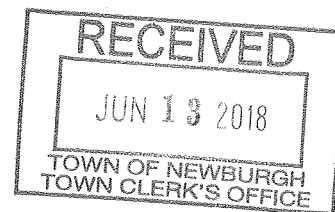


ZONING BOARD OF APPEALS**MEETING – MAY 24, 2018**

(Time Noted – 7:06 PM)

Mr. Scalzo: I'd like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have a cell phone to please turn it off or put it on silent and when speaking, speak directly into the microphone as it is being recorded. Roll call please.

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN
JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

Pledge of Allegiance to the Flag led by Peter Olympia

(Time Noted – 7:10 PM)

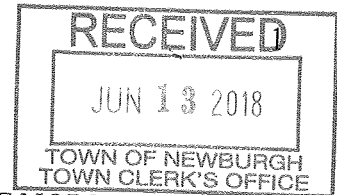
BB 6/13/18

ZBA MEETING – MAY 24, 2018

(Time Noted – 7:08 PM)

DANIEL & ELISSA DICKINSON

SBL 6-1-12 (IN VICINITY OF NORTH
FOSTERTOWN, REVERE ROAD, TARBEN
WAY & STILLHOLLOW ROAD) A/R ZONE



Applicant is seeking an area variance from the requirements of New York State Town Law 280-a - (1) allowing a single family home to be constructed on property where no street or highway giving access to the property has been duly placed on the official map or plans and where such access is not on an existing state, county or town highway and is not a street shown upon a plat approved by the planning board nor is it a street on a plat duly filed and recorded in the office of the county clerk prior to the appointment of such planning board and (2) road must be suitably improved to the satisfaction of Town road specifications to have a Building Permit issued.

Mr. Scalzo: Folks, on the Agenda this evening there is one item which is Daniel and Elissa Dickinson, we have correspondence from their engineer. At this time, they are requesting that the Public Hearing for the variance be held Open to the June 28, 2018 Zoning Board meeting as their engineer will not be able to attend this evening. So if there was anyone here for the Daniel and Elissa Dickinson, SBL 6-1-12, vicinity of North Fostertown, Revere Road, Tarben Way, Stillhollow Road that will not be heard this evening.

Ms. Gennarelli: Do you need to have a vote to hold it open or you just want to hold it open?

Mr. Donovan: Yeah, that is correct, if you could just a vote for the Board, a motion and a second to adjourn the matter to the June meeting.

Mr. McKelvey: I'll make that motion.

Mr. Masten: I'll second it.

Mr. Scalzo: Motion from Mr. McKelvey, second from Mr. Masten, roll call.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN
JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 7:10 PM)

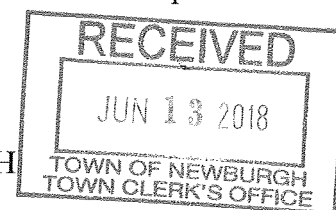
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ZBA MEETING – MAY 24, 2018

(Time Noted – 7:10 PM)

MICHAEL & CONSTANCE PENDINO

129 WEYANTS LANE, NBGH
(17-1-46) R-2 ZONE



Applicant is seeking an area variance for pools in excess of 200 sq. ft. shall be located at least 10 ft. from any lot line to keep a pool deck (25 x 30) and an area variance for increasing the degree of non-conformity of the side yard setback to build a rear deck (14 x 20) on the premises.

Mr. Scalzo: Okay, the first applicant we have this evening is Michael and Constance Pendino, 129 Weyants Lane, Newburgh, they are seeking an area variance for pools in excess of 200 sq. ft. shall be located at least 10 ft. from any lot line to keep a pool deck which is 25 x 30 and an area variance for increasing the degree of non-conformity of the side yard setback to build a rear deck (14 x 20) on the premises. Ms. Gennarelli.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, May 16th and The Orange County Post on Friday, May 18th. This applicant sent out thirty-seven letters. All the mailings, publications and postings are in order.

Mr. Scalzo: And before we begin just for any members of the audience here all of the Members of the Zoning Board of Appeals have visited the sites so we are personally familiar with it. It's an obligation of the position so realize that we have seen what you are about to speak about. Mr. Lytle please introduce yourself and continue.

Mr. Lytle: Thank you, Ken Lytle representing the Pendinos...

Ms. Gennarelli: If you could just lift it (mic) up a little...

Mr. Lytle: Better?

Ms. Gennarelli: ...towards you and you might have to get closer.

Mr. Lytle: Better?

Ms. Gennarelli: Yes, now I can hear you.

Mr. Lytle: Ken Lytle, representing the Pendinos at the project located at 129 Weyants Lane. We're here before the Board, they're making an application to construct a rear deck in the back of their house which requires a side yard setback. The house is actually closer to the property line than this so it would be a I guess a degree of less non-conformity and in doing so and having the survey done we found out that the pool that they had a Building Permit for and also was a C.O. issued for the pool based on the new survey realized it was too close to the property line. Years ago when they did it they didn't

require a complete survey. So that's something they stumbled upon from this time we want to get that cleaned up at the same time.

Mr. Scalzo: So a...just help me out Ken...

Mr. Lytle: Yeah.

Mr. Scalzo: ...the pool is too close to the property line or the deck from the pool?

Mr. Lytle: The deck from the pool.

Mr. Scalzo: Okay.

Mr. Lytle: It's just attached to the pool.

Mr. Scalzo: Okay, I was actually just there this afternoon. It's a very nice lot layout. The house is quite close to the left property line.

Mr. Lytle: Yes.

Mr. Scalzo: It...well-manicured, nice neighborhood, it appears everyone keeps their property up. I have no comments myself but I will turn to the Board. Mr. Bell?

Mr. Bell: Nope, none.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: None.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: The...the a...area behind the pool where all the trees are is that...do you think they...anybody is ever going to build on it?

Mr. Lytle: I doubt that. I believe that's actually attached to a resident who owns property off of Fostertown Road. They have that attached and picked up that vacant lot.

Mr. McKelvey: Okay.

Mr. Lytle: So I don't believe so.

Mr. McKelvey: Thank you.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I agree that it's a neat lot. Everything was in place. I have no comments other than that.

Mr. Scalzo: Mr. Masten?

Mr. Masten: I have no comment because it was a beautiful kept property.

Mr. Scalzo: Thank you. Mr. Marino?

Mr. Marino: No, no comment.

Mr. Scalzo: Hearing nothing substantial from the Board I'll turn to the members of the public. Anyone here to speak on this applicant?

No response.

Mr. Scalzo: Hearing none, I'll look back to the Board for one final opportunity for comment. And if not, perhaps a motion?

Mr. Masten: I'll make a motion.

Mr. Scalzo: To close the Public Hearing from Mr. Masten.

Mr. McKelvey: I'll second.

Mr. Scalzo: Second from Mr. McKelvey.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The Public Hearing is closed. We will do our best to render a decision this evening.

Mr. Lytle: Great, thank you.

Mr. Scalzo: Thank you.

(Time Noted - 7:15 PM)

ZBA MEETING – MAY 24, 2018 (Resumption for decision: 8:34 PM)

MICHAEL & CONSTANCE PENDINO 129 WEYANTS LANE, NBGH
(17-1-46) R-2 ZONE

Applicant is seeking an area variance for pools in excess of 200 sq. ft. shall be located at least 10 ft. from any lot line to keep a pool deck (25 x 30) and an area variance for increasing the degree of non-conformity of the side yard setback to build a rear deck (14 x 20) on the premises.

Mr. Scalzo: I'd like to call the meeting back to order and at this point we'll try and vote on the current applications in front of us. The first application being Michael and Constance Pendino, 129 Weyants Lane, Newburgh, area variance for pools in excess of 200 sq. ft. shall be located at least 10 ft. from any lot line to keep a pool deck (25 x 30) and an area variance for increasing the degree of non-conformity of the side yard setback to build a rear deck (14 x 20) on the premises. I will look to the Board for any final comments on this applicant.

Mr. McKelvey: The house is close to the line already.

Mr. Scalzo: Yes. This is a Type II Action under SEQR and at that point we'll go through the area variance criteria and discuss the five factors that we're weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Bell: No.

Mr. Olympia: No.

Mr. Scalzo: Generally I'm hearing a no.

Mr. Bell: No.

Mr. Olympia: No.

Mr. Scalzo: The second, if there is an undesirable change in the neighborhood character or a detriment to nearby properties? I think what's going on there currently is in conformance or character with the current surroundings.

Mr. Bell: With the neighborhood, yes.

Mr. Scalzo: The third, whether the request is substantial?

Mr. McKelvey: No.

Mr. Olympia: No

Mr. Scalzo: I really don't think so, the way the lot configurations are it appears there's plenty of room there. The fourth, whether the request will have adverse physical or environmental effects?

Mr. Bell: No.

Mr. Olympia: No.

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Marino: No.

Mr. Masten: No.

Mr. Scalzo: It doesn't appear so. And the fifth, whether the alleged difficulty is self-created? This is relevant but not determinative.

Mr. Bell: When he bought the house it was there.

Mr. Scalzo: No, not Pendino, I don't...I'm not sure that was the case. They actually got the Permit for the pool...

Mr. Bell: Pool? Oh, right, yeah.

Mr. Donovan: They probably didn't have a survey or not an accurate survey. They got the Permit for the pool and deck and a C.O. for the pool and the deck, when they did the new survey according to the testimony this evening.

Mr. Scalzo: Perhaps you're right.

Mr. Bell: That deck is...that deck is...

Mr. Scalzo: Very good, having gone through the balancing tests of the area variance what is the pleasure of the Board? Does the Board have a motion of some sort?

Mr. McKelvey: I'll make a motion we approve.

Mr. Masten: I'll second it.

Mr. Bell: I'll...

Mr. Scalzo: Wow, that was fast, motion for approval from Mr. McKelvey and a second from Mr. Masten.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The motion is carried.

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN
JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY (Time Noted – 8:34 PM)

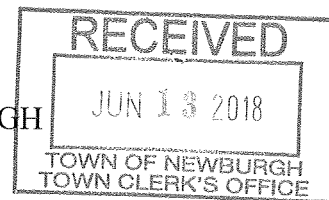
6/13/18

ZBA MEETING – MAY 24, 2018

(Time Noted – 7:15 PM)

CHARLES & HEATHER SALAMONE

29 PADDOCK PLACE, NBGH
(58-2-24) R-2 ZONE



Applicant is seeking an area variance an accessory building may be located in a side or rear yard to keep an accessory building (10 x 10) installed without approvals or Permits on the premises (corner lot).

Mr. Scalzo: The second applicant this evening is Charles and Heather Salamone, 29 Paddock Place in Newburgh. They are requesting an area variance an accessory building may be located in a side or rear yard to keep an accessory building (10 x 10) installed without approvals or Permits on the premises. Noted that this is a corner lot in the Meadow Hill subdivision. Ms. Gennarelli.

Ms. Gennarelli: This applicant sent out sixty-seven letters. All the mailings, publications and postings are in order.

Mr. Scalzo: Thank you very much.

Ms. Gennarelli: You're welcome.

Mr. Scalzo: Sir if you could introduce yourself please?

Mr. Salamone: Hi, my name is Charles Salamone. This is not Heather, this is my son Gage, Heather couldn't make it tonight unfortunately and a...good evening. The property that we purchased back in October when we were a couple of weeks from closing we were informed that the shed that was there for twenty-five plus years was not a legal shed and we were told that after the closing we were going to have to get a variance for it and that's essentially what I'm doing here is to get the variance for the shed.

Mr. Scalzo: Okay, as I say, we have all been to the site, we've seen it. I was there myself today. All your postings are in order. I saw it on the a...where it was supposed to be. So at this point I will turn to the Board. Mr. Bell any comments or questions?

Mr. Bell: No, I'm good.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: The a...the direction which the shed is facing and you view the lot is...is pretty awkward wouldn't you say?

Mr. Salamone: A...well personally...no, I mean it faces with the back to the road...

Mr. Olympia: Right, right.

Mr. Salamone: ...so that if it was turned around the doors would be opened and...

Mr. Olympia: What if it was turned ninety degrees rather than...it would face the front of the property rather than the side road or the back of the property? I just...I just thought it...it's beautifully done and everything. I just thought it was very awkward the way it was placed...

Mr. Salamone: Right.

Mr. Olympia: ...aesthetically it's...it is what it is.

Mr. Salamone: We didn't have anything...

Mr. Olympia: Right.

Mr. Salamone: ...to do with the...with the placing of it and the way that the foundation is built...

Mr. Olympia: Right.

Mr. Salamone: ...it's like built...

Mr. Olympia: It doesn't allow you to turn it.

Mr. Salamone: ...or it would either be facing the way now or turned around facing out towards the road.

Mr. Olympia: Yeah, yeah, okay.

Mr. McKelvey: None of the neighbors complain, do they?

Mr. Salamone: No, why now?

Mr. Scalzo: Mr. McKelvey is that your...any further comments from there?

Mr. McKelvey: No, that's it.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I do agree with Mr. Olympia, it does look strange sticking out of the back but a...it is what it is.

Mr. Salamone: Very good.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No, I have no comments.

Mr. Scalzo: No. Mr. Marino?

Mr. Marino: I'd have to agree with Mr. Levin it's a little unusual but it is what it is and it wasn't by your doing.

Mr. Scalzo: I...I have no comments so at that point; I will turn to the members of the public. Is anyone here to speak on this action?

No response.

Mr. Scalzo: Apparently no one is here to speak on this action so I'll give the Board one more opportunity for comment.

Mr. Bell: No, good.

Mr. Olympia: Fine.

Mr. Scalzo: Hearing none I will look for a motion to close the Public Hearing.

Mr. Bell: I make a motion to close it.

Mr. Olympia: I'll second that.

Mr. Scalzo: Motion from Mr. Bell, second from Mr. Olympia.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The Public Hearing is closed. We will do our best to render a decision this evening.

Mr. Salamone: Thank you. Have a good evening.

Mr. Scalzo: Thank you.

(Time Noted - 7:18 PM)

ZBA MEETING – MAY 24, 2018 (Resumption for decision: 8:34 PM)

CHARLES & HEATHER SALAMONE 29 PADDOCK PLACE, NBGH
(58-2-24) R-2 ZONE

Applicant is seeking an area variance an accessory building may be located in a side or rear yard to keep an accessory building (10 x 10) installed without approvals or Permits on the premises (corner lot).

Mr. Scalzo: The second applicant we heard this evening was Charles and Heather Salamone, 29 Paddock Place in Newburgh, area variance for accessory building may be located in a side or rear yard to keep an accessory building (10 x 10) installed without approvals or Permits on the premises, of note is this is a corner lot. We had heard testimony from the current owner that the shed was placed by the previous owner. So this is also a Type II Action Under SEQR. We will go through the area variance criteria and discuss the five factors, the first one being whether or not the benefit can be achieved by other means feasible to the applicant? You know other than removal it's a corner lot, it's difficult. Quite honestly I believe it...it provides him a little bit of privacy from the road. You know, because it does allow you know, at least a block of the view of the street. Anyone else on that?

Mr. Olympia: No.

Mr. Bell: No.

Mr. Scalzo: The second, if there is an undesirable change in the neighborhood character or a detriment to nearby properties? We heard testimony that this shed has been in place for many years.

Mr. McKelvey: It was there before he bought it.

Mr. Scalzo: Yeah. The third, whether the request is substantial?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Levin: No.

Mr. Marino: No.

Mr. Bell: No.

Mr. Olympia: No.

Mr. Scalzo: It doesn't appear so. The fourth, whether the request will have adverse physical or environmental effects? If they haven't in the last fifteen to twenty years I doubt they will.

Mr. Masten: No.

Mr. Scalzo: Moving forward, fifth, whether the alleged difficulty is self-created? Relevant but not determinative. Well it's self-created only because he bought it that way. He didn't create it but he inherited it. So if the Board approves shall grant the minimum variance that's necessary. Any...I don't see any conditions that would be attached to this. Having gone through the balancing tests of the area variances what is the pleasure of the Board; do we have a motion?

Mr. Bell: I'll make a motion we approve.

Mr. Olympia: I'll second.

Mr. Scalzo: We have a motion from Mr. Bell, a second from Mr. Olympia.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: Motion carried. The Darrigo Revocable Trust is still an open item, correct?

Board Members: Yes.

Mr. Scalzo: The Dickinson item is pushed off to the June meeting.

Board Member: Right.

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN
JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:37 PM)

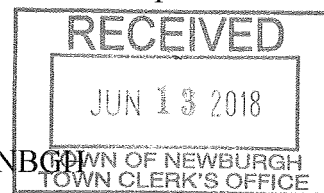
188 6/13/18

ZBA MEETING – MAY 24, 2018

(Time Noted – 7:18 PM)

RE-HEARING OF FRANK DARRIGO
REVOCABLE TRUST

84 LAKESIDE ROAD, NEWBURGH
(86-1-96) R-1 ZONE



Re-hearing of Use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a Residential-1 District (R-1 Zone).

Mr. Scalzo: The next applicant is the re-hearing of the Frank Darrigo Revocable Trust at 84 Lakeside Road, Newburgh. The re-hearing is of a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a Residential-1 District (R-1 Zone). Ms. Gennarelli I will be recusing myself from this applicant. Mr. McKelvey, Vice Chair will be taking the chair.

Ms. Gennarelli: Alright and this applicant sent out a hundred and five letters. All the mailings, publications and postings are in order. And we did receive a response John...we did receive a response from Orange County.

Mr. McKelvey: Yes.

Ms. Gennarelli: Do you need me to read it into the record or...it was Local Determination.

Mr. McKelvey: Okay. Mr. Lease.

Mr. Lease: Thank you for rehearing this application. I'm Jeff Lease and I'm representing the Darrigo Revocable Trust at 84 Lakeside Road. The Darrigo family is seeking a use variance for a sixty acre portion...of a sixty acre farm, a portion of which would be used as a solar farm. The property is currently zoned R-1, a single-family residential with a minimum lot size of 40,000 feet a...40,000 square feet. Tonight I will demonstrate that there is no reasonable return on this land and that it clearly meets the four points of hardship described in the application. For this reason and others we request a variance from the R-1 to a solar farm fully described in the Town of Newburgh's current zoning but permitted only in the "I" Industrial District. What is left of the farm is a sixty acre parcel which was purchased in 1927 by the Darrigo brothers. They have continuously farmed the land since and have run the material supply operation from this location of which the Town of Newburgh is a customer. The original tract more than a hundred and fifty acres was bisected by I-84 in the fifties into two parcels sixty and seventy acres each. Additionally the family ran a permitted DEC dumpsite on the sixty acre portion. The site was annually inspected and found to be in full DEC compliance. However, in 1978 the rules changed and made certain waste materials illegal to dump and the remediation mandatory. The Darrigo family fully accommodated this request by executing a multiyear investigation and study resulting in the remediation and capping of the former waste site. To provide for this colossal expense the family was forced to sell the seventy acres to the east of I-84 to Manheim Auto Auction. They used all of those earnings from the sale and then some to comply with the State...State regulations. This was a bitter disappointment for the family as the farm was a legacy of three generations

of stewardship. Now the retention of the remaining sixty acres is at stake. The family has owned the farm before the enactment of zoning and has seen those rules and their attended costs change many times during their ownership. The proposed use variance allows this respected Newburgh family to retain ownership of the remaining farm by leasing the land to a solar company who will erect four mega-watt array and pay the family an annual rental of eighty thousand dollars a year. This will allow the Darrigos to retain ownership as income from farming has become economically unfeasible on this site. Equally unfeasible is the execution of the current R-1 zoning as we will now demonstrate. Let me go through the four points of hardship as on the application. The points of hardship as defined are to qualify for a use variance premised upon unnecessary hardship. There must be shown that one the property cannot yield a reasonable return if used only for the permitted purposes as currently zoned; two, the hardship results from unique characteristics of the property, number three, the proposed use would not alter the character of the neighborhood and finally four, the hardship was not self-created. Let me speak to the first one, under the applic...applicable zoning regulations the applicant is deprived of all economic benefit from the property because the property in fact encumbered by an inactive hazardous waste site that restricts and prevents development as a residential subdivision. It completely prevents the residential of the eight point six DEC designated portion of the site where there is no residential development may ever occur. That portion on the map, here is the existing farm, is this section here. It's not a separate subdivided area it's just an area designated by the DEC as the...as the a...the a...hazardous waste site. Furthermore it restricts the balance of the acreage because any future residential subdivision will have to mention the property was one part of a contiguous to this hazardous waste site. This site is actively being monitored to this day. Additional the R-1 Zone requires forty thousand square feet per lot without much road frontage the cost of installing interior roads to Town standards with lots this large would be cost prohibitive. Addit...Additionally there is a substantial grade difference of eighty feet from the level of the barns to the top of the fields. This would require a road whose six percent mandated slope would run two thousand, one hundred linear feet or roughly the length equal to the entire length of the property along Amber Fields.

Ms. Gennarelli: Can you take the microphone with you or...

Mr. Lease: Yes.

Ms. Gennarelli: ...pop that one off? Thank you.

Mr. Lease: I'm sorry Betty.

Ms. Gennarelli: That's fine. Thanks.

Mr. Lease: So in other words what we'd need is a road a...to get up from here to this level here equal to this. In other words it would have to zig zag somehow up the hill. The cost of the roads and the site work would make the project to build with lots this size. The best use of the property continues to be as a farm but as the area has grown up around the site so must the nature of what is farmed. This location is simply too valuable for hay and

alfalfa. Solar energy turns out to be the next logical crop rotation. Point number two, hardship and uniqueness, this hardship is completely unique, completely unique in the district, in the neighborhood and in the Town of Newburgh. There are no other hazardous waste sites in the Town of Newburgh. The next point, the variance would not alter the essential character of the neighborhood, the proposed solar farm is actually more in keeping with the existing nature of the neighborhood. It reserves the green buffer that neighbors have enjoyed for years. In fact exercising the R-1 zoning would greatly modify the property because of the need to clear the trees, push soil down to accommodate the elevation change present on this site. The proposed variance preserves the open green space consistent with the neighborhood as it is today. Since the Darrigos have operated the farm since 1927 it predates all zoning in the Town of Newburgh. The R zone zoning...the R-1 zoning was in effect created around the Darrigo farm. That zoning has changed many times since the Darrigos have owned the property. And finally the act of self creation, this hazardous condition was not self-created. The Darrigo family did not buy into the hardship but was a result of the changing classification by the DEC. All the materials dumped on the farm were legal and monitored by the DEC during the fifties, sixties and seventies. Let me repeat that they were actually legal and they were being monitored by the DEC. In the 1980's the DEC reclassified some of these materials as hazardous waste. At the same time they closed all small privately held dumpsites. The DEC and the Darrigos kept records of the dumping activity during the regular monitoring and partly because of the regular monitoring the DEC tested the Darrigo parcel early on. It predictively tested...tested positive for the newly reclassified materials. In a cruel twist the Darrigo family was then forced to pay for the cleanup based on these new regulations. There were never any penalties; there were never any fines for the remediation. There was simply a case of the State reclassifying material. Unfortunately, the result is that the family was forced to sell more than half of the remaining farm again to Mannheim Auto to pay for the cleanup. The eight point six active...inactive hazardous waste site may not be used for residential purposes but only for commercial. The DEC letter included in the application corroborates this fact but in a larger sense the existing monitoring site forever taints any development on the remaining acreage. No title report on a single family home within this R-1 subdivision will fail to mention that the site was once part of a contaminated field. This will adversely affect value and ultimately make financing of the project difficult to impossible. This condition and the on-going monitoring have an economically stigmatized the project...the property. Farming builds a special relationship with the owner and the land. The family would very much like to continue to own the remaining portion of a legacy that goes back three generations. This variance assures that this will happen. As a solar farm is a rental with the family continues to own the land, exercising the R-1 zoning would require the sale and end their stewardship of the property. A stewardship which has survived changing zoning the declining farming in our area and the changing regulations of the DEC. In short this action provides for a dignity of continuity of ownership we owe to a family not a multi-national corporation but a family, a neighbor, a tax payer and a citizen of our Town. There is in fact no other reasonable return on this property except as a solar farm. To further elaborate the a...economic conditions I will introduce Gregg Langer who is proxy is included in the application to demonstrate the economics of development as an R-3...R-1 zone and the benefits of a...the income from solar. Greg...

Mr. Langer: Greg Langer with Valuation Consultants, we're real estate appraisers...

Ms. Gennarelli: Greg, you can make that higher...

Mr. Masten: Raise the mic.

Ms. Gennarelli: ...or I'll just make it a little higher for you.

Mr. McKelvey: Is this the same report you gave the last time?

Mr. Langer: Pretty similar.

Mr. Donovan: Well, perhaps if you want to highlight what's new in this report. I do...I do see a date of May 8th ...two documents, the Board is in receipt of your prior report part of this application, you have a supplement or additional information that may perhaps, the Chairman is indicating to just kind of present that part of it orally.

Mr. Langer: Alright, so there was the original report which said what it said and you saw it and now we amended it just to point out a few other things because the original report compared a...what you could develop on sixty acres where the solar farm was only on forty acres so there...we therefore analyzed what you could develop on the forty acres where the solar farm is proposed, we came up with a value of a hundred and ninety thousand dollars through price per acre and throughout of sellout of a lot scenario where you put a value on each lot subdivision analysis. We also a...talked about the fact that as part of the rent there were three percent annual increases a...which added to the value of the income stream to the owners of the property which increased the value over a twenty year period from one million to one million three if you factored in that three percent annual increase.

Mr. Lease: Two and a half percent.

Mr. Langer: Two and a half percent? I'm sorry, two and a half percent annual increase. I mean that's...and that was the...the main difference in the amendment as compared to the original report.

Mr. McKelvey: Any Board Members have any questions of...?

Mr. Olympia: Yes. What's the term of the lease with the solar company?

Mr. Lease: Twenty-five years.

Mr. Olympia: What happens at the end of twenty-five years?

Mr. Lease: A...the term...the term of the lease is twenty-five years and then it gets returned back to the Darrigos, the prop...the a...solar panels are removed from the site and the Town has a code which describes exactly how that may happen.

Mr. Olympia: Is there bond being provided?

Mr. Lease: There'll probably will be, yes, yes.

Mr. Olympia: Was a glare and glimmer study done?

Mr. Lease: It's part of the...actually that's a good question. It is part of the application with respect to a...a...the airport. So any...any...yes there's got to be a glare and glimmer report done for the airport, yup, but that's something that's I think is going to be taken care of a...with the planning board. Actually the DEC is going have to review the whole application as well for...for a...for their approval on the a...eight point six acres.

Mr. Olympia: Thank you.

Mr. Lease: So there's several layers of approvals here that have to...beyond this. What we have before you right now is simply a use variance. It's just the first step in a very long process until we get a solar farm on the property.

Mr. McKelvey: Mr. Bell?

(Inaudible)

Mr. McKelvey: Mr. Levin?

Mr. Levin: Did you mention what the income is to the Darrigos?

Mr. Lease: Eighty...eighty thousand dollars a year with two and a half percent increases as compared to a hundred and ninety thousand dollars if the property were divided into an R-1. I mean it...it's astoundingly dramatic...that...that I never expected it to be that dramatic.

Mr. Levin: Jeff, I'm not sure I can ask you to do this but it's pretty junky when you go by on the highway. Will that be removed or is that going to stay there?

Mr. Lease: Well actually the portion where the a...where the a...supply company is right now that's not part of where the solar will...will occur.

Mr. Levin: But that's on the property.

Mr. Lease: Right, right.

Mr. Levin: Okay.

Mr. Lease: Yeah, I don't know how to answer that intelligently quite frankly. I don't know that that can be a...a condition of this or something that the planning...

Mr. Levin: I...I don't know if they can.

Mr. Lease: ...board can address, yeah, but what I'm touching upon on the four points of hardship.

Mr. Donovan: Well Rich I'm not sure I have a good picture. I haven't been to the site.

Mr. Levin: Oh.

Mr. Donovan: I don't know what junky means.

Mr. Levin: There's a lot stuff.

Mr. McKelvey: It's not a...it's not neat.

Mr. Levin: It's a lot of stuff.

Mr. Masten: Yeah.

Mr. Donovan: And that's a tenant of the property owner?

Mr. Lease: No that's the Darrigos themselves, the Darrigo Brothers Supply Company, right. The same place that the Town of Newburgh buys its...its seed and hay from by the way.

Mr. Donovan: Well just relative to that issue what this Board has done in the past if it's...if it's...if we get to the place where you're potentially granting the variance we get to impose reasonable conditions that are somehow related to a legitimate objective of the variance. Now if this may be to attenuated what this Board has done in the past is...is put specific language in a decision that directs the planning board during their site plan review since that would...the site plan would just be for solar but the whole property is part of the site there they would...we would ask them to pay specific attention to a...cleaning up the junk if you will. Okay.

Mr. Lease: I think that would be very agreeable, quite frankly, that would be...that would be great.

Mr. McKelvey: Mr. Masten?

Mr. Masten: I had basically the same questions that...Mr. Levin had so...I don't need any more.

Mr. McKelvey: Mr. Marino?

Mr. Marino: Just one question for Mr. Lease.

Mr. Lease: Yes?

Mr. Marino: I...I think you said if the property were to be sold for the construction of homes...

Mr. Lease: Yes?

Mr. Marino: ...whoever buys that property has to be told that it was a toxic landfill site?

Mr. Lease: Well it's part of.

Mr. Marino: Part of?

Mr. Lease: Part, yes.

Mr. Marino: But they would have to know that in advance.

Mr. Lease: Yes.

Mr. Marino: Okay.

Mr. Lease: Yes.

Mr. Marino: A discouragement.

Mr. Lease: Yeah, it...it affects the ability to finance and the ability to sell property when it has that kind of stigma. Greg, do you have anything else?

Mr. Langer: No, no, I'm good.

Mr. Lease: (Inaudible)... Mr. Bloom.

Mr. McKelvey: While you're doing that can I ask if there's anybody from the public that wants to speak?

Mr. Lease: May I finish my...can I finish?

Mr. McKelvey: Yeah, go ahead.

Mr. Donovan: Oh, we thought you were done.

Mr. Lease: One more page and that's done. Okay? So a...again the Darrigos have operated the farm since 2006 and the proposal this proposal maintains the farm, the fields and the woodlands and will comport with and in fact, actually exceed the existing zoning setback for solar farm that is written in the current zoning. We intend to exceed those standards that the zoning now has. This proposal will use the site to continue to function as a buffer to the existing residential uses and the noise of 84 and...and Stewart Airport. I think one of the biggest concerns with the informal town hall meeting that we had with neighbors is that they were going to get with an R-1 subdivision the same kind of noise that Meadow Hill and Amber Fields were getting along the a...84 end and that the...the farm worked as a beautiful green buffer to protect that sound and that environment along Patton Road and Meadow Hill Road. Ultimately though this application stands on its own merits of hardship and does not need to rely on need, error of zoning or its continuity of stewardship. It is by every standard a exceptional hardship, unique, not self-created, a property without economic benefit and one that will maintain the current character of the neighborhood. It works on so many levels of rightness. I urge you to grant this variance to this exceptional and we hope historic project in the Town of Newburgh. Thank you.

Mr. McKelvey: I have a question to ask you.

Mr. Lease: Yes sir?

Mr. McKelvey: You presented drawings in your...in your reapplication.

Mr. Lease: Yes.

Mr. McKelvey: Who prepared them?

Mr. Lease: I did.

Mr. McKelvey: You are not a solar farm.

Mr. Lease: No.

Mr. McKelvey: You're not a company.

Mr. Lease: No.

Mr. McKelvey: Nobody signed it, no seal.

Mr. Masten: Yeah.

Mr. Lease: So...it's a use variance.

Mr. Donovan: Yeah so typically if the Board is approving an application the submission to the Board is either prepared by a...a for something like this if you're going to show the location of the solar farm it's on some sort of scale drawing and it...

Mr. Lease: It's scaled.

Mr. Donovan: ...and it's...

Mr. McKelvey: But you're not...you're not a registered...

Mr. Donovan: ...certified by someone with (Inaudible) licensing.

Mr. McKelvey: You're not a registered architect.

Mr. Lease: What?

Mr. McKelvey: You're not a registered architect.

Mr. Lease: I'm...I'm a...I'm a licensed architect, correct, I no longer have my...I no longer practice so. It's all done to scale a...and...

Mr. McKelvey: Well why wasn't it...why wasn't it signed? And I think...I think that this drawings was a little different than the original ones.

Mr. Lease: No, it's the same drawing. It's exactly the same drawing. And it's the same drawing that I submitted in the January application when I brought it over to the Town of Newburgh and Joe Mattina looked at it and said that this was fine. I brought it in. It was accepted and I submitted the drawing...as a use variance I can tell you that the planning board will ultimately have final say as to where those solar panels go and how they comport with the Town code. So...we're...we're not actually placing exactly where the solar panels are. It's a kind of a general diagram.

Mr. Donovan: Mr. Lease, somewhere in these documents do you give us the size, the megawatt capability of the a...?

Mr. Lease: Several times, four megawatts, yes.

Mr. McKelvey: That's by State Law.

Mr. Donovan: But I...

Mr. Lease: No it can be anything. It can be any size.

Mr. Donovan: So let's not talk over each other, okay? One at a time...my turn now? Okay. So do you identify the number of panels that will be on the site and their approximate location?

Mr. Lease: Excuse me?

Mr. Donovan: The number of panels that will be on the site and the approximate location of those panels?

Mr. Lease: No I do not give the number of panels but their approximate location yes.

Mr. Donovan: So is that something that the Board is interested in seeing? That the...you've given to the Board as I see it a...some pictorial representations. Is that what this is going to look like or is that not what that is going to look like?

Mr. Lease: It will look a version of that but again the planning board will have the final say so as to the exact plan of the thing and the...the solar company needs to lay out the entire proposal. This is typically you get a kind of general version of it.

Mr. Donovan: So when it comes down to...

Mr. Lease: The...the setbacks are the most important part of this application with respect to the code because the code doesn't describe really that much more than height, setback and area so it...it answers all of that and the planning board will supersede whatever...whatever review you have here.

Mr. Donovan: So...so the framework for analysis is this, it's a use variance we are talking about the use of a solar...of solar...we'll call it a solar farm so this Board if you're inclined you're in the position to say we will allow the property to be used for a four megawatt solar farm with a site plan to be approved by the planning board. However, if you're not satisfied, you think you may need more information to make a determination about what the site is going to look like so you have a better ability to evaluate the four factors of a use variance you have the right to ask for that as well.

Mr. McKelvey: Yeah, the last solar farm that we had before us...

Mr. Bell: Yeah.

Mr. McKelvey: ...they came in with plans from the solar company.

Mr. Bell: Yeah.

Mr. Levin: Sure.

Mr. Lease: Right, I saw those that was a...a...a kind of a cartoon but okay. It had a...it had a stamp on it but it was...it was no more informative than these drawings here. I mean I...I looked at those drawings. They just were simple lines drawn on a thing. In fact, they...they were less accurate than this one. They...they...they did not show a single line of solar panels that accurately represented one line of sonar...solar panels. They're really more...nothing more than a cartoon.

Mr. Donovan: I think and again, the Board you're not required to see that...

Mr. McKelvey: No.

Mr. Donovan: ...but if I recall correctly basically we had a survey by Charlie Brown and Charlie showed that the footprint of where the solar panels would be located.

Mr. Lease: Right.

Mr. Donovan: If the Board is not satisfied with this drawing...if you think you need to see that you have the ability to ask for it. You're not required to if you think you have enough information based upon what's been submitted since you are being requested to grant a use variance for the use you could do that as well. It's up to the discretion of the Board.

Mr. McKelvey: On the other one Troon was involved with it too...the company, the solar company.

Mr. Donovan: Correct.

Mr. McKelvey: Is there any other questions from the Board?

No response.

Mr. McKelvey: We'll open it to the public. Anybody from the public want to speak?

Mr. Michalski: Hello, my name is Steve Michalski, I'm just an advocate of solar so I want to give you my a...a...reasoning why solar is a really benefit for all of us. Okay? And if you look where you get our energy now we get our energy from fossil fuels and fossil fuels are ripped out of the ground, they damage groundwater, they're transported, they want to put the Pilgrim Pipeline through here which nobody wants. There's tankers, there's trains carrying fossil fuels which are dangerous. They're polluting the air, they're polluting groundwater, people's tanks leak, solar is a enormous public benefit. We're getting our energy...for Town of Newburgh you're getting energy right here for all of us. Okay? Community solar which I believe this is proposed to be...many people put solar on their roofs and they...the energy goes directly into their house. Many people can't put solar on their roofs because their roofs don't face the right way, they have trees in the way, there's neighbor's trees are in the way, many people rent apartments so this is an opportunity to create local energy that we're all going to use over the next twenty-five years and beyond. Be...besides that you know we just had a storm came through, we lost power, there's likely to be more storms in the future, solar is now going to be attached to batteries in the future. You're going to have local micro grids. If you have...if you lose power for a week the Town of Newburgh the solar farm here with batteries is going to keep essential services going. So solar is really a public benefit. It's not just...it's not a strip mall, it's not like a...an office building. It really has an a long term benefits for all of us. So I ask that you consider that in your decision. Thank you.

Mr. Hughes: Sorry you had to wait so long for me to roll up here. I don't move as quick as I used to. Good evening, I congratulate the Board for re-opening the Hearing to hear what the applicant has to say. However, I am a little bit disappointed in Mr. Lease in the fact that after the original presentation and the descriptions of how impossible a use variance is to receive and describe and a very lengthy conversation of what is needed to be done to get there. Listen to this, I have even spoken to the Town Board and Supervisor Piaquadio and others, I think your Counsel will agree with me that it's ultimately impossible to grant a use variance under these conditions for many reasons and we won't get into an argument about what Mr. Lease thinks is a hardship or not. The proposal that was made and the numbers and everything are all right in sync with what goes on with one of these things and the easiest way out which I have described to Mr. Lease is to ask the Board (Town) for an overlay district with a sunset clause at the end of twenty years or whatever it is...those things are not going to last twenty-five years. They're obsolete when you order them. So if the project is projected to last fifteen years or twenty years or twenty-five years whatever the hell it is you make your sunset clause, you make your overlay district and you (whistling sound) draw a pencil around the map. No use, no change and when it's done he talks about it reverting back to the way it was...that's how easy it is to get there. Does anybody have any questions about what I just said? Because I can walk through this, I have been involved with these things; I'm a Pace Law graduate. At one time in my earlier misspent years I was the President of the Planning Federation in the County and I participated with the State. I know my way around and I know how to get there and a use variance is an impossibility but the overlay district (snapping fingers) can be done this week. And I don't know why he refuses to listen to this advice and comes back here again and again with comps and comparable things when it's not applicable. What the law says for comparable financial return on situations like this you have to go through everything that's allowed in that district and prove that you can't lease, rent, bargain, barter, cajole, whatever. But there's an easy way to get there and this has been going on...I think Mr. Lease said since January? Let's stop the games. Let's get the overlay district with sunset clause coincident with the end of the property and that can be flexible and put in writing and we can stop all this nonsense. You are compelled by law not to grant a use variance in this thing because they haven't demonstrated what's required by law to get a use variance.

Mr. Donovan: Before you roll back...

Mr. Hughes: Oh, yes.

Mr. Donovan: ...let me just say that I respectfully disagree to a degree...that use variances are not impossible...they're difficult and the...and the....and the issue here a...I think is up to the Board to decide. I wouldn't say that it's...I don't know that I agree with your characterization. I'll just leave it at that.

Mr. Hughes: Was I any...

Mr. Donovan: But I appreciate your input as always.

Mr. Hughes: Oh yeah and likewise and...nice haircut.

Mr. Donovan: Thank you, just today just for you...I thought you were coming.

Mr. McKelvey: I have a question or two, Dave of you. If...if they grant a variance in an R-1...R...well a residential district for solar and somebody else comes in with a piece of property in a residential area and wants to put solar in and they get turned down...they're going to say, they got it.

Mr. Donovan: So, you know, we run into this issue of whether or not our actions create a precedent and what I tell you always is everything that we do creates a precedent to a degree. Right? At the same point in time you have to look at the individual factors from each application. So if...if you granted a variance for a request A and it comes in location B it's the same exact facts you're going to have to grant the variance. If there are different facts or different circumstances, different conditions and you...you set those four through your decision to deny the one and grant the other it would be sustained. You have to have an objective reason though. You can't just say I like person A and don't like person B.

Mr. Lease: May I say something?

Mr. McKelvey: We could open up a can...

Mr. Donovan: It's up to the Chair.

Mr. McKelvey: We could open up a can of worms.

Mr. Lease: May I say something?

Mr. McKelvey: Go ahead.

Mr. Lease: Yeah, yeah, this is in fact the only hazardous waste site in the Town of Newburgh. That alone, that one point which is the foundation for the reason for this application is what makes this project completely unique. I...I...I don't think you...I don't think you can get...I don't think you can get to the first point of this application without realizing that unique quality and there is...there will never be another hazardous waste site in the Town of Newburgh and one that compromises such a large and a...a valuable piece of property as this. I think that's the unique thing that will prevent anyone else from following on the coattails of this application.

Mr. McKelvey: But they caused the problem by dumping the waste there.

Mr. Lease: I...I've gone through it again and I'll say it again, they did not cause the problem. It was the change in the DEC laws that caused the problem with the...with the contamination. It was not contamination when they dumped it. It...it became contamination when the DEC reclassified the materials. That's an...that is an extremely

important point of this application...it's central, it's those two features are central to the application. It is not self-created and a...and it a...and it was not inherited.

Inaudible audience member

Ms. Gennarelli: Please, can you just introduce yourself for the record and speak into the mic?

Mr. McKelvey: Yes.

Mr. Darrigo: Daniel Darrigo, I reside at 86 Lakeside Road. I just want to bring up the point about the DEC contamination. This was not our family's fault. At the time, when material was being dumped it was perfectly okay by the DEC. The remediation was done at great expense. We had to sell half of the farm to be able to do everything that the DEC said. At no case was there ever a criminal fine or anything. There was no civil fines. There was nothing to that effect. I just want to point out to this Board that this was definitely not created. I myself may have been four years old. Okay? This was not...I want to make that point completely clear. It's an insult to our family to even suggest that we created this...that we contaminated our own property knowing that it was contaminate...that's impossible. What we did was just normal practices but it got reclassified, new information came along and we got...you know we were left holding the bag. So I take it as a personal insult to even think that we...we did this to ourselves. I mean, do you think we would do this back forty, fifty years ago knowing that hey, you know what we're going to create a hardship so fifty years we can come in front of the Board and cry poverty. I mean, do you think we had that foresight? Thank you.

Mr. Lease: I...I also...Jeff Lease, I also want to make one more correction. I...a...Mr. Hughes has called me several times about what should be done on this application but in no instance did he suggest the a...the approach that he just gave before me. I never heard of that approach. I don't really know what he's...what he's referring to. I've tried to be as open and as...as flexible as possible but when he makes statements here that he says I'm doing something against his advice I...I really...that's a complete falsehood...with all due respect and I...I also find that incredibly insulting...

Mr. Hughes: How do you keep your nose from growing when you're telling stories like this?

Mr. Lease: Okay, that's enough, okay.

Mr. Hughes: But I've got quite enough of your crap too. And I respectfully disagree with what you said earlier about precedence. We have no precedence there established here. The reason that this Board is in existence is to purge the relief the conscript of the law. You're allowing somebody to do something that they're not supposed to do and this is the way for the person to get a reasonable return and if you would like to check on the voracity of my statements versus Mr. Lease you can call your Supervisor. Quit while you're behind Jeff.

Mr. McKelvey: Anyone else?

Mr. Olympia: The gentleman in the back.

Mr. Masten: The one in the back there, John.

Mr. McKelvey: Come ahead, come forward.

Mr. Siegfried: Hi, my name is Arthur Siegfried...

Mr. McKelvey: Come up to the mic please.

Ms. Gennarelli: Come to the microphone please.

Mr. Siegfried: I think I'm pretty loud.

Ms. Gennarelli: You have to speak into the microphone it's being recorded.

Mr. McKelvey: It's being recorded that's why.

Mr. Siegfried: Okay, Arthur Siegfried, Town of Newburgh. Mr. Marino, Mr. Lease I just don't like the way this is being presented as a plan to you guys. I think it's...no offense Mr. Lease, I don't think it's done properly. It's like a kid who does homework in the last five minutes...

Mr. McKelvey: Speak to the Board please.

Mr. Siegfried: ...it's homework in the last five minutes. You're not showing what's to be done here properly and you're not giving the people a feel to be there. Yes, everyone likes solar. This is the Town of Newburgh, everybody here is a half a hippie, you know, we all like solar, we're all pro solar...whatever. But what I've been seeing is going on in the Town of Newburgh is we're approving everything. We just had a big problem with the board...the Zoning Board a couple of weeks ago.

Mr. Donovan: But we're the Zoning Board.

Mr. Siegfried: A well the...Sarvis who approved that they were going to cut fifteen trees took off to Goshen to try and get it turned to thirty trees now and turn into a development like I told you they would and that's going on right now.

Mr. McKelvey: That's the planning board.

Ms. Gennarelli: The planning.

Mr. Siegfried: They approved what was going to go on over there now it's going to be a neighborhood. It went from cutting down fifteen...we got them down to fifteen trees an acre with a buffer they ran out to Goshen. You know these things are getting out of hand for a plan of Newburgh. What do we want Newburgh to be? Yes, solar is cool. Everybody wants solar, you know, everybody wants to do their part to do something good but present it like this? No, it's an insult to you guys too. You know and he a...and a Mr. Scalzo should ex...ex...give a reason why he had to excuse himself to the...to the room. When if you're going to excuse yourself from something and this goes to all of you guys...tell me why, I want to know why you got to excuse yourself from voting or from speaking on something. You know, I want to know if it's your cousin, if he's your brother-in-law, if he's your uncle. One of the problems we're having with Serviss is is that that's his uncle out in Goshen.

Mr. McKelvey: Well Mr. Scalzo I think he did some surveys for the...for the property.

Mr. Siegfried: See so then he's getting paid.

Mr. Masten: Yeah.

Mr. McKelvey: That was...that was a while back.

Mr. Siegfried: But it doesn't matter. Everyone is doing...I don't like the way things are being run around here, you know, I had the guys from the DEC in last week and I took them on a tour around Newburgh and they were blown away. They were blown away at the wetlands, what's happening to the wetlands. The wetlands by your house Mr. Marino. Do you remember that when I was a little kid it was a small little pond...?

Mr. Marino: Anyone who buys that house is crazy.

Mr. Siegfried: ...it was a little pond because you guys haven't been paying attention to what's been going on it's now almost up to Union Avenue. It's fifteen feet away from Union Avenue. This is going on all over the city...all over the Town of Newburgh...

Mr. McKelvey: We don't do site-plans.

Mr. Siegfried: But you guys should be knowing when things like this are going to happen. What's going to happen after twenty-five years? What are they going to put on it? You know and...and...and he tells you...I'm...I'm not hearing why is this ground toxic? What's in the ground that's toxic? What's the DEC's recommendations for this land? You know what is the DEC...did the DEC say well you know...you could farm this on here and make money? You know this...this isn't affected by this. You cleaned up the landsite I don't know maybe grow truffles who knows? You know, you don't have to grow corn and wheat, you know, there are other things to be going on and this is just not a plan. Who brings a paper like this? I can do this in about an hour. You know, this is ridiculous I'm an art director I can do that in an hour and bring it to you for to change the policy of the Town of Newburgh like this? I...I am blown away. You want a hardship

case? I just gave my mother hospice and then gave my spouse hospice back to back Alzheimer's and cancers that's a hardship case not because I let someone dump on my property for so long and then the...the stuff turned out to not be good. You know, yeah, things change and I know you want to make a little money and this is a great opportunity for him to make eighty thousand a year for doing nothing. Great. You know everybody wants to do something good but what you guys have to do is you guys represent Newburgh, the Town of Newburgh and have planned for us. I can't believe what's happened to the Town in my lifespan alone. It's turning into Yonkers, you know, it's horrible. You know that monstrosity they just built up on the hill when you're going on 84, that's somewhat excusable, it brings in jobs, it's on 84 and that whole area is kind of blaugh...you stay away from it. But all around little like this are being nailed up and destroyed and to come in here and present this and give you some bull hardship case story as an excuse for to throw it through...it's disrespectful to you and it's disrespectful to the residents of the Town of Newburgh. Now I'm back, I moved down to Florida for twenty-two years but I came back from hospice and I ain't leaving no more. I am going to be at every meeting now. I'm going to be watching people, photographing what's going on around the Town, into the wetlands, I've already contacted the FBI, the DEC, the Army Corp of Engineers and I'm getting all of them involved because this is crazy and it's got to come to a stop. Now I appreciate it if you guys take this to effect. And for the Lease but God bringing this in like this. I mean, come on, look at that. Honestly, seriously that's ridiculous. I needed better plans like this when I changed a lightbulb in the city of Fort Lauderdale. You guys...everyone up north likes to make jokes about southerners but God...you got to change a ceiling fan you've got to pull a permit. This is huge chunk of the Town of Newburgh. I want to see...if you...sol...if you want to build a solar farm cool. You show me what it's going to look like and how you're going to protect with maybe poplar trees around it the residents or something...or how...or how the land is going to be like if a storm comes in...

Mr. McKelvey: They have to show this to the planning board.

Mr. Siegfried: But before they...yeah but once it gets approved by you all these little things just (snapping fingers) people know people and things get done around here that's what's pissing me off.

Mr. McKelvey: Well that's why you can...

Mr. Siegfried: That's what's happening in the Town of Newburgh right here...let me finish...was with this just two weeks ago he got approved to cut down fifteen trees an acre right behind Little Brick Farm up here and then he ran over to see his uncle in Goshen who wanted to put it through...Animal, I guess is his name, who wanted to put it through but just it says, oh, put this through but I have to excuse myself. You know it's like, no, now he wants to take thirty trees an acre and they were going to trying to lower taxes. Who is scamming who about taxes too on these properties? For lower taxes on this...on this piece of property up here, he's only paying for like over a hundred ac...like ninety acres, like six grand, seven grand. You know and that's money that goes into the Town, you know, and then he wants to...the plans are already up that he wants to build...he

wants to rezone for a...two-family homes...for what is it...less than an acre? I...I don't have the figures with me but that's what...that's what I'm talking about. You know you guys approve one thing and then everyone just keeps flushing it through and people get whatever they want. Every...nobody...nobody cares about the residents it's just what...whoever comes here and wants to build something gets whatever they want.

Mr. McKelvey: We have...we have to stop you because we're here just for this use variance.

Mr. Siegfried: And if that's...I pulled out and just walked around Town from a play tonight when I was coming home the long way thank God I saw a meeting was tonight, forgot so I'll be here next...for the next one. I was like let me see what is going on tonight just out of curiosity and I'm glad I did. Because once again like I said, that is an insult to bring that to you. That is really an insult for something that's going to...to impact that many people's homes and the community, you know, show me what you're going to do. You know, before you come to asking you guys for anything they should be prepared, you know or else you guys look like fools. You guys look like uh hum, I want my pay check, that's it. That's what you look like. Come, you know, show me what you're going to do, that's not anything. And again, what is in the ground that is toxic? Do any of you know?

Mr. McKelvey: We...we a...we don't...

Mr. Siegfried: Do you any of you know what's in the ground that's toxic?

Mr. McKelvey: We don't do site plans.

Mr. Siegfried: So none of you know today what's toxic?

Mr. McKelvey: They have...they have to go before the planning board.

Mr. Siegfried: But none of you know? I'm asking you a question. Do any of you know what's in the ground that's toxic that they're complaining about?

No response.

Mr. Siegfried: Anyone?

Mr. Bell: Let me ask you a question. And I hope I'm not out of line here. I hear you. Okay? I'm not saying I agree or disagree with you. But I am hearing that you're telling us that we're about to approve something and you don't even know what direction we're going in...

Mr. Siegfried: I'm just letting you know my concerns.

Mr. Bell: ...hold on, hold on, okay I hear your concerns but what we're here for is for a use variance. Okay? I hear what you are saying all about what's around Newburgh and what's going on around Newburgh. But let's stick to what's going on with this variance, this use variance, right, I'm not going to step too far out of my bounds but I don't want you to tell us how to vote because you don't know how we are going to vote. I hope you understand what I am saying.

Mr. Siegfried: I know exactly what you are saying.

Mr. Bell: I...I'm trying to tread lightly here.

Mr. Siegfried: No, I know.

Mr. Bell: Okay, okay, that's what I want to say.

Mr. McKelvey: And what's going on around the Town we're not here for that.

Mr. Bell: We got that.

Mr. Siegfried: You guys have the opportunity to stop these things from happening and nip it in the bud or at least if someone is going to come to you, show you the respect by bringing something proper, you know. If I...you know, if I break into a...even a popup dinner don't show up at my house with a bag of chips. You know and that's what that is. You know and like I said...I would like an answer, does anyone here know what's in the ground that's toxic?

Mr. Bell: The one thing that you have to understand is that we do our homework. Okay? Things that are brought forward...brought forward to this Board, we hear what's brought forward, it triggers a question to an answer that we don't have and then we go back and we do our homework so that's why things are...some of the thing are...are held over until we have the answer.

Mr. Siegfried: Okay.

Mr. Bell: So, so...so please don't...

Mr. Siegfried: No, I understand.

Mr. Bell: ...don't insult us like we don't do what we're supposed to do and we're only here for a paycheck that's...that's...I'm just saying, okay.

Mr. Siegfried: Well you're going to talk about toxic and you're not mentioning about what's toxic.

Mr. Donovan: So...so let's just talk about that for a second so it's a letter from the DEC it's posted on the website so there's a website you can go to and access all this

information which says that remediation of the site is complete and the use of the eight point eight six acres is restricted to commercial use cause eight point eight six acres of the forty acre site was impacted by the former dump and that future use of adjacent property is subject to local zoning laws and restrictions. So that's from the DEC letter, January 9th 2018 posted on the website. So if you went on the website and did your homework you would see this.

Mr. Siegfried: So a small part is toxic.

Mr. Donovan: It doesn't say that it's toxic it says it's an inactive hazardous waste site that's been remediated.

Mr. Masten: Yes, right.

Mr. Siegfried: It says nothing to...then why am I hearing toxic from Mr. Lease like this is the only opportunity that they can have? I mean, you know, it...it's nice...I don't...you know it just doesn't sound right I'm standing here and I'm hearing this is toxic but and now you're telling me it's been cleaned up pretty much...

Mr. Donovan: I'm telling you what the DEC said.

Mr. Siegfried: The DEC is telling...say that it was a small portion and it was cleaned up so then there are other uses for it. This is not the only use and no it's not a hardship case.

Mr. McKelvey: You can't build houses on it.

Mr. Siegfried: You can do something else probably but you know, that's like I said, I don't have even a problem with the solar but this is not you know, this isn't a plan. You know, this is not a plan.

Mr. McKelvey: That's what we're saying that they're here for a use variance. They have to give their plans to the planning board.

Mr. Masten: That's right.

Mr. McKelvey: Not to us.

Mr. Siegfried: See that's the problem I've been having for a year now. Well what, I'm sorry it gets...the variance starts with one person saying okay and then the amount of work that has to get done. Like I said we have to...we're going crazy now dealing with...he went from just cutting down fifteen trees over here to building a neighborhood, in two weeks...

Mr. McKelvey: You're repeating yourself now.

Mr. Siegfried: But that's why I...I said what I said. Okay? You know there...there's reason why I'm a little bit upset about this because I've been dealing with this for the last few weeks and seeing what's been going on, taking the DEC around and they're freaking out. You know, the DEC was blown away by a lot of thing with the wetlands around here and they advised me to call the Army Corp of Engineers because they're in charge of things that aren't covered by the DEC right now so...

Mr. McKelvey: I think we have to stop here because we're here for a use variance.

Mr. Siegfried: Fine, fine.

Mr. Masten: Okay.

Mr. McKelvey: Anybody else want to speak?

No response.

Mr. McKelvey: Once again I'll go to the Board Members. Mr. Bell?

Mr. Bell: I'm good right now.

Mr. McKelvey: Peter?

Mr. Olympia: I'm good.

Mr. Levin: I'm fine.

Mr. Masten: I'm fine.

Mr. Marino: No.

Mr. Donovan: So in terms of the Public Hearing your options are to close or continue the Public Hearing. Relative to a...a more detailed plan a...you are entitled to ask for that, let me just find the provision in the code. So 185-55-F required information in appeal or application, each appeal or application shall fully set forth the circumstances of the case. Each application for a Special Permit which this is not but each application for a Special Permit shall be accompanied by a proposed plan showing the size and location of the lot in a site plan showing the location of buildings and proposed facilities. The import of that provision is that it's that is not required for a use variance however, you have it within your authority if you don't think you're in a position to make an informed opinion or a decision on this application to ask for a more detailed plan. And if you're going to do that, there was a point why I started that, then you should continue the Public Hearing so it will allow people the ability to comment on that.

Mr. McKelvey: So what's the wishes of the Board?

Mr. Marino: I...I think I would like to continue the Public Hearing because I agree with a lot of what Mr. Lease said but also a lot of what Mr. Siegfried said. And if he could come back, Mr. Lease with some of the details that we're asking for tonight we might be in a better position to make a decision next month. I...I don't think we should kill the issue. Solar energy is the way to go on some point so let's ask for more information, hold over the Public Hearing and continue next month.

Mr. Bell: I agree.

Mr. McKelvey: Does somebody want to make that motion?

Mr. Marino: I'll make that motion.

Mr. Masten: I'll second it John.

Mr. Bell: I'll second, yup.

Mr. McKelvey: Roll call.

Ms. Gennarelli: Okay so who was the second Darrell or John Masten

Mr. Olympia: John.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

Peter Olympia: Yes

John McKelvey: Yes

Mr. McKelvey: Does somebody want to bring Mr. Scalzo back in?

Ms. Gennarelli: So John that would be...

Mr. McKelvey: When...when's the date of the next meeting?

Ms. Gennarelli: June 28th and he's going to submit more information? Is that what's happening?

Mr. Donovan: Yeah, that's correct.

Mr. Lease: Can you be very specific about what information you'd like to see? A detailed plan, of course.

Mr. Donovan: Well not to speak to the Board it sounds to me like if you have a survey...

Mr. Lease: Yes.

Mr. Donovan: ...and you can field locate the footprint of where the panels are proposed to go, generally speaking, is the Board wants?

Board Members: Yes.

Mr. Donovan: So, you have a picture of the entire site and a footprint for where the panels would be.

Mr. Lease: Happily, thank you.

Mr. Marino: And if there's...if there's going to be any buffer created to protect the surrounding area, you know, show that as well.

Mr. Lease: Okay, great. Thank you.

Mr. McKelvey: Okay Darrin.

Mr. Scalzo: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight's applicant. If I could ask in the interest of time if the folks in the audience could wait out in the hallway and we'll call you in very shortly.

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN
JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO - RECUSED

ALSO PRESENT:

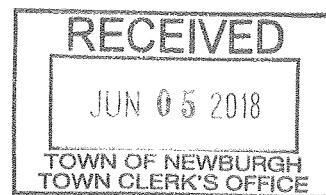
DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:12 PM)

1508
6/13/18

ZBA MEETING – MAY 24, 2018

(Resumption for decision: 9:08 PM)



RESERVED DECISION

Same Minutes Used for Both the Interpretation and the Use Variance

WCC TANK TECHNOLOGY, INC.
(2102 PARTNERS, LLC.)

2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,
(3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation that the use and proposed indoor parking of so-called “hydrovac” trucks used by WCC Tank Technology in its business is permitted under the 1982 use variance as a legally permitted expansion of the existing business and, therefore, a building permit should be issued for the new garage.

Mr. Scalzo: At this time we have a Reserved Decision from the April 26, 2018 meeting which is WCC Tank Technology, Inc. (2102 Partners, LLC.) at 2102 Route 300 & Plank Road, N., mailing address of Wallkill. They are seeking an Interpretation that the use and proposed indoor parking of so-called “hydrovac” trucks used by WCC Tank Technology in its business is permitted under the 1982 use variance as a legally permitted expansion of the existing business and, therefore, a building permit should be issued for a new garage. At this point we’re...we’ll tackle these one at a time, there is another Reserved Decision for a use variance for that same property.

Mr. Donovan: And also the...an appeal of the Order to Remedy issued by Code Compliance, just to round that out.

Mr. Scalzo: Okay...we’re going to have quite a bit of discussion I’m sure folks here a...I got a lot out of reading the meeting minutes. I’m hoping the rest of the Board Member...Members have had a chance as well to see the testimony that was given at the last meeting. The Public Hearing is closed on this so we...we can ask the applicant’s representative if we so chose but other than that no other comments will be heard. We did extend...we had a ten day extension on comments, written comments to come in. Betty, we got a few pieces of information on that? Which are included in our package, I believe.

Ms. Gennarelli: Yes.

Mr. Scalzo: I will...should I read in the County’s...? Yup, the County’s comments, the Planning Department has reviewed the submitted materials regarding the appeal for a...for a...both of them say use variance, however, and has found no evidence that inter-municipal or countywide impacts would result from its approval. County Planning recommends that the Board act on this variance request only if the applicant satisfied the unnecessary hardship standard as defined by New York State Law a...the courts of New York hold the unnecessary hardship standard is satisfied by competent proof of each of the following: the land in question cannot yield a reasonable return in dollars and cents if used for any use permitted in the zone, the use to be authorized by the variance will not alter the essential character of the locality, the hardship is not unique to the parcel and not general throughout the zoning district and the hardship is not self-created. With the proposed expansion the existing non-conforming use does not appear to meet the standard. It also does not

appear that the continuation and expansion of the use will cause significant negative impacts. We have no advisory comments regarding this application. And the County recommendation is Local Determination.

Mr. Donovan: And...and if I could Mr. Chairman just for the purpose of clarity? So the County referral is for the use variance component of the application. There is also an interpretation component of the application. Interpretations are not items that referable to the Orange County Department of Planning so they would...would not comment on that a...component of the application.

Mr. Scalzo: I understand. Thank you, Dave. Dave if I could ask you to lead us through a...?

Mr. Donovan: So just trying to orient this, the Board will recall...at least the Members that were on the Board there was a request from Code Compliance a little over a year ago for clarification of the 1982 use variance. The use of a tank lining business was permitted pursuant to a 1982 use variance a...the Board back in...let me pull out the decision...April of 2017 answered a series of questions posed by Code Compliance in sum and substance saying that the tank lining business approved in 1982 was obviously continued to be authorized under the use variance. The...what the Board found to be the expansion of that business to include a business known as hydro evacuation was not permitted. Thereafter in...September of 2017 there was a Building Permit Application made relative to this property to construct a 37 x 50 foot addition. Subsequently by a letter written by WCC there was a clarification that letter dated January 9, 2018 indicating that there would be four hydrovac trucks...parked in this 37 x 50 foot addition although called hydrovac trucks they would not be used in connection with the operation of the Hydrovac business which this Board had determined was not allowed on the site. Thereafter by letter February 1, 2018, Code Compliance issued a...what is characterized as an interpretation and determination that the indoor parking of the four hydrovac vehicles was not encompassed by the 1982 use variance or the 2017 a...clarification of the 1982 use variance that at that time in connection with that decision this Board had determined that outdoor parking was not permitted. And again if I could just flip back to...the item that we were requested to answer by Code Compliance...specifically did the March 1982 use variance allow the premises to be used for and in support of outdoor parking of semi-trucks and trailers. This Board finds it has insufficient evidence to make a determination if the 1982 use variance authorized the use of the premises for this specific use. I think largely in reliance upon that and reliance upon the fact that this Board indicated the Hydrovac business was not allowed Code Compliance's interpretation and determination was the parking of the four hydrovac trucks indoors, outdoors didn't matter, it was not permitted. Thereafter, the applicant appealed...there was also I need to add again...there was an Order to Remedy issued indicated the property...the property was being used improperly for the Hydrovac business. Thereafter, the applicant made his application seeking the first item of relief, an interpretation that the 1982 use variance extends to indoor storage of so-called hydrovac trucks used by WCC in its business. So that is the first order of business for this Board to either affirm the determination of Code Compliance that the 1982 use variance does not allow the storage of the four hydrovac trucks a...and...and withhold...uphold that determination or determine that the 1982 use variance does extend to indoor storage of the proposed four hydrovac trucks. And Mr. Gaba I'll just ask you since you are present if I've accurately characterized that first component of your application?

Mr. Gaba: Yes.

Mr. Donovan: I admire your brevity. Obviously something I'm not blessed with.

Mr. Scalzo: Thank you Dave. As I mentioned earlier I did get a chance to really dig through the meeting minutes from last month. The testimony given by Mr. Gaba just indicating that WCC's owner's had the sister company which is called Hydrovac, Hydrovac is not engaged in tank removal work a...at one point it was stated that they would allow or lease...WCC's trucks to Hydrovac or for a cross-use of the trucks a...and Mr. Gaba also went over that in 2005 Hydrovac Company moved on to the site, WCC shared with Hydrovac, put up the sign, put in the offices for Hydrovac, put the Hydrovac trucks on the property and in all candor as he says some of the Hydrovac truck operations took place on the property but it has since ceased. And then further on in the testimony Mr. Gaba indicates that in fact Mr. Conklin is no longer involved in the Hydrovac business a...Mr. Conklin himself had testified a...that as far as activity on the property...they do some local firehouse or fire station work. They can repair the water tank on the truck; they'll even put a fiberglass bed inside one of the trucks. They do some very minor work on the property but they do no major tank work on the property. That in itself isn't in alignment with the 1982 variance. Further on in the meeting Mr. Gaba had indicated that once they were notified that they were in violation that they did cease the...the operations. I had asked during the meeting of Mr. Conklin that he had made a promise in the year ago meeting to restore the area with top soil and seed and having visited the site I didn't see that. Mr. Conklin in his testimony responded that he has not done that. Also indicated in the minutes, I had asked Mr. Gaba about WCC owning...a...since they own hydrovac trucks they would perhaps lease them to Hydrovac a...and the clarification was that they were not in a truck leasing business, that would be a totally separate business although further on in the meeting indicated that there were other trucks there's pickup trucks on the site. There was two one ton dump trucks, two pickups, a van right now. I was at the site today there's quite a...quite a few a...well there's three one ton dump trucks, there's a couple of pickup trucks there additional the business may have been operating at the time, the WCC business so there probably were employee vehicles there as well. We received a letter dated May 21, 2018 a...Mr. Conklin had indicated he was no longer involved with Hydrovac, however, the May 21st letter...Chairman Scalzo and Board Members, I am writing in regard to the pending application of WCC Tank Technology Inc. and the 2102 Partners LLC. to the ZBA, at the Public Hearing on April 26, 2018 I presented proof that my employment and association with Hydrovac Inc. had been terminated by the then majority shareholder of the business. In the weeks since the Public Hearing my divorce proceeding has been resolved. As a result of which I was awarded ownership of Hydrovac Inc. however, as I stated at the Public Hearing I am currently parking only four hydrovac...hydroevacuation trucks all owned by WCC Tank Technology on the property. So this letter indicates that the...the trucks are there. I did not see them today. This will not change. No hydroexcavation trucks owned by Hydrovac Inc. will be parked on or present at 2102 Route 300. The four trucks at the property will be used only by WCC Tank Technology Inc. Although the change in ownership of Hydrovac Inc. will have no effect on the parking or use of hydroexcavation trucks at the property I feel it's important to make the Board aware of this development. So a...that was received as I say May 21 a...the meeting minutes from last month, there was...I...I couldn't quite a...Mr. Gaba it's...they are not running Hydrovac out of that site?

Mr. Gaba: No they are not.

Mr. Scalzo: They are not...

Mr. Gaba: Do you want me to say that into the microphone?

Mr. Scalzo: Please, if you could...you know what; I probably have a couple of additional questions...as we go.

Mr. Gaba: Well, first let me apologize Mr. Conklin had a death in this family. He would have been here otherwise but under the circumstances he...he just couldn't make it. If there are issues that the Board needs to have fleshed out or questions that you need him to answer we'll be happy to put this over to the June meeting. We'll have everyone back and provide whatever information you may need. As to Hydrovac, Hydrovac is off site, has been off site for a while. We sent in a...a supplemental letter addressing that issue and continues to be off site as per that letter will not be going back on site or so I am told by my client. (Inaudible) told was the business situation.

Mr. Scalzo: Okay and the May 21st letter a...just a few days ago...Mr. Conklin now is the sole owner or partner or majority partner in...?

Mr. Gaba: Yeah, it was a strange situation a...he and his wife owned Hydrovac and she was majority shareholder cause that's the way they set the corporation and as the divorce got a...more unpleasant shall we say a...they took action to terminate him and took over the company, Mrs. Conklin or the former Mrs. Conklin did and as it turned out as they went through the marital assets and decided who got what this was...this just turned out that she decided she decided she decided she'd rather have other assets rather than Hydrovac and so literally had a judge award them that asset that day and it was really much to his surprise as anybody. He thought that was a done deal when it was hers but now he's got but not at this site...

Mr. Scalzo: And...and that's a...thank you very much and please forward Mr. Conklin our condolences in his loss at this time.

Mr. Olympia: Do you know what the operating address is for Hydrovac?

Mr. Gaba: It...it...it's...it's off 9W somewhere but I can't tell you...I...I just...I just don't...he's told me before, I just don't remember. I can get that information though if you want I will...like said we'll submit supplemental information if the Board wants.

Mr. McKelvey: That might be the site that they moved from cause they had an offsite I think up at...up that...

Mr. Scalzo: I believe it was off Lattintown Road at one point but I thought that was an old site not...it may not be the new one I'm not sure.

Mr. McKelvey: Yeah, I don't know either.

Mr. Scalzo: I...I don't...I'm not sure how relevant it is...at this point but...thank you.

Mr. Gaba: Thank you.

Mr. Masten: Darrin, just...the other day when I was at the site there was one of those hydrovac trucks at that site on 300.

Mr. Scalzo: Was it labelled Hydrovac or...?

Mr. Masten: I couldn't tell how it was labeled because I pulled in there and I didn't see. I saw it to the left side of the building.

Mr. Scalzo: Sure it is a unique looking piece of equipment a...Mr. Conklin in his May 21 letter does state that there are four trucks.

Mr. Masten: I only saw one there.

Mr. Scalzo: Perhaps they were actually on a...on a project.

Mr. Masten: Yeah.

Mr. Scalzo: So that's...unless you saw the tag on the door. I don't know if they're even labelled. I haven't seen one...WCC's...

Mr. Masten: Just to be on information...there was a broken pole on 9W the other day and one of Conklin's trucks were there hydro-vacing.

Mr. Gaba: Inaudible

Mr. Masten: It was one of his trucks doing the work...

Mr. Gaba: Really?

Mr. Masten: Yes, WCC right by Middlehope Firehouse.

Mr. Scalzo: Further on in last month's meeting minutes Mr. Gaba again just reading right from the minutes which are online. Anyone...actually they're not on line yet until we approve them then they'll be on line.

Ms. Gennarelli: No, they're online.

Mr. Scalzo: Oh, they are online? Oh, they are. Very good. Thank you Betty.

Ms. Gennarelli: As soon as I submit them to the Town Clerk.

Mr. Scalzo: Okay. From Mr. Gaba's testimony the twist is this a...you're going to hear in a minute from the accountant but the accountant indicated that we need to enlarge it and we need to expand

it, later on, we need to diversify. They indicate...further on it says we're not going to bring in something altogether but we want to use the tools that we use in our business for a closely related activity to supplement existing use. Now it's not clear if that's allowed under the 1982 variance a...you know that...that's I believe that we could touch on that if we get to the use variance section of this later. The change in use, the change in use is very different from expanded use a...and that's again that's going to be discussed for the second portion of this. Let's see...further on in the testimony Mr. Gaba indicates that they're looking for relief, they want besides part of the interpretation to let us use our trucks for something other than excavating...tanks. Mr. Conklin later in the testimony indicated we're not looking to do offsite so all work we would do...and it was in response to a question Mr. Marino asked...they're not...they're not looking to make a construction yard out of the site, which was one of the concerns of the Board at the time and then further on other testimony from other folks had been brought in. So that I...I had just read through all the...the substantial portions of the meeting minutes that I got from the last meeting and I'm going to turn to my Board Members here. Mr. Bell do you have any comments on this?

Mr. Bell: Not at this time, I'm still...

Mr. Scalzo: We can come back to you. Mr. Olympia?

Mr. Olympia: Yeah, there seems to be lot of inconsistency with...with the testimony and...and the use of the property and the future use of the property. That's the problem I have.

Mr. Scalzo: Thank you. Mr. McKelvey?

Mr. McKelvey: I just want to know, Mr. Gaba, do you know what hours that they back these trucks out with the noise in the morning? That was one of the complaints.

Mr. Gaba: Well, yeah a...the backup beepers were an issue. The trucks do go out in the morning but it's, you know, a...vary...the hours vary. I can't tell you that they start at 7AM every day or 9AM every day or 6:30, it depends on the jobs they have.

Mr. Scalzo: They and it has been indicated in previous it might have been last month or even last year but they are emergency response folks they yeah, they can get called out at 2 or 3 in the morning.

Mr. Masten: Yes.

Mr. McKelvey: Yeah.

Mr. Gaba: Yup that's among one of the reasons we wanted the accessory use of being able to do excavations besides on tanks.

Mr. McKelvey: One of the main complaints was noise.

Mr. McKelvey: Thank you. Mr. Levin, comments, questions ?

Mr. Levin: I a...I agree with Mr. Olympia. I think things seem to change all the time on this...on this project.

Mr. Scalzo: Mr. Masten?

Mr. Masten: I have no other comment.

Mr. Scalzo: Mr. Marino?

Mr. Marino: I have nothing at this time.

Mr. Scalzo: Mr. Bell, I'll just go back to you.

Mr. Bell: There's very much inconsistencies. So you...did you say that the...the Hydrovac Company is now merged with WCC? Is that what I'm hearing?

Mr. Scalzo: No. No, no, no they are two entirely different companies.

Mr. Bell: Two different companies.

Mr. Scalzo: Two entire, they operate out of different...

Mr. Bell: That's what I...

Mr. Scalzo: ...they operate out of different locations...

Mr. Bell: Yup, okay.

Mr. Scalzo: ...although again, the letter...I hope you've got it there...

Mr. Bell: Yes, I see it.

Mr. Scalzo: ...Mr. Conklin indicates that there are currently four trucks at the a...at the property.

Mr. Bell: Got it.

Mr. Scalzo: As the Public Hearing is closed...I'm going to just...I'll look to...does the Board feel as though they've had enough time to analyze a...the information that we have to...you know, at least...Dave am I...? I'm...I'm...I don't know that I'm going through the area variance questions in this case so if you could lead it from here that would...

Mr. Donovan: No so, well so the question for the Board initially, you don't have answer this right away but do you think you have enough information or do you want more time? I think Mr. Gaba has indicated that he'd consent to...to more time, if the Board wants that. If the Board doesn't want that then you need to go through...you need to start first with the Interpretation and your options there are a motion to affirm the Code Compliance determination of February 1, 2018 or

alternatively a motion to essentially reverse that and issue an interpretation that the 1982 use variance extends to the indoor storage of the four hydrovac trucks. So that...that would be first, you'd have to decide...if you want more time to consider that or if you want to advance one of those motions.

Mr. Gaba: Could I a...be allowed to address the inconsistencies issue before you decide that or would you prefer to (Inaudible)?

Mr. Scalzo: Mr. Gaba, please approach. And I...I was unaware that the meeting minutes were online...I'm not sure if you had a chance to read them.

Mr. Gaba: No, no I was there so...I pretty much remember. In...in regard to the facts of this matter I understand that there's been a lot of dispute and a lot of I'll say ancillary issues raised and anything from whether the building is going to be over the septic tank to a...a...wetlands and things like that but really in terms of the interpretation and whether or not we can use these four trucks in WCC's business I...I don't think that the facts are...are murky or in dispute at all. There was in the 1980's...in 1982 a variance granted to allow WCC Tank Technology to run it's lining business and the lining business even then and...and this is undisputed involved excavation of tanks and excavation of tanks necessarily required dig em up, excavation. Now this is not a legal non-conforming use. This is a use variance. They are two very different animals. Under the law, I'm sure your Counsel will tell you, you can expand a use unless expressly prohibited by the Code or the variance under which it's granted to a...increase with time...naturally expand, modes of production that change, modes of delivering services change. If you had, for example, I don't know a...a cannery, a factory that...that canned vegetables or something like that. Okay? You could as time goes by if you got a use variance for it expand the building and change the machinery inside. You could change the trucks that come and go to deliver the vegetables. What you can't do is start selling retail on the property because that's changing the use. Okay? So here we have a business a tank lining it's all in dispute, a tank lining business that does excavation, they could have as many shovels on the property as they wanted to dig up the tanks. It's part of their business and when the technology changes and they need a backhoe instead of shovels they could park a backhoe on...on the...as long as it was used in WCC's business for the tank excavation they have a right to do that under their use variance. So here now they had a number of different trucks and...and...and vehicles involved, they never did have a backhoe but they always did dig up or they had a subcontractor do it or otherwise got the tanks dug up. So instead of having a backhoe which I think they could do, as of right if they were going to dig up the tanks themselves there were these hydrovac trucks to dig up the tanks. I think they have a legal right under the variance that they got to do that. I think it's a natural expansion of the tank lining business. Now all the other business about is the excavation still on the site or not on the site or how is it operating? I grant you there is a lot of back and forth about that but the basic issue on this first...this first application you're deciding whether we have a right...or that the client has a right to park these trucks on the property? I think the facts are crystal clear. I...I just don't see the inconsistencies there.

Mr. Bloom: Chairman, may I be heard...in response?

Mr. Scalzo: Mr. Bloom, I apologize, but you can't. We have the opportunity to ask the applicant however the Public Hearing is closed. The applicant's representative is here so I...I apologize Mr. Bloom but we can't accept your testimony at this time.

Mr. Bloom: Thank you.

Mr. Donovan: So Mr. Chairman all I wanted to do and I'm going to...I'm going to read to you some areas of the law that are outlined in the practice commentaries to Section 267 of the New York State Town Law relative to use variances. And I'm just going to read this verbatim. It says a use for which a use variance has been granted constitutes a conforming use and as a result no further use variance is required for its expansion. However, the fact that the property may be used for commercial purposes does not leave the development of the property unrestrained. The use of the property remains subject to the terms of the use and where the Board of Appeals has previously determined that the development is limited only to a certain extent by the terms of the variance the Board of Appeals is not free layered to disregard that determination. Not citing the cases that are cited in the practice commentaries but I just wanted to provide that information to the Board. That being the case we're back to where we were before which is you could ask for more time, you can...someone can introduce or make a motion to affirm the Building Inspector's...Code Compliance's determination or someone could make a motion to grant the interpretation requested by the applicant which would in effect, reverse the determination of the...Code Compliance Department.

Mr. Scalzo: Well I'm going to look to the Board...ask what the Board's pleasure is here...do I have any motion?

No response.

Mr. Donovan: Now I took tomorrow off to paint my front porch so just to make sure you know I start at 8:00.

Mr. Scalzo: Alright and even if the motion is to request more time a...but we need to...we need to wrap this up.

Mr. Olympia: I'll make a motion that we a...move to...a...sustain the Code Compliance requirements.

Mr. Donovan: The...the February 18th letter...

Mr. Olympia: Right.

Mr. Donovan: ...to affirm that determination.

Mr. Scalzo: Alright we have a motion from Mr. Olympia to sustain the Code Compliance determination.

Mr. Levin: I'll second that.

Mr. Scalzo: We have a second from Mr. Levin.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Donovan: So the next thing you need to do then...the second request which you now have to act upon is the request for a use variance permitting a change to the existing permitted tank repair, and I should just add I'm reading from Mr. Gaba's letter of March 29, 2018. A use variance permitting a change to the existing permitted tank repair use on the property to extend to use and parking of WCC's hydrovac trucks. And I'll just ask Mr. Gaba since he has a puzzled look on his face...is that what you...? I read from your letter.

Mr. Gaba: Well yeah it was used then for purposes other than my client's...

Ms. Gennarelli: I'm sorry, you're going to need to go to the...

Mr. Donovan: So for clarification and for using them in association with the WCC business?

Mr. Gaba: Yes.

Mr. Donovan: So Mr. Chairman, relative to that request, you need to take a look at the four factors for the use variance.

Mr. Scalzo: I have them here. Alright I will look to the Board; we will go through the test of the four questions for a use variance application. All four of these criteria must be met or the Zoning Board is barred by the New York State Town Law from granting an approval. To allow a use not otherwise allowed in zoning an applicant must demonstrate to the Board unnecessary hardship satisfied by competent proof. Such demonstration includes all of the following for each and every use permitted in that zone. The first is the land cannot realize a reasonable return in dollars and cents substantial as shown by competent financial evidence. Please recall at the last Board meeting we had testimony by a certified public accountant which also gave us documentation supporting the a...that the business cannot realize a reasonable return. Has the Board had a chance to review

that information and if anyone has any discussion that we can...move through at this point? Mr. Bell?

Mr. Bell: No.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: Yes.

Mr. Scalzo: You're satisfied that the a...both of you gentleman are satisfied that the a...

Mr. Bell: Yes.

Mr. Scalzo: ...competent financial evidence. Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: So, so.

Mr. Scalzo: So, so?

Mr. Donovan: So just...Darrin, do you have that letter in front of you the letter from Tom Weddell who was...

Mr. Scalzo: I did a moment ago.

Mr. Donovan: So what has been submitted is a letter from RBT LLP, dated April 26, 2018 which purports to show following please find financial information from WCC Tank Technology to support today's Zoning Board presentation. It shows a sales and net income/loss. WCC Tank Technology Inc. expense partial list signed by Tom Weddell. The Board has been through the use variance criteria relative to this first item before. Generally, specifically what's required under the first category is competent financial evidence called by dollars and cents proof. It demonstrates to the Board that a...no financial...reasonable financial return can be realized on the property unless the use variance is granted. I believe the applicant has indicated since we granted the use variance...not we...but the ZBA in 1982 that that hurdle was cleared. You need to determine whether or not you find the proof in front of you a...justifies that position. In other words this is sufficient to demonstrate to you that the four extra trucks are required a...to have a reasonable financial economic return on the property.

Mr. Levin: The reason I'm swaying back and forth is because he's had those trucks in use during this period of time and still not showing a profit...or a substantial profit. Am I wrong about that? He's not been using the trucks?

Mr. Gaba: WC...WCC's trucks were used for WCC jobs only on a limited basis. They were shared or leased to Hydrovac. Hydrovac obtained the cash from those jobs not WCC. WCC can't use the trucks, WCC will suffer the loss you see there.

Mr. Levin: The trucks were on the property.

Mr. Gaba: Yeah but they weren't being used by WCC. They were being used by Hydrovac a different corporation.

Mr. Levin: Okay.

Mr. Donovan: So again just for the Board...so we went through this with the Troon Properties application and if you recall you denied that use variance. There was a lawsuit. You know among other things the court determined that...you know, it sustained your denial because there was no appraisal of the property, there was no identification of the carrying costs of the property, there was no identification of you know I guess Mr. Gaba is saying this would be the...if they had it and if they didn't what the financial loss would be a...but those are some of the things you typically look for in a use variance; an appraisal, an estimate of carrying costs, so I just want to make sure the Board is satisfied or not satisfied with the information that you have.

Mr. Scalzo: I'm not a finance guy Dave, you mentioned an appraisal and the other supplemental information a...what do my fellow Board Members...anybody with more expertise than me could weigh in on that?

Mr. Olympia: Well Mr. Gaba have the 2017 tax returns been done or completed?

Mr. Gaba: I...I don't know.

Mr. Olympia: Can I ask you some questions about the income statement that we were provided?

Mr. Gaba: You can if you like but I am not an accountant I...

Mr. Olympia: I...I understand,

Mr. Gaba: ...so I...

Mr. Olympia: I understand.

Mr. Gaba: (Inaudible) ...you want us to bring back the account's we have to do that.

Mr. Olympia: Maybe you can answer the question. He had nominal profitability from 2013 to 2015, 2016 his sales almost tripled and he shows a loss of \$62,000. Do you know what the reason for that was? I mean was the...?

Mr. Gaba: (Inaudible).

Mr. Olympia: I...I would like to have some additional financial information if we can get Tom Weddell...

Mr. Donovan: Well that's up to the Board, I mean if the Board wants to...ask for additional information then you need to continue the...okay. So if you recall before you indicated you didn't need it...you closed the Public Hearing you needed additional time to think about the information but if we're going have additional information submitted then you have an issue with the Public Hearing being closed since the public can't comment on additional information. So your...your choices are you can vote with the information that you have or you're going to have to reopen this if you want additional information because it's not fair to the public otherwise.

Mr. Gaba: I don't think that's true at all. Unless...if there's a change in the application that the public hasn't had an opportunity to comment on it then certainly I'd agree with you. It's the exact same application there going to ask us for some additional financials...well it's the Board's prerogative to not open or open that's all there is to it but I would say you're not required to if you don't want to just because you asked for tax returns or I don't know some information whether the trucks are on site or not?

Mr. Scalzo: Your opinion of that Dave?

Mr. Donovan: Are we required? We may not be required. I said it was fair. I know I'm a lawyer I'm not supposed to say what's fair but the Board did...you understand when we closed the Public Hearing the idea was you had sufficient information and needed time to consider that information that was the...as I recall it anyway, that was the condition under which you closed the Public Hearing. What Mr. Gaba is saying is not wrong, right? Okay, you could not open the Public Hearing. Obviously indicating there's additional which has been the practice of the Board under my advice the conditional information of some material matters being submitted the public had a right to comment on it. You closed the Public Hearing. You can vote. You're in a position to vote. Or not, that's, you know that's...

Mr. Scalzo: Alright the Public Hearing was closed on area variance and use variance...

Mr. Donovan: No, no there's no area variance. It was an Interpretation...

Mr. Scalzo: An Interpretation...

Mr. Donovan: ...and a use variance and a...

Mr. Scalzo: ...and a use variance...

Mr. Donovan: ...and a reversal...the request to reverse the Order to Remedy. Those were the three items before the Board...

Mr. Scalzo: Right.

Mr. Donovan: ...and the Public Hearing was closed relative to all those three items.

Mr. Scalzo: Relative to all three, okay.

Mr. Bell: I'll vote.

Mr. Olympia: I'll vote.

Mr. Donovan: Well if you got to...you're only on the first factor, if you're going to continue then you need to go with the rest of the factors and you've got to...you've got to finish up the rest of your deliberations on the first factor.

Mr. Scalzo: Okay.

Mr. Donovan: All I want to do is make sure you're clear on the law before you do that.

(Inaudible)

Mr. Scalzo: Well, no what I'm looking to the Board for at this point is at this point, do you think we need the additional time first to evaluate the financials that Mr. Olympia has requested and then at that point do we need...can...can we do that?

Mr. Donovan: Well let me phrase it this way, do you want additional financial information or are you prepared to vote on the financial information that you have?

Mr. Scalzo: Well it...it appears it's incomplete or not...not sufficient for the satisfaction...

Mr. Donovan: So...so your options are to vote based on what you have or ask for additional information.

Mr. Scalzo: Mr. Olympia I'm going to look to you on this one. If...if you're not satisfied with...

Mr. Olympia: Well I don't know how I could reasonably answer the first requirement without the additional information.

Mr. Donovan: Well let...you should do what you think is appropriate. If you're not satisfied with the information if you don't think that they've satisfied the criteria you can vote on it.

Mr. Scalzo: Then we vote on what's here.

Mr. Donovan: They...they've made their application.

Mr. Olympia: Okay.

Mr. Donovan: That's up to you.

Mr. Scalzo: Okay, so in...in this case going back to the use variance questions a...the first is the land cannot realize a reasonable return in dollars and cents substantial as shown by competent financial evidence. We had the wavering Mr. Levin and then the a...Mr. Olympia has a more pointed comment so at this point shall we move forward with discussion. It appears Mr. Olympia is of the a...position that we do not have competent financial evidence and Mr. Levin a...

Mr. Levin: I...I agree with him...but I...I see other problems coming up so, okay.

Mr. Scalzo: So Dave is it within my ability to poll each Member in this case?

Mr. Donovan: Well as go that's the way that we typically do we go through the four factors, let everybody contribute to each factor.

Mr. Scalzo: Okay, but because this is a...you know two out of three ain't bad, it's all four need to be met. If we don't get past number one then...you know, then...then is there any sense in continuing?

Mr. Donovan: Well, you wouldn't have to, you could but you wouldn't have to obviously of course. Listen, you guys should do what you think is appropriate under the circumstances. All I want to do is make sure you're aware of what the law is and we just had the very recent case of Troon where we were in court on very specific items and...and it was clear what was required to satisfy the first criteria for a use variance.

Mr. Scalzo: Okay. Mr. Marino?

Mr. Marino: Yeah, I think out of respect for Mr. Olympia, I believe Mr. Bell felt the same way perhaps we should hold this over to next month, get the additional information that they want so that they can vote on the first item...

Mr. Donovan: So, so...

Mr. Marino: ...on the criteria.

Mr. Donovan: ...let's get through this then again it's up to the Chair...you can go through the other items...

Mr. Marino: Yeah.

Mr. Donovan: ...if you say you don't know about this one and you want to go to the other items you can do that as well. As you...as you've indicated if you fall on one...

(Inaudible)

Mr. Donovan: ...correct.

Mr. Scalzo: Okay.

Mr. Donovan: If that's where you were going Darrin, I'm sorry if I...

Mr. Scalzo: No, no, I thank you Dave. I a...sometimes I lose myself in the direction I'm headed. So, fellow Board...Mr. Bell?

Mr. Bell: Yes, I am...I do agree that there's not enough...

Mr. Scalzo: Enough financial evidence.

Mr. Bell: ...there is something in there that's not correct but yet he has had enough time to submit the proper documents to move forward so even though to me that is not there, if he didn't bring it in the sufficient time then I think we move...we move forward with a vote. So that's where I'm at.

Mr. Scalzo: Okay, Mr. Bell, Mr. Olympia and it appears Mr. Levin at this point are not satisfied that the competent evidence has been provided. Mr. Marino is seeking more information? Mr. Masten?

Mr. Masten: I would go for more information.

Mr. Scalzo: Would prefer more information. Now if I understood Mr. Donovan correctly well we can extend this or we can vote based on the information that was provided. If you're not comfortable voting on the information that was provided I just want to caution us all that I feel as though we need to be very specific with what we're asking for because this could go on and on and on and Dave needs to paint his porch tomorrow. So...so let's move on to the second criteria and when we wrap all four up I can come back to number one and see if we actually need to make adjustments. Second, that the alleged hardship is unique and does not apply to a substantial of district or neighborhood? The entire lot the...the use of the lot which is an approved use variance from 1982 it is unique to the neighborhood. It is out of character with the neighborhood however it is, has been there since 1982...

Mr. Levin: My thoughts are that the hydrovac trucks, the...a tremendous amount of people came forward and said they were a major problem and that's what I think is...is a change in the neighborhood if we allow it now as opposed to before.

Mr. Scalzo: No Dave just so I'm clear, that the way I...I read this is we are at that point the hardship is that they need to expand the business in an ancillary way as Mr. Gaba had indicated to include minor excavation. Is that? Am I interpreting that correctly?

Mr. Donovan: Well let's go back to the application.

Mr. Scalzo: Minor excavation not associated with...

Mr. Donovan: Well that's one of the things that was said during the Public Hearing. Right? The request is a use variance to permit a change in the existing permitted tank repair use on the

property to extend the use and parking of WCC's hydrovac trucks although, clarified, not in conjunction with the Hydrovac business.

Mr. Scalzo: Correct. WCC hydroexcavation vehicles.

Mr. Donovan: That's correct.

Mr. Scalzo: Yes, so that...that's what we're looking at folks is...the hardship is unique, are we looking to modify the use variance, modify or is it modified?

Mr. Donovan: No, it would be to...to a change...to extend the use variance to allow the indoor parking of these four trucks.

Mr. Scalzo: I'll look to the Board for any comments or questions here. Mr. Bell, anything regarding item number two?

Mr. Bell: No I don't have one.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: No.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No not right now.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I already stated that I felt that the trucks made such a racket and such a noise that it was disturbing to the neighborhood and that was not there when this original variance was issued.

Mr. McKelvey: Yeah, I'd have to agree with that.

Mr. Scalzo: Mr. Levin, I...I actually think your comment would really fit the third and if you don't mind I'm going to move on here just to read it.

Mr. Levin: Okay.

Mr. Scalzo: The third, the requested variance will not alter the essential character of the neighborhood and that...that one for me is pretty easy to understand the way the business operates now. We've heard testimony that it...it's been waning in...in they have to travel further and further for any tank lining businesses however now that they are looking to do minor excavation, other types of excavation now the activity around the site is going to increase and...and that I believe will alter the character of what they've got going on right now. Comments, Mr. Bell?

Mr. Bell: Agreed.

Mr. Olympia: I agree.

Mr. McKelvey: I agree to that too.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I definitely agree with it and I had suggested when they were there that they should move the business to another location and you may think I'm crazy but I have a business on 17K, behind it is a huge area that I would be more than happy if they moved into that area. They can move. So and they have garages there. They have everything there and it's for sale. Now it's not for me. No, no and I'm not a real estate agent.

Mr. Bell: As long as you don't own it.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Basically what I would say that is the same way I feel.

Mr. Scalzo: Mr. Marino?

Mr. Marino: We're going around and around, we're not getting to any conclusion I think either we vote on it tonight or we get the additional information that the other members of the Board want and we vote on it next month in June and put it to rest but we got to come up with a decision one way or another.

Mr. Scalzo: I agree with you. I'm going to move on to the last criteria the alleged hardship has not been self-created. Mr. Bell?

Mr. Bell: It's not been self-created?

Mr. Scalzo: Do you feel that it's been self-created or no?

Mr. Bell: Yes, I do.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: Yes.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: Yes.

Mr. Scalzo: Mr. Levin?

Mr. Levin: Yes.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Yes.

Mr. Scalzo: Mr. Marino?

Mr. Marino: I don't think it was self-created circumstances have changed over time.

Mr. Scalzo: Fair enough. Alright so we're going to jump back to the first criteria and that it can't realize a reasonable return and all I'm going to ask is that we have an opportunity to either look for more information, we have other criteria that has not been met. We can vote on it tonight. We can let it move to another...another month. So at this point I am going to...well I'll ask one last time on the competent financial evidence. Mr. Bell you don't feel as though there has been. I don't want to put words in your mouth so just to confirm do you feel as though there has been competent financial evidence supplied to date?

Mr. Bell: No.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: No.

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin, do you feel there's competent financial information supplied to date?

Mr. Levin: No.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No.

Mr. Scalzo: Mr. Marino?

Mr. Marino: No.

Mr. Scalzo: Okay, then I...I don't...am I clear, I...I believe I hit all four.

Mr. Donovan: That's correct.

Mr. Scalzo: Alright, then I am going to actually... if it's pleasure of the Board for someone to make a motion?

Mr. Levin: Why can't we vote on the other ones? Either you have to get all four so if they...?

Mr. Scalzo: If...if they get three out of four it's still no.

Mr. Donovan: Well it's up to...I...if you don't think that they've satisfied the four criteria the motion would be to deny the variance because they haven't satisfied any of the four criteria...that would be the motion.

Mr. Scalzo: But it needs to be four out of four Richard.

Mr. Levin: Four out of four.

Mr. Scalzo: They need to satisfy...satisfy four out of four.

Mr. McKelvey: Four out of four.

Mr. Bell: Satisfy.

Mr. Scalzo: If they satisfy three out of four it's still a denial.

Mr. Levin: If we're saying that two, three and four that they didn't satisfy. We vote on those each individually?

Mr. Donovan: If someone wants to vote...listen, I can't make the motion for the Board. I think you're making it more complicated than it needs to be.

Mr. Bell: So I make a motion to deny.

Mr. Scalzo: We have a motion from Mr. Bell.

Mr. Levin: On what?

Mr. Scalzo: To deny the application.

Mr. Donovan: Can you...can you kind of elaborate you mean saying because they haven't met specific criteria or they haven't met any of the criteria?

Mr. Bell: They haven't met specific criteria. They met...I mean...the...the...the...financial statements okay, to me they had opportunity to present all this. Even though I say that they have there's not sufficient evidence...

Mr. Donovan: So listen I...I don't...I'm sorry I don't mean to cut you off but...

Mr. Bell: Okay, yeah.

Mr. Donovan: My suggestion is this if you're going to make a motion to deny, make a motion to deny because they haven't met criteria one, two, three or four, criteria one, two and three, criteria...

Mr. Bell: Criteria number one.

Mr. Scalzo: Alright so you're making a motion that they do not meet criteria number one a...are you remaining silent on criteria's two, three and four? Because Mr. Bell we're going to wrap this all into one.

Mr. Bell: Okay.

Mr. Scalzo: So if...if you could...

Mr. Bell: Okay, wait, here we go. Number one, number three it does create a difference...it does alter the neighborhood, okay as far as we know (inaudible) and hardship, okay and it has been self-created.

Mr. Scalzo: Okay, so if I could paraphrase again Mr. Bell's words, Mr. Bell's position is that items one, three and four have not been satisfied ...for the use variance?

Mr. Bell: That's what I...yes.

Mr. Scalzo: And that's what his motion to deny is based on?

Mr. Bell: Yes, yes.

Mr. Scalzo: Do we have a second?

Mr. Olympia: Well I'll second.

Mr. Scalzo: We have a second from Mr. Olympia.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Donovan: Alright so the last thing you have to do, there's an appeal of the Order to Remedy so you either have to vote to sustain the Order to Remedy or overturn the Order to Remedy. And just for...to refresh everyone's collective recollections...the Order to Remedy says that the property owner committed the following or allowed to exist the following offense: expanded an existing business beyond the previously approved use variance issued by the Town of Newburgh ZBA dated March 11, 1982 by operating a Hydrovac business and parking vehicles at this location. So your determination if you wish to affirm that it would just be a motion to affirm the Order to Remedy. Alternatively you could reverse that and make whatever ruling you deemed appropriate.

Mr. Scalzo: I'll look to the Board for a motion to affirm or...pardon me, a motion to affirm or modify...

Mr. Donovan: You...you're allowed to do that, the law allows you to modify or you could just affirm the Order to Remedy.

Mr. Scalzo: Or just affirm the Order to Remedy and we'd need a motion for that of course?

Mr. Donovan: Yes, of course.

Mr. Marino: And if we do nothing? If there's no...

Mr. Donovan: Well there's an app...there's still an outstanding application you run into the...

Mr. Marino: Right.

Mr. Donovan: ...you know I have to remember this on the fly whether there's default approval. I wouldn't recommend you do nothing, either you sustain it or reverse it.

Mr. Marino: Okay.

Mr. Donovan: Just logically if you denied the first two it's kind of logic going to...

Mr. Olympia: Sustain the Order to Remedy, right.

Mr. Donovan: ...sustain but I'm not going to tell you what to do but that's kind of the way this works...

Mr. Olympia: I'll make a motion that we sustain the Order to Remedy.

Mr. McKelvey: And I'll second it.

Mr. Scalzo: We have a motion from Mr. Olympia, a second from Mr. Masten.

Mr. Marino: Explain again...what we're voting on now.

Mr. Donovan: So the Order to Remedy issued by Code Compliance back in December of 2017 alleged a Violation of the Town of Newburgh Zoning Code because it was an expansion of the existing business beyond the previously approved use variance issued by the ZBA on March 11, 1992 (1982) in that the defendant allegedly did operate the Hydrovac business and parking vehicles at this location, reading from the Order to Remedy.

Mr. Marino: Okay.

Mr. Scalzo: Alright, we have a motion and a second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN
JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO

ALSO PRESENT:

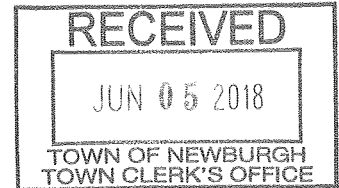
DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:46 PM)

6/5/18
[Signature]

ZBA MEETING – MAY 24, 2018

(Resumption for decision: 9:08 PM)



RESERVED DECISION

Same Minutes Used for Both the Interpretation and the Use Variance

WCC TANK TECHNOLOGY, INC.
(2102 PARTNERS, LLC.)

2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,
(3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking a use variance permitting a change of the existing permitted tank repair use on the property to extend to use and parking of WCC's hydrovac trucks. This request is submitted in the event that the applicant's simultaneous interpretation request, seeking a determination that the use and parking of said hydrovac trucks is permitted under the previously issued 1982 use variance, is denied by the Zoning Board of Appeals.

Mr. Scalzo: At this time we have a Reserved Decision from the April 26, 2018 meeting which is WCC Tank Technology, Inc. (2102 Partners, LLC.) at 2102 Route 300 & Plank Road, N., mailing address of Wallkill. They are seeking an Interpretation that the use and proposed indoor parking of so-called "hydrovac" trucks used by WCC Tank Technology in its business is permitted under the 1982 use variance as a legally permitted expansion of the existing business and, therefore, a building permit should be issued for a new garage. At this point we're...we'll tackle these one at a time, there is another Reserved Decision for a use variance for that same property.

Mr. Donovan: And also the...an appeal of the Order to Remedy issued by Code Compliance, just to round that out.

Mr. Scalzo: Okay...we're going to have quite a bit of discussion I'm sure folks here a...I got a lot out of reading the meeting minutes. I'm hoping the rest of the Board Member...Members have had a chance as well to see the testimony that was given at the last meeting. The Public Hearing is closed on this so we...we can ask the applicant's representative if we so chose but other than that no other comments will be heard. We did extend...we had a ten day extension on comments, written comments to come in. Betty, we got a few pieces of information on that? Which are included in our package, I believe.

Ms. Gennarelli: Yes.

Mr. Scalzo: I will...should I read in the County's...? Yup, the County's comments, the Planning Department has reviewed the submitted materials regarding the appeal for a...for a...both of them say use variance, however, and has found no evidence that inter-municipal or countywide impacts would result from its approval. County Planning recommends that the Board act on this variance request only if the applicant satisfied the unnecessary hardship standard as defined by New York State Law a...the courts of New York hold the unnecessary hardship standard is satisfied by competent proof of each of the following: the land in question cannot yield a reasonable return in dollars and cents if used for any use permitted in the zone, the use to be authorized by the variance will not alter the essential character of the locality, the hardship is not unique to the parcel and not general throughout the zoning district and the hardship is not self-created. With the proposed

expansion the existing non-conforming use does not appear to meet the standard. It also does not appear that the continuation and expansion of the use will cause significant negative impacts. We have no advisory comments regarding this application. And the County recommendation is Local Determination.

Mr. Donovan: And...and if I could Mr. Chairman just for the purpose of clarity? So the County referral is for the use variance component of the application. There is also an interpretation component of the application. Interpretations are not items that referable to the Orange County Department of Planning so they would...would not comment on that a...component of the application.

Mr. Scalzo: I understand. Thank you, Dave. Dave if I could ask you to lead us through a...?

Mr. Donovan: So just trying to orient this, the Board will recall...at least the Members that were on the Board there was a request from Code Compliance a little over a year ago for clarification of the 1982 use variance. The use of a tank lining business was permitted pursuant to a 1982 use variance a...the Board back in...let me pull out the decision...April of 2017 answered a series of questions posed by Code Compliance in sum and substance saying that the tank lining business approved in 1982 was obviously continued to be authorized under the use variance. The...what the Board found to be the expansion of that business to include a business known as hydro evacuation was not permitted. Thereafter in...September of 2017 there was a Building Permit Application made relative to this property to construct a 37 x 50 foot addition. Subsequently by a letter written by WCC there was a clarification that letter dated January 9, 2018 indicating that there would be four hydrovac trucks...parked in this 37 x 50 foot addition although called hydrovac trucks they would not be used in connection with the operation of the Hydrovac business which this Board had determined was not allowed on the site. Thereafter by letter February 1, 2018, Code Compliance issued a...what is characterized as an interpretation and determination that the indoor parking of the four hydrovac vehicles was not encompassed by the 1982 use variance or the 2017 a...clarification of the 1982 use variance that at that time in connection with that decision this Board had determined that outdoor parking was not permitted. And again if I could just flip back to...the item that we were requested to answer by Code Compliance...specifically did the March 1982 use variance allow the premises to be used for and in support of outdoor parking of semi-trucks and trailers. This Board finds it has insufficient evidence to make a determination if the 1982 use variance authorized the use of the premises for this specific use. I think largely in reliance upon that and reliance upon the fact that this Board indicated the Hydrovac business was not allowed Code Compliance's interpretation and determination was the parking of the four hydrovac trucks indoors, outdoors didn't matter, it was not permitted. Thereafter, the applicant appealed...there was also I need to add again...there was an Order to Remedy issued indicated the property...the property was being used improperly for the Hydrovac business. Thereafter, the applicant made his application seeking the first item of relief, an interpretation that the 1982 use variance extends to indoor storage of so-called hydrovac trucks used by WCC in its business. So that is the first order of business for this Board to either affirm the determination of Code Compliance that the 1982 use variance does not allow the storage of the four hydrovac trucks a...and...and withhold...uphold that determination or determine that the 1982 use variance does extend to indoor storage of the proposed four hydrovac trucks. And Mr. Gaba I'll just ask you since you are present if I've accurately characterized that first component of your application?

Mr. Gaba: Yes.

Mr. Donovan: I admire your brevity. Obviously something I'm not blessed with.

Mr. Scalzo: Thank you Dave. As I mentioned earlier I did get a chance to really dig through the meeting minutes from last month. The testimony given by Mr. Gaba just indicating that WCC's owner's had the sister company which is called Hydrovac, Hydrovac is not engaged in tank removal work a...at one point it was stated that they would allow or lease...WCC's trucks to Hydrovac or for a cross-use of the trucks a...and Mr. Gaba also went over that in 2005 Hydrovac Company moved on to the site, WCC shared with Hydrovac, put up the sign, put in the offices for Hydrovac, put the Hydrovac trucks on the property and in all candor as he says some of the Hydrovac truck operations took place on the property but it has since ceased. And then further on in the testimony Mr. Gaba indicates that in fact Mr. Conklin is no longer involved in the Hydrovac business a...Mr. Conklin himself had testified a...that as far as activity on the property...they do some local firehouse or fire station work. They can repair the water tank on the truck; they'll even put a fiberglass bed inside one of the trucks. They do some very minor work on the property but they do no major tank work on the property. That in itself isn't in alignment with the 1982 variance. Further on in the meeting Mr. Gaba had indicated that once they were notified that they were in violation that they did cease the...the operations. I had asked during the meeting of Mr. Conklin that he had made a promise in the year ago meeting to restore the area with top soil and seed and having visited the site I didn't see that. Mr. Conklin in his testimony responded that he has not done that. Also indicated in the minutes, I had asked Mr. Gaba about WCC owning...a...since they own hydrovac trucks they would perhaps lease them to Hydrovac a...and the clarification was that they were not in a truck leasing business, that would be a totally separate business although further on in the meeting indicated that there were other trucks there's pickup trucks on the site. There was two one ton dump trucks, two pickups, a van right now. I was at the site today there's quite a...quite a few a...well there's three one ton dump trucks, there's a couple of pickup trucks there additional the business may have been operating at the time, the WCC business so there probably were employee vehicles there as well. We received a letter dated May 21, 2018 a...Mr. Conklin had indicated he was no longer involved with Hydrovac, however, the May 21st letter...Chairman Scalzo and Board Members, I am writing in regard to the pending application of WCC Tank Technology Inc. and the 2102 Partners LLC. to the ZBA, at the Public Hearing on April 26, 2018 I presented proof that my employment and association with Hydrovac Inc. had been terminated by the then majority shareholder of the business. In the weeks since the Public Hearing my divorce proceeding has been resolved. As a result of which I was awarded ownership of Hydrovac Inc. however, as I stated at the Public Hearing I am currently parking only four hydrovac...hydroevacuation trucks all owned by WCC Tank Technology on the property. So this letter indicates that the...the trucks are there. I did not see them today. This will not change. No hydroexcavation trucks owned by Hydrovac Inc. will be parked on or present at 2102 Route 300. The four trucks at the property will be used only by WCC Tank Technology Inc. Although the change in ownership of Hydrovac Inc. will have no effect on the parking or use of hydroexcavation trucks at the property I feel it's important to make the Board aware of this development. So a...that was received as I say May 21 a...the meeting minutes from last month, there was...I...I couldn't quite a...Mr. Gaba it's...they are not running Hydrovac out of that site?

Mr. Gaba: No they are not.

Mr. Scalzo: They are not...

Mr. Gaba: Do you want me to say that into the microphone?

Mr. Scalzo: Please, if you could...you know what; I probably have a couple of additional questions...as we go.

Mr. Gaba: Well, first let me apologize Mr. Conklin had a death in this family. He would have been here otherwise but under the circumstances he...he just couldn't make it. If there are issues that the Board needs to have fleshed out or questions that you need him to answer we'll be happy to put this over to the June meeting. We'll have everyone back and provide whatever information you may need. As to Hydrovac, Hydrovac is off site, has been off site for a while. We sent in a...a supplemental letter addressing that issue and continues to be off site as per that letter will not be going back on site or so I am told by my client. (Inaudible) told was the business situation.

Mr. Scalzo: Okay and the May 21st letter a...just a few days ago...Mr. Conklin now is the sole owner or partner or majority partner in...?

Mr. Gaba: Yeah, it was a strange situation a...he and his wife owned Hydrovac and she was majority shareholder cause that's the way they set the corporation and as the divorce got a...more unpleasant shall we say a...they took action to terminate him and took over the company, Mrs. Conklin or the former Mrs. Conklin did and as it turned out as they went through the marital assets and decided who got what this was...this just turned out that she decided she decided she decided she'd rather have other assets rather than Hydrovac and so literally had a judge award them that asset that day and it was really much to his surprise as anybody. He thought that was a done deal when it was hers but now he's got but not at this site...

Mr. Scalzo: And...and that's a...thank you very much and please forward Mr. Conklin our condolences in his loss at this time.

Mr. Olympia: Do you know what the operating address is for Hydrovac?

Mr. Gaba: It...it...it's...it's off 9W somewhere but I can't tell you...I...I just...I just don't...he's told me before, I just don't remember. I can get that information though if you want I will...like said we'll submit supplemental information if the Board wants.

Mr. McKelvey: That might be the site that they moved from cause they had an offsite I think up at...up that...

Mr. Scalzo: I believe it was off Lattintown Road at one point but I thought that was an old site not...it may not be the new one I'm not sure.

Mr. McKelvey: Yeah, I don't know either.

Mr. Scalzo: I...I don't...I'm not sure how relevant it is...at this point but...thank you.

Mr. Gaba: Thank you.

Mr. Masten: Darrin, just...the other day when I was at the site there was one of those hydrovac trucks at that site on 300.

Mr. Scalzo: Was it labelled Hydrovac or...?

Mr. Masten: I couldn't tell how it was labeled because I pulled in there and I didn't see. I saw it to the left side of the building.

Mr. Scalzo: Sure it is a unique looking piece of equipment a...Mr. Conklin in his May 21 letter does state that there are four trucks.

Mr. Masten: I only saw one there.

Mr. Scalzo: Perhaps they were actually on a...on a project.

Mr. Masten: Yeah.

Mr. Scalzo: So that's...unless you saw the tag on the door. I don't know if they're even labelled. I haven't seen one...WCC's...

Mr. Masten: Just to be on information...there was a broken pole on 9W the other day and one of Conklin's trucks were there hydro-vacing.

Mr. Gaba: Inaudible

Mr. Masten: It was one of his trucks doing the work...

Mr. Gaba: Really?

Mr. Masten: Yes, WCC right by Middlehope Firehouse.

Mr. Scalzo: Further on in last month's meeting minutes Mr. Gaba again just reading right from the minutes which are online. Anyone...actually they're not on line yet until we approve them then they'll be on line.

Ms. Gennarelli: No, they're online.

Mr. Scalzo: Oh, they are online? Oh, they are. Very good. Thank you Betty.

Ms. Gennarelli: As soon as I submit them to the Town Clerk.

Mr. Scalzo: Okay. From Mr. Gaba's testimony the twist is this a...you're going to hear in a minute from the accountant but the accountant indicated that we need to enlarge it and we need to expand it, later on, we need to diversify. They indicate...further on it says we're not going to bring in something altogether but we want to use the tools that we use in our business for a closely related activity to supplement existing use. Now it's not clear if that's allowed under the 1982 variance a...you know that...that's I believe that we could touch on that if we get to the use variance section of this later. The change in use, the change in use is very different from expanded use a...and that's again that's going to be discussed for the second portion of this. Let's see...further on in the testimony Mr. Gaba indicates that they're looking for relief, they want besides part of the interpretation to let us use our trucks for something other than excavating...tanks. Mr. Conklin later in the testimony indicated we're not looking to do offsite so all work we would do...and it was in response to a question Mr. Marino asked...they're not...they're not looking to make a construction yard out of the site, which was one of the concerns of the Board at the time and then further on other testimony from other folks had been brought in. So that I...I had just read through all the...the substantial portions of the meeting minutes that I got from the last meeting and I'm going to turn to my Board Members here. Mr. Bell do you have any comments on this?

Mr. Bell: Not at this time, I'm still...

Mr. Scalzo: We can come back to you. Mr. Olympia?

Mr. Olympia: Yeah, there seems to be lot of inconsistency with...with the testimony and...and the use of the property and the future use of the property. That's the problem I have.

Mr. Scalzo: Thank you. Mr. McKelvey?

Mr. McKelvey: I just want to know, Mr. Gaba, do you know what hours that they back these trucks out with the noise in the morning? That was one of the complaints.

Mr. Gaba: Well, yeah a...the backup beepers were an issue. The trucks do go out in the morning but it's, you know, a...vary...the hours vary. I can't tell you that they start at 7AM every day or 9AM every day or 6:30, it depends on the jobs they have.

Mr. Scalzo: They and it has been indicated in previous it might have been last month or even last year but they are emergency response folks they yeah, they can get called out at 2 or 3 in the morning.

Mr. Masten: Yes.

Mr. McKelvey: Yeah.

Mr. Gaba: Yup that's among one of the reasons we wanted the accessory use of being able to do excavations besides on tanks.

Mr. McKelvey: One of the main complaints was noise.

Mr. McKelvey: Thank you. Mr. Levin, comments, questions ?

Mr. Levin: I a...I agree with Mr. Olympia. I think things seem to change all the time on this...on this project.

Mr. Scalzo: Mr. Masten?

Mr. Masten: I have no other comment.

Mr. Scalzo: Mr. Marino?

Mr. Marino: I have nothing at this time.

Mr. Scalzo: Mr. Bell, I'll just go back to you.

Mr. Bell: There's very much inconsistencies. So you...did you say that the...the Hydrovac Company is now merged with WCC? Is that what I'm hearing?

Mr. Scalzo: No. No, no, no they are two entirely different companies.

Mr. Bell: Two different companies.

Mr. Scalzo: Two entire, they operate out of different...

Mr. Bell: That's what I...

Mr. Scalzo: ...they operate out of different locations...

Mr. Bell: Yup, okay.

Mr. Scalzo: ...although again, the letter...I hope you've got it there...

Mr. Bell: Yes, I see it.

Mr. Scalzo: ...Mr. Conklin indicates that there are currently four trucks at the a...at the property.

Mr. Bell: Got it.

Mr. Scalzo: As the Public Hearing is closed...I'm going to just...I'll look to...does the Board feel as though they've had enough time to analyze a...the information that we have to...you know, at least...Dave am I...? I'm...I'm...I don't know that I'm going through the area variance questions in this case so if you could lead it from here that would...

Mr. Donovan: No so, well so the question for the Board initially, you don't have answer this right away but do you think you have enough information or do you want more time? I think Mr. Gaba has indicated that he'd consent to...to more time, if the Board wants that. If the Board doesn't want

that then you need to go through...you need to start first with the Interpretation and your options there are a motion to affirm the Code Compliance determination of February 1, 2018 or alternatively a motion to essentially reverse that and issue an interpretation that the 1982 use variance extends to the indoor storage of the four hydrovac trucks. So that...that would be first, you'd have to decide...if you want more time to consider that or if you want to advance one of those motions.

Mr. Gaba: Could I a...be allowed to address the inconsistencies issue before you decide that or would you prefer to (Inaudible)?

Mr. Scalzo: Mr. Gaba, please approach. And I...I was unaware that the meeting minutes were online...I'm not sure if you had a chance to read them.

Mr. Gaba: No, no I was there so...I pretty much remember. In...in regard to the facts of this matter I understand that there's been a lot of dispute and a lot of I'll say ancillary issues raised and anything from whether the building is going to be over the septic tank to a...a...wetlands and things like that but really in terms of the interpretation and whether or not we can use these four trucks in WCC's business I...I don't think that the facts are...are murky or in dispute at all. There was in the 1980's...in 1982 a variance granted to allow WCC Tank Technology to run it's lining business and the lining business even then and...and this is undisputed involved excavation of tanks and excavation of tanks necessarily required dig em up, excavation. Now this is not a legal non-conforming use. This is a use variance. They are two very different animals. Under the law, I'm sure your Counsel will tell you, you can expand a use unless expressly prohibited by the Code or the variance under which it's granted to a...increase with time...naturally expand, modes of production that change, modes of delivering services change. If you had, for example, I don't know a...a cannery, a factory that...that canned vegetables or something like that. Okay? You could as time goes by if you got a use variance for it expand the building and change the machinery inside. You could change the trucks that come and go to deliver the vegetables. What you can't do is start selling retail on the property because that's changing the use. Okay? So here we have a business a tank lining it's all in dispute, a tank lining business that does excavation, they could have as many shovels on the property as they wanted to dig up the tanks. It's part of their business and when the technology changes and they need a backhoe instead of shovels they could park a backhoe on...on the...as long as it was used in WCC's business for the tank excavation they have a right to do that under their use variance. So here now they had a number of different trucks and...and...and vehicles involved, they never did have a backhoe but they always did dig up or they had a subcontractor do it or otherwise got the tanks dug up. So instead of having a backhoe which I think they could do, as of right if they were going to dig up the tanks themselves there were these hydrovac trucks to dig up the tanks. I think they have a legal right under the variance that they got to do that. I think it's a natural expansion of the tank lining business. Now all the other business about is the excavation still on the site or not on the site or how is it operating? I grant you there is a lot of back and forth about that but the basic issue on this first...this first application you're deciding whether we have a right...or that the client has a right to park these trucks on the property? I think the facts are crystal clear. I...I just don't see the inconsistencies there.

Mr. Bloom: Chairman, may I be heard...in response?

Mr. Scalzo: Mr. Bloom, I apologize, but you can't. We have the opportunity to ask the applicant however the Public Hearing is closed. The applicant's representative is here so I...I apologize Mr. Bloom but we can't accept your testimony at this time.

Mr. Bloom: Thank you.

Mr. Donovan: So Mr. Chairman all I wanted to do and I'm going to...I'm going to read to you some areas of the law that are outlined in the practice commentaries to Section 267 of the New York State Town Law relative to use variances. And I'm just going to read this verbatim. It says a use for which a use variance has been granted constitutes a conforming use and as a result no further use variance is required for its expansion. However, the fact that the property may be used for commercial purposes does not leave the development of the property unrestrained. The use of the property remains subject to the terms of the use and where the Board of Appeals has previously determined that the development is limited only to a certain extent by the terms of the variance the Board of Appeals is not free layered to disregard that determination. Not citing the cases that are cited in the practice commentaries but I just wanted to provide that information to the Board. That being the case we're back to where we were before which is you could ask for more time, you can...someone can introduce or make a motion to affirm the Building Inspector's...Code Compliance's determination or someone could make a motion to grant the interpretation requested by the applicant which would in effect, reverse the determination of the...Code Compliance Department.

Mr. Scalzo: Well I'm going to look to the Board...ask what the Board's pleasure is here...do I have any motion?

No response.

Mr. Donovan: Now I took tomorrow off to paint my front porch so just to make sure you know I start at 8:00.

Mr. Scalzo: Alright and even if the motion is to request more time a...but we need to...we need to wrap this up.

Mr. Olympia: I'll make a motion that we a...move to...a...sustain the Code Compliance requirements.

Mr. Donovan: The...the February 18th letter...

Mr. Olympia: Right.

Mr. Donovan: ...to affirm that determination.

Mr. Scalzo: Alright we have a motion from Mr. Olympia to sustain the Code Compliance determination.

Mr. Levin: I'll second that.

Mr. Scalzo: We have a second from Mr. Levin.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Donovan: So the next thing you need to do then...the second request which you now have to act upon is the request for a use variance permitting a change to the existing permitted tank repair, and I should just add I'm reading from Mr. Gaba's letter of March 29, 2018. A use variance permitting a change to the existing permitted tank repair use on the property to extend to use and parking of WCC's hydrovac trucks. And I'll just ask Mr. Gaba since he has a puzzled look on his face...is that what you...? I read from your letter.

Mr. Gaba: Well yeah it was used then for purposes other than my client's...

Ms. Gennarelli: I'm sorry, you're going to need to go to the...

Mr. Donovan: So for clarification and for using them in association with the WCC business?

Mr. Gaba: Yes.

Mr. Donovan: So Mr. Chairman, relative to that request, you need to take a look at the four factors for the use variance.

Mr. Scalzo: I have them here. Alright I will look to the Board; we will go through the test of the four questions for a use variance application. All four of these criteria must be met or the Zoning Board is barred by the New York State Town Law from granting an approval. To allow a use not otherwise allowed in zoning an applicant must demonstrate to the Board unnecessary hardship satisfied by competent proof. Such demonstration includes all of the following for each and every use permitted in that zone. The first is the land cannot realize a reasonable return in dollars and cents substantial as shown by competent financial evidence. Please recall at the last Board meeting we had testimony by a certified public accountant which also gave us documentation supporting the

a...that the business cannot realize a reasonable return. Has the Board had a chance to review that information and if anyone has any discussion that we can...move through at this point? Mr. Bell?

Mr. Bell: No.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: Yes.

Mr. Scalzo: You're satisfied that the a...both of you gentleman are satisfied that the a...

Mr. Bell: Yes.

Mr. Scalzo: ...competent financial evidence. Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: So, so.

Mr. Scalzo: So, so?

Mr. Donovan: So just...Darrin, do you have that letter in front of you the letter from Tom Weddell who was...

Mr. Scalzo: I did a moment ago.

Mr. Donovan: So what has been submitted is a letter from RBT LLP, dated April 26, 2018 which purports to show following please find financial information from WCC Tank Technology to support today's Zoning Board presentation. It shows a sales and net income/loss. WCC Tank Technology Inc. expense partial list signed by Tom Weddell. The Board has been through the use variance criteria relative to this first item before. Generally, specifically what's required under the first category is competent financial evidence called by dollars and cents proof. It demonstrates to the Board that a...no financial...reasonable financial return can be realized on the property unless the use variance is granted. I believe the applicant has indicated since we granted the use variance...not we...but the ZBA in 1982 that that hurdle was cleared. You need to determine whether or not you find the proof in front of you a...justifies that position. In other words this is sufficient to demonstrate to you that the four extra trucks are required a...to have a reasonable financial economic return on the property.

Mr. Levin: The reason I'm swaying back and forth is because he's had those trucks in use during this period of time and still not showing a profit...or a substantial profit. Am I wrong about that? He's not been using the trucks?

Mr. Gaba: WC...WCC's trucks were used for WCC jobs only on a limited basis. They were shared or leased to Hydrovac. Hydrovac obtained the cash from those jobs not WCC. WCC can't use the trucks, WCC will suffer the loss you see there.

Mr. Levin: The trucks were on the property.

Mr. Gaba: Yeah but they weren't being used by WCC. They were being used by Hydrovac a different corporation.

Mr. Levin: Okay.

Mr. Donovan: So again just for the Board...so we went through this with the Troon Properties application and if you recall you denied that use variance. There was a lawsuit. You know among other things the court determined that...you know, it sustained your denial because there was no appraisal of the property, there was no identification of the carrying costs of the property, there was no identification of you know I guess Mr. Gaba is saying this would be the...if they had it and if they didn't what the financial loss would be a...but those are some of the things you typically look for in a use variance; an appraisal, an estimate of carrying costs, so I just want to make sure the Board is satisfied or not satisfied with the information that you have.

Mr. Scalzo: I'm not a finance guy Dave, you mentioned an appraisal and the other supplemental information a...what do my fellow Board Members...anybody with more expertise than me could weigh in on that?

Mr. Olympia: Well Mr. Gaba have the 2017 tax returns been done or completed?

Mr. Gaba: I...I don't know.

Mr. Olympia: Can I ask you some questions about the income statement that we were provided?

Mr. Gaba: You can if you like but I am not an accountant I...

Mr. Olympia: I...I understand,

Mr. Gaba: ...so I...

Mr. Olympia: I understand.

Mr. Gaba: (Inaudible) ...you want us to bring back the account's we have to do that.

Mr. Olympia: Maybe you can answer the question. He had nominal profitability from 2013 to 2015, 2016 his sales almost tripled and he shows a loss of \$62,000. Do you know what the reason for that was? I mean was the...?

Mr. Gaba: (Inaudible).

Mr. Olympia: I...I would like to have some additional financial information if we can get Tom Weddell...

Mr. Donovan: Well that's up to the Board, I mean if the Board wants to...ask for additional information then you need to continue the...okay. So if you recall before you indicated you didn't need it...you closed the Public Hearing you needed additional time to think about the information but if we're going have additional information submitted then you have an issue with the Public Hearing being closed since the public can't comment on additional information. So your...your choices are you can vote with the information that you have or you're going to have to reopen this if you want additional information because it's not fair to the public otherwise.

Mr. Gaba: I don't think that's true at all. Unless...if there's a change in the application that the public hasn't had an opportunity to comment on it then certainly I'd agree with you. It's the exact same application there going to ask us for some additional financials...well it's the Board's prerogative to not open or open that's all there is to it but I would say you're not required to if you don't want to just because you asked for tax returns or I don't know some information whether the trucks are on site or not?

Mr. Scalzo: Your opinion of that Dave?

Mr. Donovan: Are we required? We may not be required. I said it was fair. I know I'm a lawyer I'm not supposed to say what's fair but the Board did...you understand when we closed the Public Hearing the idea was you had sufficient information and needed time to consider that information that was the...as I recall it anyway, that was the condition under which you closed the Public Hearing. What Mr. Gaba is saying is not wrong, right? Okay, you could not open the Public Hearing. Obviously indicating there's additional which has been the practice of the Board under my advice the conditional information of some material matters being submitted the public had a right to comment on it. You closed the Public Hearing. You can vote. You're in a position to vote. Or not, that's, you know that's...

Mr. Scalzo: Alright the Public Hearing was closed on area variance and use variance...

Mr. Donovan: No, no there's no area variance. It was an Interpretation...

Mr. Scalzo: An Interpretation...

Mr. Donovan: ...and a use variance and a...

Mr. Scalzo: ...and a use variance...

Mr. Donovan: ...and a reversal...the request to reverse the Order to Remedy. Those were the three items before the Board...

Mr. Scalzo: Right.

Mr. Donovan: ...and the Public Hearing was closed relative to all those three items.

Mr. Scalzo: Relative to all three, okay.

Mr. Bell: I'll vote.

Mr. Olympia: I'll vote.

Mr. Donovan: Well if you got to...you're only on the first factor, if you're going to continue then you need to go with the rest of the factors and you've got to...you've got to finish up the rest of your deliberations on the first factor.

Mr. Scalzo: Okay.

Mr. Donovan: All I want to do is make sure you're clear on the law before you do that.

(Inaudible)

Mr. Scalzo: Well, no what I'm looking to the Board for at this point is at this point, do you think we need the additional time first to evaluate the financials that Mr. Olympia has requested and then at that point do we need...can...can we do that?

Mr. Donovan: Well let me phrase it this way, do you want additional financial information or are you prepared to vote on the financial information that you have?

Mr. Scalzo: Well it...it appears it's incomplete or not...not sufficient for the satisfaction...

Mr. Donovan: So...so your options are to vote based on what you have or ask for additional information.

Mr. Scalzo: Mr. Olympia I'm going to look to you on this one. If...if you're not satisfied with...

Mr. Olympia: Well I don't know how I could reasonably answer the first requirement without the additional information.

Mr. Donovan: Well let...you should do what you think is appropriate. If you're not satisfied with the information if you don't think that they've satisfied the criteria you can vote on it.

Mr. Scalzo: Then we vote on what's here.

Mr. Donovan: They...they've made their application.

Mr. Olympia: Okay.

Mr. Donovan: That's up to you.

Mr. Scalzo: Okay, so in...in this case going back to the use variance questions a...the first is the land cannot realize a reasonable return in dollars and cents substantial as shown by competent financial evidence. We had the wavering Mr. Levin and then the a...Mr. Olympia has a more pointed comment so at this point shall we move forward with discussion. It appears Mr. Olympia is of the a...position that we do not have competent financial evidence and Mr. Levin a...

Mr. Levin: I...I agree with him...but I...I see other problems coming up so, okay.

Mr. Scalzo: So Dave is it within my ability to poll each Member in this case?

Mr. Donovan: Well as go that's the way that we typically do we go through the four factors, let everybody contribute to each factor.

Mr. Scalzo: Okay, but because this is a...you know two out of three ain't bad, it's all four need to be met. If we don't get past number one then...you know, then...then is there any sense in continuing?

Mr. Donovan: Well, you wouldn't have to, you could but you wouldn't have to obviously of course. Listen, you guys should do what you think is appropriate under the circumstances. All I want to do is make sure you're aware of what the law is and we just had the very recent case of Troon where we were in court on very specific items and...and it was clear what was required to satisfy the first criteria for a use variance.

Mr. Scalzo: Okay. Mr. Marino?

Mr. Marino: Yeah, I think out of respect for Mr. Olympia, I believe Mr. Bell felt the same way perhaps we should hold this over to next month, get the additional information that they want so that they can vote on the first item...

Mr. Donovan: So, so...

Mr. Marino: ...on the criteria.

Mr. Donovan: ...let's get through this then again it's up to the Chair...you can go through the other items...

Mr. Marino: Yeah.

Mr. Donovan: ...if you say you don't know about this one and you want to go to the other items you can do that as well. As you...as you've indicated if you fall on one...

(Inaudible)

Mr. Donovan: ...correct.

Mr. Scalzo: Okay.

Mr. Donovan: If that's where you were going Darrin, I'm sorry if I...

Mr. Scalzo: No, no, I thank you Dave. I a...sometimes I lose myself in the direction I'm headed. So, fellow Board...Mr. Bell?

Mr. Bell: Yes, I am...I do agree that there's not enough...

Mr. Scalzo: Enough financial evidence.

Mr. Bell: ...there is something in there that's not correct but yet he has had enough time to submit the proper documents to move forward so even though to me that is not there, if he didn't bring it in the sufficient time then I think we move...we move forward with a vote. So that's where I'm at.

Mr. Scalzo: Okay, Mr. Bell, Mr. Olympia and it appears Mr. Levin at this point are not satisfied that the competent evidence has been provided. Mr. Marino is seeking more information? Mr. Masten?

Mr. Masten: I would go for more information.

Mr. Scalzo: Would prefer more information. Now if I understood Mr. Donovan correctly well we can extend this or we can vote based on the information that was provided. If you're not comfortable voting on the information that was provided I just want to caution us all that I feel as though we need to be very specific with what we're asking for because this could go on and on and on and Dave needs to paint his porch tomorrow. So...so let's move on to the second criteria and when we wrap all four up I can come back to number one and see if we actually need to make adjustments. Second, that the alleged hardship is unique and does not apply to a substantial of district or neighborhood? The entire lot the...the use of the lot which is an approved use variance from 1982 it is unique to the neighborhood. It is out of character with the neighborhood however it is, has been there since 1982...

Mr. Levin: My thoughts are that the hydrovac trucks, the...a tremendous amount of people came forward and said they were a major problem and that's what I think is...is a change in the neighborhood if we allow it now as opposed to before.

Mr. Scalzo: No Dave just so I'm clear, that the way I...I read this is we are at that point the hardship is that they need to expand the business in an ancillary way as Mr. Gaba had indicated to include minor excavation. Is that? Am I interpreting that correctly?

Mr. Donovan: Well let's go back to the application.

Mr. Scalzo: Minor excavation not associated with...

Mr. Donovan: Well that's one of the things that was said during the Public Hearing. Right? The request is a use variance to permit a change in the existing permitted tank repair use on the property to extend the use and parking of WCC's hydrovac trucks although, clarified, not in conjunction with the Hydrovac business.

Mr. Scalzo: Correct. WCC hydroexcavation vehicles.

Mr. Donovan: That's correct.

Mr. Scalzo: Yes, so that...that's what we're looking at folks is...the hardship is unique, are we looking to modify the use variance, modify or is it modified?

Mr. Donovan: No, it would be to...to a change...to extend the use variance to allow the indoor parking of these four trucks.

Mr. Scalzo: I'll look to the Board for any comments or questions here. Mr. Bell, anything regarding item number two?

Mr. Bell: No I don't have one.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: No.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No not right now.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I already stated that I felt that the trucks made such a racket and such a noise that it was disturbing to the neighborhood and that was not there when this original variance was issued.

Mr. McKelvey: Yeah, I'd have to agree with that.

Mr. Scalzo: Mr. Levin, I...I actually think your comment would really fit the third and if you don't mind I'm going to move on here just to read it.

Mr. Levin: Okay.

Mr. Scalzo: The third, the requested variance will not alter the essential character of the neighborhood and that...that one for me is pretty easy to understand the way the business operates now. We've heard testimony that it...it's been waning in...in they have to travel further and further for any tank lining businesses however now that they are looking to do minor excavation, other types of excavation now the activity around the site is going to increase and...and that I believe will alter the character of what they've got going on right now. Comments, Mr. Bell?

Mr. Bell: Agreed.

Mr. Olympia: I agree.

Mr. McKelvey: I agree to that too.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I definitely agree with it and I had suggested when they were there that they should move the business to another location and you may think I'm crazy but I have a business on 17K, behind it is a huge area that I would be more than happy if they moved into that area. They can move. So and they have garages there. They have everything there and it's for sale. Now it's not for me. No, no and I'm not a real estate agent.

Mr. Bell: As long as you don't own it.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Basically what I would say that is the same way I feel.

Mr. Scalzo: Mr. Marino?

Mr. Marino: We're going around and around, we're not getting to any conclusion I think either we vote on it tonight or we get the additional information that the other members of the Board want and we vote on it next month in June and put it to rest but we got to come up with a decision one way or another.

Mr. Scalzo: I agree with you. I'm going to move on to the last criteria the alleged hardship has not been self-created. Mr. Bell?

Mr. Bell: It's not been self-created?

Mr. Scalzo: Do you feel that it's been self-created or no?

Mr. Bell: Yes, I do.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: Yes.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: Yes.

Mr. Scalzo: Mr. Levin?

Mr. Levin: Yes.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Yes.

Mr. Scalzo: Mr. Marino?

Mr. Marino: I don't think it was self-created circumstances have changed over time.

Mr. Scalzo: Fair enough. Alright so we're going to jump back to the first criteria and that it can't realize a reasonable return and all I'm going to ask is that we have an opportunity to either look for more information, we have other criteria that has not been met. We can vote on it tonight. We can let it move to another...another month. So at this point I am going to...well I'll ask one last time on the competent financial evidence. Mr. Bell you don't feel as though there has been. I don't want to put words in your mouth so just to confirm do you feel as though there has been competent financial evidence supplied to date?

Mr. Bell: No.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: No.

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin, do you feel there's competent financial information supplied to date?

Mr. Levin: No.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No.

Mr. Scalzo: Mr. Marino?

Mr. Marino: No.

Mr. Scalzo: Okay, then I...I don't...am I clear, I...I believe I hit all four.

Mr. Donovan: That's correct.

Mr. Scalzo: Alright, then I am going to actually... if it's pleasure of the Board for someone to make a motion?

Mr. Levin: Why can't we vote on the other ones? Either you have to get all four so if they...?

Mr. Scalzo: If...if they get three out of four it's still no.

Mr. Donovan: Well it's up to...I...if you don't think that they've satisfied the four criteria the motion would be to deny the variance because they haven't satisfied any of the four criteria...that would be the motion.

Mr. Scalzo: But it needs to be four out of four Richard.

Mr. Levin: Four out of four.

Mr. Scalzo: They need to satisfy...satisfy four out of four.

Mr. McKelvey: Four out of four.

Mr. Bell: Satisfy.

Mr. Scalzo: If they satisfy three out of four it's still a denial.

Mr. Levin: If we're saying that two, three and four that they didn't satisfy. We vote on those each individually?

Mr. Donovan: If someone wants to vote...listen, I can't make the motion for the Board. I think you're making it more complicated than it needs to be.

Mr. Bell: So I make a motion to deny.

Mr. Scalzo: We have a motion from Mr. Bell.

Mr. Levin: On what?

Mr. Scalzo: To deny the application.

Mr. Donovan: Can you...can you kind of elaborate you mean saying because they haven't met specific criteria or they haven't met any of the criteria?

Mr. Bell: They haven't met specific criteria. They met...I mean...the...the...the...financial statements okay, to me they had opportunity to present all this. Even though I say that they have there's not sufficient evidence...

Mr. Donovan: So listen I...I don't...I'm sorry I don't mean to cut you off but...

Mr. Bell: Okay, yeah.

Mr. Donovan: My suggestion is this if you're going to make a motion to deny, make a motion to deny because they haven't met criteria one, two, three or four, criteria one, two and three, criteria...

Mr. Bell: Criteria number one.

Mr. Scalzo: Alright so you're making a motion that they do not meet criteria number one a...are you remaining silent on criteria's two, three and four? Because Mr. Bell we're going to wrap this all into one.

Mr. Bell: Okay.

Mr. Scalzo: So if...if you could...

Mr. Bell: Okay, wait, here we go. Number one, number three it does create a difference...it does alter the neighborhood, okay as far as we know (inaudible) and hardship, okay and it has been self-created.

Mr. Scalzo: Okay, so if I could paraphrase again Mr. Bell's words, Mr. Bell's position is that items one, three and four have not been satisfied ...for the use variance?

Mr. Bell: That's what I...yes.

Mr. Scalzo: And that's what his motion to deny is based on?

Mr. Bell: Yes, yes.

Mr. Scalzo: Do we have a second?

Mr. Olympia: Well I'll second.

Mr. Scalzo: We have a second from Mr. Olympia.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Donovan: Alright so the last thing you have to do, there's an appeal of the Order to Remedy so you either have to vote to sustain the Order to Remedy or overturn the Order to Remedy. And just for...to refresh everyone's collective recollections...the Order to Remedy says that the property

owner committed the following or allowed to exist the following offense: expanded an existing business beyond the previously approved use variance issued by the Town of Newburgh ZBA dated March 11, 1982 by operating a Hydrovac business and parking vehicles at this location. So your determination if you wish to affirm that it would just be a motion to affirm the Order to Remedy. Alternatively you could reverse that and make whatever ruling you deemed appropriate.

Mr. Scalzo: I'll look to the Board for a motion to affirm or...pardon me, a motion to affirm or modify...

Mr. Donovan: You...you're allowed to do that, the law allows you to modify or you could just affirm the Order to Remedy.

Mr. Scalzo: Or just affirm the Order to Remedy and we'd need a motion for that of course?

Mr. Donovan: Yes, of course.

Mr. Marino: And if we do nothing? If there's no...

Mr. Donovan: Well there's an app...there's still an outstanding application you run into the...

Mr. Marino: Right.

Mr. Donovan: ...you know I have to remember this on the fly whether there's default approval. I wouldn't recommend you do nothing, either you sustain it or reverse it.

Mr. Marino: Okay.

Mr. Donovan: Just logically if you denied the first two it's kind of logic going to...

Mr. Olympia: Sustain the Order to Remedy, right.

Mr. Donovan: ...sustain but I'm not going to tell you what to do but that's kind of the way this works...

Mr. Olympia: I'll make a motion that we sustain the Order to Remedy.

Mr. McKelvey: And I'll second it.

Mr. Scalzo: We have a motion from Mr. Olympia, a second from Mr. Masten.

Mr. Marino: Explain again...what we're voting on now.

Mr. Donovan: So the Order to Remedy issued by Code Compliance back in December of 2017 alleged a Violation of the Town of Newburgh Zoning Code because it was an expansion of the existing business beyond the previously approved use variance issued by the ZBA on March 11,

1992 (1982) in that the defendant allegedly did operate the Hydrovac business and parking vehicles at this location, reading from the Order to Remedy.

Mr. Marino: Okay.

Mr. Scalzo: Alright, we have a motion and a second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN
JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO

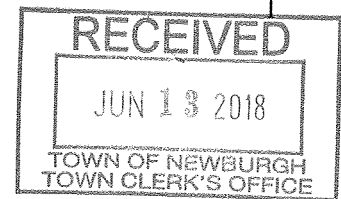
ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:46 PM)

6/5/18
R8

ZBA MEETING – MAY 24, 2018



END OF MEETING

(Time Noted – 9:46 PM)

Mr. Scalzo: Okay, the only other item on the agenda would be the approval of the meeting minutes from the previous meeting.

Ms. Gennarelli: That would be correct.

Mr. Scalzo: Do I have a motion to approve the previous meeting minutes?

Mr. McKelvey: I'll make that motion.

Mr. Scalzo: Mr. Masten (Mr. McKelvey).

Mr. Levin: I'll second.

Mr. Scalzo: Second by Mr. Levin. All those in favor?

Aye - All

Mr. Scalzo: And do we have a motion to...no other Board business?

Ms. Gennarelli: I don't believe do.

Mr. Scalzo: No, do we have a motion to adjourn?

Mr. Levin: So moved.

Mr. McKelvey: Second.

Mr. Scalzo: All in favor say Aye?

Aye All

Mr. Scalzo: The meeting is adjourned.

PRESENT ARE:

DARRELL W. BELL
RICHARD D. LEVIN
ANTHONY R. MARINO
JOHN D. MASTEN

JOHN H. MC KELVEY
PETER M. OLYMPIA JR.
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:50 PM)

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