

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, July 16th, 2014*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

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ADOPTION OF MEETING MINUTES FOR MAY 21, 2014 and JUNE 18, 2014

So moved, seconded with all in favor saying "aye."

Mr. David Douglas stated the minutes for both May and June are adopted.

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CLOSED AND RESERVED:

- A. CASE No. 2013-37 DOTS Code Enforcement** for an Interpretation that the pre-existing, non-conforming five-family residence has been in continuous use since July 15, 1996, with none of the units vacant for more than one year from that date to the present on property located at **1 Hale Hollow Rd., Croton-On-Hudson.**

Mr. David Douglas asked I think that DOTS is going to request an extension on this?

Mr. Ken Hoch responded yes, Mr. Chairman, DOTS agrees to an extension.

Mr. David Douglas stated so we can consider the various issues that are involved in that case. It'll be extended to give us time to consider it and deal with it next month. There's a lot of issues

involved in that case.

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NEW PUBLIC HEARINGS:

- A. CASE No. 2014-15** **Blair Companies on behalf of Domino's** for an Area Variance to allow a second freestanding sign with an Area Variance for the size and height of the second freestanding sign on property located at **Pike Plaza, 2050 Cortlandt Blvd. (E. Main St.), Cortlandt Manor.**

Ms. Elizabeth stated with Blair Signs and Awnings representing Blair Companies and Domino's. They're looking to go for a Variance for the wall sign and the addition of a pylon sign, and an additional ground sign, freestanding ground sign.

Mr. Charles Heady stated we were talking at the work session the other night. Coming off 6, you're on Jacob Hill Road, there's a sign there now with your name on it, King Buffet, H&R Block and the Surgical which they've done that all along but you say you want a freestanding sign there by itself with a Domino. Am I right?

Ms. Elizabeth responded yes.

Mr. Charles Heady stated we talked it over and the Board doesn't think that you really should have because it's going to set a precedent. The other people are going to have a bunch of little signs going up the road which won't look too good at all. We actually aren't going to issue that one sign going up the road. Now, when you're going up the road, there's also a sign, a direction sign with your name on it and there's others: King Buffet, H&R Block, Surgical Supply and a few other ones and if you look at your building there, on the side of that building you can see you've got the Domino in there, it's very easy to see. There would be nothing that would block that whatsoever. But that sign must have been put up not too long ago because that sign is cloth, that's not a real wood sign that you have there now.

Ms. Elizabeth stated it's a banner.

Mr. Charles Heady asked it was put up extra or something. You want to put the Domino there, right? Am I right?

Ms. Elizabeth responded yes.

Mr. Charles Heady asked in the front of the store you want to add a Domino closer to the name right, in the front?

Ms. Elizabeth responded yes.

Mr. Charles Heady stated but the Board and we were talking it over we said if you can cut the size of the Domino down, you would have to come before us to have a Variance to fit it all into one. You think you could do that?

Ms. Elizabeth responded to put the letters and the logo into one sign, you're saying?

Mr. John Mattis responded cut down the Domino itself.

Mr. Charles Heady stated the domino.

Mr. John Mattis stated not the word.

Mr. Charles Heady stated not the sign itself just the domino...

Mr. James Seirmarco stated see, the sign is calculated by the envelope that goes around the domino and the word Domino. The domino itself determines the height. If you lowered the size of the domino to the letters that are there, then you wouldn't need a Variance. You reduce the physical size of the domino to the 'D' and then you don't need a Variance.

Mr. Wai Man Chin stated smaller domino.

Ms. Elizabeth asked okay and the one on the side of the elevation? The domino by itself on the side elevation?

Mr. James Seirmarco stated that's permitted.

Mr. John Mattis stated that's permitted, as long as it's just the domino but that thing that says "fun jobs. Apply now." They can't have something like that. That's advertising.

Mr. Charles Heady stated looking from Route 6 up you can see Domino's name very well. It's not something that won't be shown at all, because I went passed on 6 and looked up and it's right out there. You want to change that size on that for us?

Ms. Elizabeth responded yes.

Mr. Charles Heady stated Mr. Chairman, she can withdraw the application, am I right?

Mr. David Douglas responded I'm trying to think. She can't withdraw right now because they're still proposing the second freestanding sign and the larger signs but if you...

Mr. Charles Heady stated we're not going to give her the freestanding sign.

Mr. David Douglas stated right...

Ms. Elizabeth stated yes, I wrote that we're not getting the freestanding sign.

Mr. Charles Heady stated she crossed that off.

Mr. David Douglas stated it's up to you if you want to withdraw the application or we can vote on it but...

Mr. Wai Man Chin stated if you're going to lower that domino symbol down to the 'D' size then it's a done deal.

Mr. James Seirmarco stated you don't need a Variance.

Mr. Raymond Reber stated the dimensions that you have currently, because of the domino you're 2 feet 8 ½ inches high, you're 13 feet long. The word, which is set by the 'D' in the Domino is 1 foot 8 inches. You could actually increase that if you brought the domino down slightly and increased the word "Domino's" to a 2 foot height, 2 feet by 13 is 26, that's what you're allowed so you can make that compromise and then you don't need a Variance from us. You can actually make Domino's a little bit taller, the domino dice a little bit smaller and you'd be within the zoning requirements.

Ms. Elizabeth asked so no chance, since we're saying okay no freestanding sign, can we keep the size of the front elevation as is and proceed with the Variance? If they decide they don't want to lower the size and they want to fight for the size.

Mr. David Douglas responded no, and we can put it to a vote but I don't think we're inclined to agree to that. What Mr. Reber said is what would achieve your purposes.

Ms. Adrian Hunte stated you have alternatives.

Mr. David Douglas stated all you need to have larger is saying the word "Domino's", larger than you proposed and just a matter of changing the domino itself.

Ms. Elizabeth responded ok. I don't want to withdraw the application just yet. I need to go back to the client and see how they want to move forward.

Mr. David Douglas stated why don't we adjourn it until next month and you can tell us what you want...

Ms. Elizabeth asked when is the meeting next month?

Mr. David Douglas responded it's August 20th.

Mr. Wai Man Chin asked so you understand what we're saying? You go with the domino symbol to the 'D' size it's a done deal, or you redo the domino, like Mr. Reber said...

Ms. Elizabeth stated I think there's a certain proportion that they have to have with the letter and the domino so they'll have to figure out...

Mr. Wai Man Chin continued equaling the **26** square feet.

Ms. Elizabeth stated thank you.

Mr. Charles Heady stated on **case 2014-15** we adjourn it until next month.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2014-15** is adjourned until August.

B. CASE NO. 2014-16 Hudson National Golf Club for an Interpretation that:

1. To the extent necessary in order to satisfy the "country club" use criteria and the minimum lot area and frontage requirements for a Special Permit for "country club" use of the portion of its property in Cortlandt, under Section 307-4, 307-14 and 307-52 of the Town Code, the Applicant may utilize the adjoining portion of its property in the Village of Croton-on-Hudson, which is currently utilized as an approved country club and golf course, to permit the Applicant to utilize the entire property as one such country club and golf course, or alternatively,
2. The Applicant's proposed used of the Cortlandt portion of its property as a golf driving range and teaching facility, as part of one combined country club and golf course use of that portion and the adjoining portion in the Village of Croton-on-Hudson, constitutes a "country club" use permitted by Special Permit under Section 307-4, 307-14 and 307-52 of the Town Code, for requirements, including minimum lot area and frontage requirements.

The property is located on **Hollis Lane, Cortlandt Manor**.

Mr. Bob Davis stated I'm the attorney for the golf club and with me tonight is the club's engineer Mr. Mastro Monaco. I would just beg your indulgence for about ten minutes to discuss what's a fairly esoteric point of zoning law that neither of us get to see too often. The club is seeking to add a driving range to its existing golf course in Croton which would be located on the club's adjoining property in Cortlandt. We're here tonight upon a referral from the Planning Division in connection with our Special Permit and Sight Plan application to the Planning Board to seek a legal Interpretation from your Board. It relates to the Planning Division's comment #5 and its March memo to the Planning Board which raised the issue that, and I'll quote it: "the subject parcel has a standalone parcel does not meet the minimal lot area or frontage requirements for a country club as defined for Special Permit Section **307-52**. In addition, the primary use of which the proposed golf driving range's access route is located in the Village of

Croton. The applicant is required to obtain an Interpretation from the Zoning Board of Appeals as to whether the subject property and application, as submitted, meets the criteria of a country club Special Permit under the town's Zoning Ordinance." We would respectfully submit that it does based, in essence, on the fact that it's part of a much larger property. The need for this Interpretation arises on the fact that the Zoning Ordinance doesn't specifically address our particular situation where we have a parcel that's divided by the municipal boundary line between Cortlandt and another municipality, in this case, Croton. More particularly, I would suggest that the question before your Board is: May we include the portion of the parcel in Croton as necessary to satisfy the town's use in bulk requirements in order to permit our use on the Cortlandt portion, particularly when such use is also permitted in Croton and the bulk requirements would also be met in Croton? Again, the Zoning Ordinance doesn't specifically address this issue. I think in our case the most important thing to emphasize is that the combined parcel would be used for just one use which will straddle the municipal boundary that is the golf and country club use which currently exists as permitted and approved in Croton. It also bears noting that the adjoining property, while in the Village, is located in the same town and further the Cortlandt portion will have its access only by way of the Croton side over the golf course for this use. In addition, according to Mr. Mastromonaco's research that he's handed in to the Board with his analysis, the town and its adjoining municipalities have apparently followed our suggested approach in the past with other parcels that have straddled the Cortlandt boundary line with other municipalities. Based on my own experience over some **30** years in Westchester, there are a number of Ordinances in Westchester that address this issue in one way or another but Cortlandt's does not and so, as your Zoning Ordinance doesn't address this issue, we looked to state law and there's not a great deal of state case law either which tells us what to do but, as discussed in our legal memorandum that we submitted to Mr. Klarl with our April 2nd letter which you have, the recognized Zoning treatises cite in some case law in New York and other states, do express the principle that under our circumstances, one town can include the property in an adjoining town – adjoining property in an adjoining town in order to satisfy the zoning requirements. That makes some sense, I would say, because there's no reason really to prejudice a property owner who happens to have a property that the municipal line goes through, particularly when as, in our case, the proposed use for that property is permitted in both municipalities and the combined parcel satisfies the bulk requirements in both municipalities; certainly, nothing in your Zoning Ordinance which prohibits the town including the Planning Board from taking into account the adjoining property in Croton. As you know, the Ordinance must be strictly construed in favor of the applicant and any ambiguity resolved in the applicant's favor. As a practical matter, while there necessarily is more than one tax lot because each municipality has to tax its lots separately in which they're located, the combined parcel is really just one lot from a zoning perspective and that's consistent with the definition of lot in section **307-4** of your Zoning Ordinance which defines a lot as "a parcel of land contained within one continuous legal boundary established in accordance with all laws and Ordinances in effect at the time of establishment." There's no issue that our client's combined parcel that is the lot and the tax lots which comprise it were lawfully created and constituted. So, with respect to the comment raised by the Planning Division as to the bulk requirements, there's no question that as a standalone parcel, the subject **19.4** acre parcel in Cortlandt would not meet the minimum lot area requirements of **50** acres or a country club Special Permit or the minimum **250** foot frontage

requirement as set forth in section **307-52** of your code, but there's also no issue that the adjoining club property in Croton, of which the Cortlandt property is now a part and in conjunction with which it will be used, already exceeds **260** acres and has far more than **250** feet of frontage on a number of different public roads. In addition, unique to this particular case is that as an alternative even to including the adjoining Croton property to meet the bulk requirements, the Cortlandt Planning Board under your code could simply waive the lot area and frontage requirements under section **307-52b7** of the Zoning Ordinance "upon ss showing that any such Variance is consistent with the purposes of this section and will not adversely affect the health, safety, and welfare of the community." We would submit that certainly under these circumstances with the large adjoining property with which it will be used, those criteria for a Planning Board waiver could easily be satisfied. However, what the Planning Board may not be so easily able to waive is the other aspect of the Planning Division's comment purporting that this property is being used only as an accessory to the principle use on the Croton site. In reference to that characterization of the Planning Division that the proposed driving range and teaching facility would only be accessory to the primary use in Croton, we would respectfully submit that the proposed facility is not merely accessory but rather as part and parcel of the one principle use on the combined lots whether you call it the annual membership club which is what the use is designated as in Croton or you call it a country club as the use is designated in Cortlandt and we would submit that even standing alone it would constitute a country club use in Cortlandt. The driving range and teaching facility, such as this, is an intrical part of golf courses and country clubs in modern times and certainly those of the quality of Hudson National. Furthermore on that issue, neither municipality designates a golf driving range or teaching facility as an accessory use to the respective permitted uses in the town. Notwithstanding that, I think more importantly it's implicit in properly treating the parcels as one zoning lot that whether you call the facilities on the Cortlandt property as a separate principle use as a country club themselves or as part of the principle use in Croton or even if you characterize it as an accessory use in Croton, it's really a distinction without a difference legally because there's only going to be one lot and one use in terms of the zoning purposes. In that regard, it should be just mentioned tangentially that the likely alternative for the Cortlandt parcel, if it's not used as part of the existing golf club, would be as a residential subdivision, probably with **5** or **6** houses and a new road whether through the village off of Hollis Lane or through the country club in Croton and we would submit that the proposed use with what's already there makes a lot more sense and less impacts than that would incur. We would ask the Board on that basis, to issue the following Interpretation that would be to the extent necessary in order to satisfy the town's country club use criteria and the town's minimum lot area and frontage requirements under sections **307-4**, **307-14** and **307-52** of the Zoning Ordinance for a Special Permit for country club use of the portion of its property in Cortlandt the applicant and the Planning Board may include the adjoining portion of the property in Croton which is currently used as an approved country club and golf course in order so that the applicant may utilize the entire property as a golf course and country club. We would respectfully submit that that is the proper Interpretation as it comports with the facts of this case as well as the definition of lot in the Ordinance, as I stated, the town's apparent past practices and the pertinent legal authority such as it is. We offered an alternative Interpretation should you disagree with us, which is not necessary to go into unless you wish to because that would be moot in the event the Board is willing to render the Interpretation that

we've suggested and requested. So, I thank you for that and I'd be happy to answer any questions.

Mr. Raymond Reber stated I have a question. When I look at the examples that you've provided, now they're all residential situations and each one is pretty straightforward in that one they take and cross over the boundary lines and they assume it's all one parcel, the decision seems to be if the part that's – for example in the Town of Cortlandt, does not incorporate any of the activity on the property. In other words, it's off to the side, it's classified as vacant property which means nothing's happening to it. The part that has a house or whatever for the residential is in the adjacent community and the adjacent community issues building permits and has jurisdiction over what they do. In the case where the Town of Cortlandt has the house or whatever they issue a building permit to make sure the activities are under compliance. This is not going to be listed as a vacant lot by Cortlandt because there's going to be activity there. They're going to put up structures, do things, landscaping, whatever. Who gets jurisdiction over what happens there? If we agree that you can combine it since the primary is Croton but yet the activities here are going to be in Cortlandt, does that with Cortlandt normally have that responsibility for what goes there?

Mr. Bob Davis responded I believe that the law's pretty clear that the town's, whether they be Croton or Cortlandt or any other set of towns, don't enforce their Ordinances across municipal line so that Cortlandt would be the enforcement agent for any activities occurring in Cortlandt and Croton, likewise, in Croton. It is somewhat of a discreet activity in connection with the golf course, it's not as if the golf course, the 18 holes if you will, transcends both boundary lines. This is sort of a discreet aspect of that which is the teaching facility building and the driving range aspect of it. They're doing it because the current driving range they have is not standard and it's too steep and it creates dangerous situations and so forth. That's the motivation for doing that.

Mr. Raymond Reber stated so, in other words, if it's decided that they can be looked at as one property, each municipality has a right to protect their interest on the section that they're within their boundaries.

Mr. Bob Davis responded absolutely and that's what the courts hope.

Mr. James Seirmarco stated a follow-up question on that, acting as a devil's advocate that somehow something tragically happens and Hudson Hills closes and leaves the driving range in the Cortlandt -- will you come back and say "well, we want to keep the driving range in Cortlandt and we'd like to have an entrance on Hollis Drive?"

Mr. Bob Davis responded we have made a proposal. I think that that wouldn't – I can understand the question. I don't think it makes much sense. We're not proposing to have access off of Hollis Drive and we would certainly need Planning Board approval for that particular type of situation where we'd be creating a new road. There's legal easements involved. There might be Variances involved with that because that particular parcel, the Cortlandt parcel does not have direct road frontage. You couldn't just willie nellie so to speak say "now we're going to make a

separate use of that parcel.” You would certainly need...

Mr. James Seirmarco stated but you would have a hardship though. You would have a hardship because the part in Croton...

Mr. Bob Davis responded I don't think we would have a hardship because it would be self-created. I think the property was purchased for the purpose of using it with the Croton piece and that's the only reason it was purchased.

Mr. James Seirmarco stated it's just a thought. I'm just trying to think of the future and all of the...

Mr. Bob Davis stated I think it would open a legal can of worms...

Mr. James Seirmarco stated that's why I'm worried about.

Mr. Bob Davis stated I don't think you have to worry because I don't think creating this situation has as its framed for sets any precedent for that type of separate use which would have a separate access.

Mr. James Seirmarco stated I agree.

Ms. Adrian Hunte asked Mr. Davis,

Mr. Bob Davis stated in fact we would stipulate it as part of our Planning Board approval, should your Board grant the Interpretation, that we would not be using Hollis Lane in connection with this use for sure.

Ms. Adrian Hunte continued Mr. Davis, a couple of questions: 1) as the teaching facility and the building, will that be for members only or is that going to be something?

Mr. Bob Davis responded members only. The facility is for members only.

Ms. Adrian Hunte asked and in terms of the land that you propose to clear, are we talking about large number of trees and also will the slope of the land be flat or will it be downhill and environmentally how are we planning to treat that property? In other words, are you planning to use pesticides in terms of...

Mr. Bob Davis responded I think what we have before your Board is purely a legal issue. All of those issues are in Planning Board jurisdiction.

Ms. Adrian Hunte stated I understand, I'd like to hear what Mr. Mastromonaco...

Mr. Bob Davis stated no, I understand. Maybe Mr. Mastromonaco could give you a little

speaking about that but, of course, we are starting before the Planning Board. They've hired an arborist on behalf of the town. They've hired a wetlands consultant or about to, on behalf of the town. All of those environmental issues will be thoroughly vetted. Naturally, there's a number of trees on the site. The one area we're talking about are believed to be relatively little significant second-era type of growth. Obviously when you create a golfing facility, you do remove trees. There's no question about that. Although, this particular proposal, I'm not sure if the plans we gave this Board showed it but there'll be conservation easements along the sides near the sanctuaries. We've also already been working with the trails committee in Croton carefully to rearrange certain trails and they've like what we're doing there so we're going to continue to allow, which we don't have to do necessarily, to allow public access over the property for use of the connections with the sanctuaries. We are subject to some very strict – my old firm was the original attorneys for the golf course that got it approved back in the **90s** and there's some very strict, probably state-of-the-art environmental restrictions on the use of pesticides and things of that nature. There's a very strict regiment that's part of the approval process in Croton and I'm sure that it'll be part of your Planning Board process. In fact, it was already raised in the staff memos that we have to comply – with all the environmental things we have to comply with in Croton we must comply with in Cortlandt.

Ms. Adrian Hunte asked and what are you planning to do with the existing driving range?

Mr. Bob Davis responded there's no plans for that at this particular time. That's in Croton, of course, but there are no plans at this particular time.

Ms. Adrian Hunte asked no way for you to reconfigure that existing driving range to satisfy your needs?

Mr. Bob Davis responded no, because as I said of the slope, I can let Mr. Mastromonaco explain that in some detail if that's important to you. But no, the answer is no, there's not as a practical matter. But, again, as I say the property won't lie fallow one way or the other and if we were unable to do what we sincerely want to do, which is use it as part of the golf course which makes perfect sense since it adjoins the golf course, it doesn't have direct access currently on a roadway. It doesn't have direct impacts on immediately surrounding neighbors. If we cannot use it in terms of the golf course, we certainly have to use it for something and then the only other real viable use would be as a residential subdivision.

Mr. David Douglas stated well, that would be up to the Planning Board.

Mr. Bob Davis responded of course.

Mr. David Douglas stated and also it might depend on the legalities of the easement rights or whatever those issues are.

Mr. Bob Davis stated that would be true if they were coming from Hollis Lane but one of the public roads from the golf course could always be extended as well.

Mr. David Douglas stated well then it might be up to Croton.

Mr. Bob Davis stated it would be in Croton yes.

Mr. David Douglas stated we're getting miles ahead of ourselves but I don't know...

Mr. Bob Davis stated it's something we don't want to do.

Mr. David Douglas stated right, I understand that.

Ms. Adrian Hunte asked will you be putting up lights in that area?

Mr. Bob Davis responded I'd have to ask Mr. Mastro Monaco that whether there's any lighting.

Ms. Adrian Hunte stated night time, single light on the building so the – simple light on the building.

Mr. Bob Davis asked a security light?

Ms. Adrian Hunte stated that means there won't be nighttime driving range golfing.

Mr. Bob Davis responded no. Again, this is not your type of public driving range like you...

Ms. Adrian Hunte stated it doesn't matter. I mean it's a golf course, it's a country club, it's open – they may have later hours and have lights to...

Mr. Bob Davis responded the answer is no. The simple answer is no.

Mr. David Douglas asked could you run through your second Interpretation just so I understand it?

Mr. Bob Davis responded the nuance with that is that the second alternative, if the Board did not permit us to use, as I think the law at least permits the property in Croton to satisfy the bulk requirements, in Cortlandt as well, then we would ask for the Interpretation that the applicant's proposed use of the Cortlandt portion of the property as a driving range and teaching facility as part of one combined country club and golf course use of that portion and the adjoining portion in Croton would in of itself comply with the town's country club use and that if that were the case then the Planning Board would have the discretionary authority under your code **307-52b7** to waive the frontage and the bulk requirements.

Mr. David Douglas stated now I understand it.

Mr. Bob Davis stated in that instance you could view the golf course either as a principle country

club use or you could invoke the definition of 'lot' in your code and say, which I think is the lesser of the proper Interpretations, but you could say it's an accessory use as well given that it's part of one whole lot.

Mr. David Douglas stated that way it would be up to the Planning Board whether to waive the minimum area lot requirements.

Mr. Bob Davis responded that would be true, as I pointed out, I think it would be hard pressed not to waive that but...

Mr. David Douglas stated they wouldn't.

Mr. Bob Davis stated I wouldn't either but that would be the scenario under that alternative.

Mr. John Klarl stated you've already bought the property. It's not contract vendee if you own the property.

Mr. Bob Davis responded yes. They bought the property I believe in November if I'm not mistaken.

Mr. John Klarl stated the Board was talking about that Monday night.

Mr. Bob Davis stated no, they own the property.

Mr. David Douglas asked anybody else? Any questions?

Mr. Wai Man Chin asked anybody in the audience?

Mr. David Douglas asked anybody in the public want to be heard?

Mr. Chris Flemming stated I'm resident of Hollis Lane. I've lived there since **1999**. I'm quite familiar with the property that's being discussed. I've walked my dogs up there frequently when it was part of the Croton Trail System. I just wanted to express some concerns as a resident and also as a neighbor of Hudson National. Hudson National has not been a particular neighbor. They have left downstream residents in the works so to speak. There's terrible runoff and whenever we get a spring melt and a snow melt there's quite a lot of flooding and damage to the roads. I've spent quite a bit of money on drainage to try and protect my property. I can't imagine clearing **20** acres of steep slope property that I can't imagine that being good for anybody who resides downstream in terms of water issues. The other issue is the amount of fill and the steep slopes that would be required to build a driving range which is probably **20** acres. I mean, you're talking **100,000** yards. I mean, that's a tremendous, tremendous construction project. We have serious concern as to how long this will take. Once trees are clear cut, and I don't care if they're old growth or second growth, once they're clear cut that opens up the entire area to tremendous runoff and erosion issues. That's a concern and secondary or tertiary concern

is there's ConEd pylons right in between us and the area in question. If you get tremendous runoff, what is the guarantee of the safety of these high voltage electric wires? This is a gigantic project. I know because I've lived there for almost 20 years and I don't expect you to be able to visualize the property because you have better things to do but having been up there numerous, numerous times I can tell you the amount of blasting, fill and deforestation that's going to occur on 20 acres of very, very steep slope property is a major, major cause for concern.

Mr. John Mattis stated you've brought up some very, very good points, unfortunately we as a Zoning Board are only looking at the legal. Save those and those are very good points to bring up when it goes to the Planning Board.

Mr. Chris Flemming stated I understand. Thank you.

Mr. David Douglas stated thank you John. That's what I was going to say.

Ms. Jennifer Cooney stated I'm also a resident on Hollis Lane. I have similar comments but I hope you'll give me a couple of minutes just so you can hear them. I cannot comment on the zoning aspect here. It is clearly up to you but I also do have concerns and one of the points that Mr. Davis made. Maybe I'm misinterpreting this or I didn't hear it correctly, was that there was no health, safety or wellness issues with regard to the surrounding community and I respectfully disagree. For many of the reasons that Chris mentioned, but also with regard to the trail system that's there, we use it all the time. There's a lot of people that use it all the time. I actually have a copy of the letter from the Croton Trails Committee that was actually to the Planning Board about their concerns. I'm going to leave that with you so you can see that. The tree removal, the blasting, bringing in the fill, there's going to be significant water and erosion issues on top of what we already have. I'm also concerned, I have young children – our street, Hollis Lane, I know they say that there's no intent to access this from our street but who's to say what they're going to propose a couple of years down the road. The street is a lane. It's a small lane, very narrow. We're out on scooters. We're out on bikes. It's a dead-end street. It's very quiet. You have an access road coming in through there. It's going to completely change the neighborhood. I have a letter that I also wrote to the Planning Board that I'm going to leave for you and if I could just read a couple of sections from it. "Our primary concern is related to the location in topographical makeup of the property including the steep slope, streams and numerous trees. The top of Hollis Lane which borders the subject property already has issues with runoff and erosion. We have learned that the proposed project includes blasting, land alteration and removal of numerous trees which will surely make the erosion and water runoff issues more significant." The third paragraph I'll let you take a look at but it starts with Hudson National not having a good reputation when it comes to pass development so please consider that strongly. We also have additional concerns about our beloved trail system, golf balls in our backyard and traffic on Hollis Lane. We are just one of many families that use the Croton Trail System every year. Please ensure that the trails are not impacted by the proposed development. And I'm glad to hear that you are working with Jan Wines of the Croton Trail Committee for that so thank you. Finally, while we understand the plan is for construction to member traffic to use Arrowcrest we want to ensure that remains the plan so that we can preserve our small community beyond Hollis

with no new traffic. Again, I know you're the Zoning Board but I wanted to get out there. We'll be back with the Planning Board.

Mr. Raymond Reber stated to clarify again for the audience because this gets taped and broadcasted, if this was a request for a Variance then one of the conditions is: does it have a deleterious effect on the neighborhood and what have you. They're not asking for a Variance. They're simply asking for legal Interpretation. We put blinders on. We can't judge based on what may happen or may not that's why you have a Planning Board. We're going to simply rule on the legalese issue of how you look at this and then all these issues have to be brought up at the Planning Board.

Ms. Jennifer Cooney stated absolutely, I understand. You all had great questions too.

Mr. Raymond Reber stated and those questions just because we're residents and we're curious but we have to discard all that when we make a judgment on the Interpretation.

Ms. Jennifer Cooney stated we'll be back if we need to be.

Mr. David Douglas stated also, if I understood Mr. Davis correctly, he's agreed that in connection with the proposed driveway not to have to attempt to come through Hollis Lane. I think he stipulated...

Inaudible

Mr. David Douglas stated if I understood him correctly, I think he's stipulated, which is the legal word for agreed that as part of this proposal that they would not do that. I think you can rest a little bit easier. I don't want to speak for Mr. Davis. It's not for me to make agreements on his behalf but I think that's what he said.

Mr. Bob Davis stated I would like to emphasize that if I wasn't emphatic enough that we have no intention of using Hollis Lane in connection with this project and we would stipulate as a condition of any approval that we will not be using Hollis Lane to access this project and although the Board member correctly noted that the concerns addressed however valid or not, are not really before this Board but the community can rest assured that we're very carefully looking at this. There'll be a number of environmental consultants involved. The golf club, in fact, has a sterling reputation in the Village of Croton which I think they would certainly back up. I don't think Mr. Hoch has had any complaints about the golf course so some of the comments, they will be addressed in any event in the Planning Board but we would respectfully disagree with the accuracy of some of them. We are addressing each and every topic that was raised and that's before the Planning Board.

Mr. Wai Man Chin stated thank you.

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

Mr. Bojan Petek stated I'm also resident of Hollis Lane. I apologize if I'm repeating things that I didn't hear my neighbors mentioning. I just heard the gentleman say that a reassurance that Hollis Lane would not be used for access and I would like – that would be great. We hope that that would be the case but perhaps that however you decide to rework the lot boundaries, consolidate them into one or whatever, perhaps this property could then not be a Hollis Lane property but part of the golf course and whatever, with whatever address and not have a Hollis Lane address or not have any kind of a Hollis Lane easement. The other thing that I think my neighbor, Mr. Flemming mentioned, we do have an ongoing water inundation problem. Some of that water comes from existing property that's under consideration. The problem seems to have gotten worse since there was a very major clear cutting operation down by Con Edison. During that time, huge bush – I don't know what they call the vehicles, but they were the kind of vehicles that could just snag a log or tree and cut it in an instant. Very heavy vehicles and they criss-crossed this whole area and created new paths for water to drain down the hill. As a consequence, we have water coming down all the time but during a storm it's a particularly serious problem. I've had parts of my driveway washed away. I think Mr. Flemming mentioned they had water in their basement where they hadn't had it in ages before that. So, if there's regrading to be done, and I know this isn't a zoning issue but -- it may be a zoning issue if you decide that's something that requires enormous reworking in terms of grading. How do you handle that?

Mr. Wai Man Chin responded it's not a zoning issue.

Mr. Bojan Petek stated it's not a zoning issue but it's an issue if you reclassify something to be different usage. I don't know. I'm just phrasing that as an issue. Thank you very much.

Ms. Adrian Hunte stated thank you.

Mr. Bob Davis stated application which mentioned something about a disturbance of **20** acres. The parcel's **19.4** acres. It's only going to be **10** to **13** acres that are destroyed. There's going to be a great deal of trees planted. There's going to be a conservation easement and the like. There's been reference the Con Edison. Con Edison owns the property adjoining us. We, of course, have no control over Con Edison and it's certainly been our thought as we've been developing this project that once the people on Hollis Lane find out what is actually going to occur I think they'll find that the use of this property, if it's going to be used at all of course, everyone would like property not to be used but if it's going to be used, it's the project and use of this property that will have the absolute least impact on the people on Hollis Lane.

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

Ms. Jennifer Cooney stated can they be required to make it better for us than it is right now with the water runoff and the erosion if we let them develop this like this, that they're required to do things to make it better...

Mr. David Douglas responded that's Planning Board. Good question though.

Mr. Wai Man Chin stated I'm sure they're going to be doing something that is going to help you overall. They're not just going to let it run down hill. The Planning Board is not going to let that happen, period.

Ms. Jennifer Cooney stated thank you.

Mr. Wai Man Chin stated they're going to have to be retention basins, whatever, Mr. Mastromonaco will tell you that easily...

Mr. Bob Davis stated there's a very detailed storm water provisions and as the project proceeds we'd be more than happy to speak to the residents about the problem they're experiencing and to see how it relates to the golf club property and what can be done reasonably to mitigate that to the extent it's emanating from the golf club property.

Mr. John Mattis stated thank you. Anyone else? On **case #2014-16**, the Hudson National Golf Club I move that we adjourn this to the August 20th meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case# 2014-16** is adjourned to the August 20th meeting at which time we will discuss this among ourselves at our next work session. We may have follow-up questions for you then. Obviously, as you started one of the very first things you said is: this is not a situation that you are or we deal with on a daily basis.

Mr. Bob Davis stated not at all. I've rarely seen it in all my years...

Mr. John Klarl stated the reason that it came before this Board because it's unique. [inaudible] in this town and actually there are very few municipalities in Westchester that faced similar legislation.

Mr. David Douglas stated after we mull it over, we may have questions we haven't thought of yet.

Mr. Bob Davis asked I was just going to ask if you would consider, since we've heard the comments of the public if we could at least close the public hearing at this point?

Mr. David Douglas stated no, we'd prefer not to so that we can engage in further discussions with you. If we close the public hearing, that's it.

Mr. John Mattis stated then you're shut out also.

Mr. David Douglas stated you don't want to be shut out.

Mr. James Seirmarco stated you can't comment and neither can we.

Mr. Bob Davis stated thank you.

Mr. David Douglas stated that **case 2014-16** has been adjourned.

C. CASE No. 2014-17 Montauk Student Transport, LLC for an Interpretation challenging the Code Enforcement Officer determination that the parking of buses is not permitted use on property located at **5716 Albany Post Road, Cortlandt Manor.**

Mr. Keith Staudohar stated Cronin Engineering. We're here representing the applicant Montauk Student Transport, LLC. You may know this site as the former south end of the rock cut that was removed recently in the last number of years. The applicant currently provides the school bus services for the City of Peekskill. He was at a site in Peekskill and had to be removed from that site due to a lawsuit going on with the City of Peekskill and the property owner. He's in need of finding a place to park the school buses and the employees, the drivers of the buses. What we have is approximately **50** buses that need to be parked. The applicant and the property owner are looking in – this is a temporary deal, looking at a three-year lease to provide this site for the buses because the property owner and our firm are looking into developing the site with the Planning Board for a different development but in the interim, this site would be used for the buses. The property's located in an HC zoning district, as you may know, right now it's flat and it's located on Highland Avenue and it's surrounded by Old Albany Post Road. The HC zoning district is not specifically, if you look at the zoning code **section 307-14, section 307-15** on the table of permitted uses, does not specifically indicate anything about bus parking.

Mr. Wai Man Chin stated we know that. We understand that.

Mr. Keith Staudohar stated we have a determination from the Code Enforcement officer Mr. Hoch indicating that the parking of buses is not permitted in the HC zoning district and we're here tonight to discuss this with the Board and come up with, hopefully, a positive Interpretation that we believe we can get. We submitted a letter to this Board indicating that the buses we park here for the City of Peekskill school. In the letter, it did indicate that no maintenance activities would be part of this facility but in prepping for this evening's discussion I was talking to the applicant and there is minor maintenance which would include: change of light bulbs, windshield wipers, air in the tires and just daily checks of the buses to make sure that they're in operation, in good form of the delivery of the children. Based on Mr. Hoch's interpretation that the bus parking is not permitted, we feel that if you take a look at the table of permitted uses, under the heading of 'automobile repair services and parking' there is a line item there that states 'automobile parking facilities' are in fact a permitted use in the HC zoning district. When you cross-reference 'automobile', the definition of that within the zoning code, the zoning code does not necessarily define automobile, it does not define truck, bus, RV or vehicle. According to **section 307-4** of the definitions if it's not specifically identified in the code that the Webster's

Dictionary definition should be utilized and when you're looking at Webster's Dictionary definition the term 'automobile' is defined as a "vehicle used for carrying passengers on streets and roads." One of the synonyms indicated in this definition, a synonym to 'automobile' would be: auto, car, bus, horse's carriage machine, motorcar, motor vehicle wheels. We feel that the intent, and the spirit of the original definition of an automobile parking facility was to include the parking of whether it's a bus, or an RV or trucks. We are here tonight to hopefully seek an Interpretation that we, in fact, could park the buses here. Like I said, we are looking at a short term, temporary situation as we plan on presenting to the Planning Board a development package for this property.

Mr. Wai Man Chin stated this is my case and from what I see around the existing area, I would not see a problem with that but, again, based on what we discussed on our Monday work session, that parking is really not included in that HC zone. Now, you're saying you have some kind of repair but not major repair?

Mr. Keith Staudohar responded yes, it's simple inspection and maintenance. If we need to put a headlight in or a blinker light or something like that.

Mr. Wai Man Chin asked are you going to have an actual structure there?

Mr. Keith Staudohar responded no, there's no mechanical, we're not going to change brakes, we're not going to change oil. We're going to do the simple stuff and if it does need mechanical stuff, that goes outside. But, there is a certain level of maintenance on-site everyday to make sure the buses are safe to transport the children.

Mr. Wai Man Chin stated the other parcels nearby, they all have maintenance, that's why...

Mr. Keith Staudohar responded you have Jim Reed's right down the street and you've got the Hudson Highland bus company just across the street on Dogwood.

Mr. Wai Man Chin stated they all have maintenance included in their parcels. This one is not going to have maintenance. It's basically just parking.

Mr. Keith Staudohar responded and minor maintenance but if I read this on the face of it in the table of permitted uses and it says 'automobile parking facilities permitted' and there's no definition of 'automobile' in the code...

Mr. Wai Man Chin stated you did your homework.

Mr. David Douglas stated you're saying that you think that 'automobile' includes any motorized vehicle that gets driven down a road.

Mr. Keith Staudohar responded I'm saying is, it's not defined in your code what an automobile is and your code says if it's not defined then it'll go by what Webster's Dictionary says it is, and in

the Webster's Dictionary 'automobile' was defined as "a vehicle used for carrying passengers on streets and roads" and underneath that – this is online Merriam Webster, online, a synonym of an automobile includes...

Mr. David Douglas stated Webster's is just a generalized term. That Merriam Webster...

Mr. Keith Staudohar stated it says Webster's Unabridged Dictionary right here in the code.

Mr. Raymond Reber stated it's interesting because **307-4** does say "words not defined in either place shall have the meanings given in the most recent edition of Webster's Unabridged Dictionary." So, it's very specific where we go.

Mr. David Douglas stated I know but the problem – there's a problem with the way the code's written because I don't think there's such a thing as Webster's Unabridged Dictionary. There's Merriam Webster, there's Random House Webster's, Webster's is the generic term for it.

Mr. Raymond Reber stated I think the key here...

Mr. David Douglas stated my concern is – I don't have a concern with the actual use. My concern has to do with this is a generalized Interpretation so we're not supposed to be looking at a specific property whether it is good or bad for that property. My concern with the automobile is I think that if you ask **25** people what an automobile is they would say it's a car and if you said is a bus an automobile? Twenty five out of twenty five, including the third graders would say no, a bus is a bus. I looked if there were any kids but you're alone right now. The kid that was here left.

Mr. Keith Staudohar stated I understand what you're saying but the reality is if I wanted to park RVs here would we have the same conversation?

Mr. Wai Man Chin stated yes, we would.

Mr. David Douglas responded we would.

Mr. Keith Staudohar asked RVs is not considered an automobile?

Mr. David Douglas responded not in my mind.

Mr. Keith Staudohar stated but it's not defined in your code so that's why...

Ms. Adrian Hunte stated the automobile means something that moves auto without being pulled by horse or some other – that's the auto part. Anyway, I would like to go into in addition to the automobile parking, I would like to go into another concerning – first of all, starting with **307-14** in content of table of permitted uses, section **B** says "only uses listed for each district as being permitted or permitted by Special Permit shall be permitted. Uses not listed specifically or by

reference as being permitted in a district shall be prohibited in the district.” So, let’s move on to the transportation facility in our table of permitted uses, concerning **sections 307-14 and 15**, ‘transportation and public utilities’ and under that section it says “all other public utility facilities including but not limited to: transmission towers and mass transportation facilities.” So, I looked up under the encyclopedia Britannica the definition of mass transit and it says that mass transit, the essential feature of mass transportation is that many people are carried in the same vehicle, for example: buses or a collection of attached vehicles, namely trains. “Mass transit systems may be owned by private profit making companies or by governments or by quasar government agencies, etc.” So, public transportation and mass transportation, they can be the same but there can be overlap and distinction. In addition, under the United States federal government, federal transportation office of modal safety and security, it talks about school bus transportation, and those are considered mass transportation.

Mr. Keith Staudohar stated I appreciate that. I cited that in our initial letters but I thought automobile was an easier argument.

Ms. Adrian Hunte stated well that too.

Mr. David Douglas stated that’s very clever.

Ms. Adrian Hunte stated I think that buses, school buses qualify as mass transit and they would also be included under the “including but not limited to” and in my interpretation...

Mr. Keith Staudohar stated we felt that way as well, that’s why we cited both of those headings in our letter.

Mr. David Douglas stated I think what Ms. Hunte said is very clever. I don’t agree but it’s very clever. I don’t think...

Ms. Adrian Hunte stated **inaudible**.

Mr. David Douglas stated to me, mass transit is it’s open to the public. I think the commonly understood definition of mass transit is group transit open for public use. It’s obviously the trains and the buses and what not. If I tried to get on a school bus as a member of the public and refused to get off I would be arrested. That’s not exactly mass transit. I have no right and no member of the public has the right to go on a school bus.

Mr. John Mattis stated but a charter bus would fit under mass transit.

Ms. Adrian Hunte stated mass transit is not necessarily public transportation. Mass transit can be a private bus...

Mr. David Douglas stated I agree, it can be owned privately because you can buy – there are private companies to transportation in cities and suburbs and all that. To me, I think that's different than a school bus.

Mr. John Mattis stated I think we're making too much of this. I think we go back – it doesn't matter what I think an automobile is. It doesn't matter what any of us think an automobile is. The code's very specific that you go to the dictionary, went to the dictionary, automobile included buses and I think that's it. When it says that automobiles can be parked there, that's under the definition of automobile as we should define it based on our code and how it tells us to do it when it's not referenced. So, to me, in this case, no matter what I feel a bus is, it's considered an automobile for the Zoning Board purposes.

Mr. Raymond Reber stated the other aspect I think here is we have, for example, a car/automobile lot off of Arlo Lane where's there's a massive parking lot and you say "ok, if we replaced all those car/automobiles with school buses does it change anything in terms of the use of that property other than maybe the color? It goes from mixed colors to yellow and they're a little bit higher but if it's straight, so from a practical point-of-view when we say we don't mind vehicles being parked there, to me, if the definition and I don't see why not accept that definition that could include buses, to me it doesn't have any more negative impact or a different impact. I'd say I don't see a reason not to.

Mr. James Seirmarco stated I respectfully disagree with that and I'll tell you why. The one on Arlo Lane is a passive lot where cars are just parked there. There's no other cars coming in to replace it with a driver and taking that bus out. So, it impacts the traffic, it impacts the number of cars that are going to be on that lot...

Mr. John Mattis stated but that's not what the code specifies. The code doesn't reference how often it's used.

Mr. Raymond Reber stated and passive is a degree because when I went to look for a car, where did they take me? They took me to that lot, we went through the lot. They said "what do you think of this car?" We took it out for a ride so it's not totally passive.

Mr. Wai Man Chin stated during our work session, we go by the code but now that a few people have brought up the dictionary, which we didn't have a dictionary with us at that moment.

Mr. David Douglas stated I would want to look at other dictionary division. I don't buy that as the Webster's Dictionary.

Mr. Wai Man Chin stated I'm tossed in the air right now. I'm not going to vote on this today. I want to adjourn this until next month until I think about this a little better.

Mr. Raymond Reber stated I agree with the Chairman that we have to make sure that wasn't the unique dictionary. We've got to check if generically dictionaries agree.

Mr. Keith Staudohar stated I went on line on Google Webster and it came up as Merriam Webster and I said 'automobile' and that's what...

Mr. David Douglas stated no, I'm not accusing you of going through **17** dictionaries and getting the right one, which some people do.

Mr. Wai Man Chin stated I just want to mull this over myself...

Mr. John Mattis asked is this best **3** out of **5** dictionaries?

Mr. Wai Man Chin stated from what you're doing over there, in that area, and from what's there I really don't have a problem with it but based on the code, this is what – so right now I want to think about this a little bit.

Mr. Keith Staudohar stated I just want to be clear that this is a temporary use.

Mr. Wai Man Chin stated once we make an Interpretation that's it.

Mr. Keith Staudohar stated understood and in this case we are providing or we are proposing at this point, if it means anything, a six-foot high white privacy fence up...

Mr. David Douglas stated but for an Interpretation that's – if it were a Variance then that would factor in.

Mr. Keith Staudohar stated I understand. We are putting in some mitigation that would prevent the view of the buses necessarily from Highland Avenue.

Mr. David Douglas stated I like Mr. Chin's approach is to mull it over...

Mr. Keith Staudohar stated I'm going to be on vacation on the 20th.

Mr. David Douglas stated you can adjourn it until September if you want.

Mr. Charles Heady asked I'd like to ask something, Ken do you know if Jim Reed and Hudson Valley bus over there is in the HC zone?

Mr. Ken Hoch responded yes.

Mr. Charles Heady asked it is? Now why can't he put a small building up, if he wants to repair stuff, it would be the same thing as over there?

Mr. Ken Hoch responded because, he's not doing that...

Mr. Wai Man Chin stated well he's not doing that.

Mr. Charles Heady stated I know that, but he could do it if it makes it better for him.

Mr. Keith Staudohar stated well, it doesn't make sense for the owner of the property to put up a building now for maintenance when we have a much larger plan, master plan if you will for the property. Like I said, this is a temporary issue. The nature of this is temporary.

Mr. Charles Heady stated it was just a suggestion.

Mr. Keith Staudohar stated I understand. Believe me, we've thought about that. We had thought about that. I appreciate your comment.

Mr. Wai Man Chin stated once we make an Interpretation and that Interpretation sticks so that's why I want to mull over the thing...

Mr. Keith Staudohar stated just another – what other zoning district, if I wanted to park RVs for sale, or if I wanted to park boats, could I do it in? Buses, aren't, in my mind bigger vehicles, bigger automobiles but it's not specifically defined anywhere in this code.

Mr. Wai Man Chin stated for sale that means you have to have maintenance or something over there for that.

Mr. Keith Staudohar stated well, we are claiming that we are doing daily maintenance, albeit it's minor but it's maintenance. We don't want to get into oil changes and brake changes...

Mr. Wai Man Chin stated I want to think this one over a little bit.

Mr. Keith Staudohar stated I appreciate that.

Mr. Wai Man Chin asked anybody in the audience?

Mr. Ken Hoch stated if I could, just to make a comment, Mr. Staudohar and I have discussed this and we have dueling dictionaries. The dictionary I have in the office defines 'automobile' as a passenger car.

Mr. David Douglas stated so I wasn't being obnoxious.

Mr. Ken Hoch stated the reference in the code is an interesting one. It references a specific Webster's Dictionary. I actually tried to find one and the last one I could find I think was published in **1985** and I could never find a copy of it anywhere so it's really gone by the wayside. You could go to **3** out of **5** dictionaries but...

Mr. John Klarl asked so Ken, what you're saying your dictionary varied?

Mr. Ken Hoch responded the dictionaries can vary, the one I looked at, which I think is a Merriam Webster in the office...

Mr. Keith Staudohar responded [inaudible.]

Mr. David Douglas stated no, no, we believe you.

Ms. Adrian Hunte asked did anyone then go to the SIC code?

Mr. David Douglas stated we can change it so we don't look at that anymore.

Mr. Ken Hoch stated we actually have to look at it because it's referenced on the table. I did look at the SIC code, I could not find bus parking listed anywhere.

Mr. Wai Man Chin asked any other questions?

Mr. John Klarl stated so we have dueling dictionaries.

Mr. David Douglas stated we have dueling dictionaries.

Mr. Wai Man Chin stated I make a motion on **case 2014-17** to adjourn the public to August.

Seconded, with all in favor saying "aye."

Mr. David Douglas stated **case #2014-17** is adjourned to August 20th. Thank you very much and have a safe ride home in your horseless carriage.

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ADJOURNMENT

Mr. John Mattis stated I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated meeting's adjourned.

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**NEXT MEETING DATE:
WEDNESDAY, AUGUST 20, 2014**