated ultimately we will reach out again.

Mr. Chin stated what Mr. Doughty said about using telephone poles, repeaters, is there any way that you could indicate that is either good, or not?

Mr. Laub stated that technology, I believe, was referring to antenna systems, which are small repeaters placed on individual poles, that is very linear in nature. It's basically very good for a straight line not for an area going back into homes, and secondary roads. You would have to run them all along those roads, and you still wouldn't get to way back in those areas. That is the problem with that technology. The topography in that area is not good for those repeaters.

Mr. Mattis stated so is you can get something to us from one of you engineers so that we have some indication as to whether it works, or it doesn't work.

Mr. Reber stated I would like some sort of a written report on that. Also, as far as credibility of these reports, I just wanted to say that we have many engineers, and architects coming before us, I myself am a PE. They're licensed to be honorable and accurate. So when they submit plans to us, we accept them as valid, because they're license people, and that is their business. We need to have certification that the person doing the testing has a professional license that qualifies them to do this type of testing. If you can put together all of that information, and resubmit what given to us before by Mr. Fisher, and we can re-evaluate it, and we can move on from there.

Mr. Mattis asked is there anyone else that would like to speak?

Mr. Boulder appeared before the Board. He stated I have to apologize because I know it is late, but I just wanted to comment on Mr. Seirmarco's point that the question that I have is if you establish that the only coverage that they can get is from location A, and you were saying if the Town can't get them to go to location B, then you have to give them the permit for location A, but there is no factors regarding safety, and danger. The fact that that location may not be safe is not a factor here.

Mr. Seirmarco stated no, public safety, of course would be of a main concern.

Mr. Boulder stated it just sounded a little bit like, if that were the only location, then you were forced in a way to put it there.

Mr. Mattis stated no, public safety can overrule that.

Mr. Jeff Weiss appeared before the Board. He stated Mr. Reber, with all due respect, to address what you said about professional engineers telling the truth. I am not suggesting that the attorneys, or the people who work for the telephone company are lying, or falsifying documents. I really am not. However, we've seen architects here, like there was one here before that said well I have to do it this way, and you said no you don't .

Mr. Reber stated I am not saying we won't go a step further. I am just saying we have to first go with what they have, and then we can evaluate to what extent we think there are issues, and maybe we then need to call in our own consultant.

Mr. Mattis stated I think we are saying that we are not ready to take that step yet, but we can go there if necessary.

Mr. Weiss stated thank you, that is all I want to hear, because facts can be interpreted in different ways.

Mr. Mattis asked is there anyone else that would like to comment?

Mr. Seirmarco made a motion in Case No. 48-05 to adjourn the case to the May meeting for the purpose of some resubmission of previous information, and other additional information requested tonight including alternative sites seconded by Mr. Douglas with all voting "aye."

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CASE NO. 06-08 NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS for a Special Use Permit to co-locate a wireless telecommunications facility on the property located at 51 Scenic Drive, Croton-on-Hudson.

Mr. Michael Sheridan, Esq. appeared before the Board. He stated I am an attorney with the law firm of Snyder and Snyder. I am here tonight on behalf of NY SMSA Limited Partnership d/b/a Verizon Wireless. Verizon Wireless is seeking to co-locate a federally licensed public telecommunications facility at the existing tower located at 51 Scenic Drive. As you recall, at last month's meeting this honorable Board indicated that it would not be able to vote until it received comments from the Town's Department of Technical Services. As you are aware the department did submit favorable comments confirming that the applicant has complied, and recommending that this Board close the public hearing, and issue a Negative Declaration, and vote to grant the requested Special Use Permit.

Mr. Douglas stated yes, we have received that information from DOTS, and we are ready to close the public hearing on this.

Mr. Mattis since there is nobody left in the audience are there any other comments from the Board?

Mr. Douglas made a motion in Case No. 06-08 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Douglas made a motion in Case No. 06-08 to grant the Special Use Permit to co-locate a wireless telecommunications facility on an existing tree pole on Scenic Drive. The is a Sequa Type I, Unlisted Action seconded by Mr. Chin with all voting "aye."

Mr. Chin made a motion to adjourn the meeting seconded by Mr. Douglas with all voting "aye."

The meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Christine B. Cothren