

ZBA MEETING – MAY 26, 2016

(Time Noted – 7:31 PM)

DANIEL & ELISSA DICKINSON

STILL HOLLOW ROAD, NBGH  
(6-1-12) R-1 ZONE

Applicant is requesting an area variance for N. Y. Town Law 280-A - No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plans.

Mr. Manley: The next item before the Board this evening is Daniel and Elissa Dickinson, Still Hollow Road in Newburgh, requesting an area variance for N. Y. Town Law 280-A - No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plans.

Mr. Brown: Thank you.

Ms. Gennarelli: And...

Mr. Brown: Thank you. Sorry...

Ms. Gennarelli: And...and this applicant sent out ten letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you Ms. Gennarelli.

Ms. Gennarelli: You're welcome.

Mr. Manley: You're all set now sir if you would just introduce yourself.

Mr. Brown: Thank you. Charles Brown; I'm the engineer for the applicant. This is a twelve acre lot a...the easement which is depicted here was actually shown on subdivisions and plans dating a...several a...way back but a...in the deeds it's classified as a right-of-way and it first goes up in 1984 where it was first granted a...it's reaffirmed in 1989 a...at the subdivision that created the lots for Still Hollow Road all those lots shown here on the location map a...it again shows up in 2003 in the deed transfer, again in 2009 and again in 2015. The lot has been in the family since 2006 a...again it's a twelve acre lot the proposal is just for one house a...based upon the chronology...this is obviously not a self-created situation a...a... it actually pre-dates the a...Mike Donnelly's a...a...he did a report I guess for the American Bar Association, which Dave would know more about, that...that a...I guess brings this thing into...into where we are here today which is that you have to have the access to...to a a road to have access for a lot. The home is only proposed to be a single family home a...therefore it's not going to be a major impact on the environment or the neighborhood. The lot is much larger than all the adjoining lots on Still Hollow Road. So again it's not going to change the character of the neighborhood. It's not self-created because a... this lot is land locked. There is no other access to it so there is no other alternative either. The only way to get access to the lot is through this...this a right-of-way

a...and a there's will be no adverse impacts to the environment because again we're only doing one single family house. Thank you.

Mr. Manley: Do any of the Board Members at this point have any questions for the applicant's representative?

Mr. Levin: You didn't show the (Inaudible)

Ms. Gennarelli: Excuse me Richard can you just get a little closer to your mic? Thanks.

Mr. Levin: I just wondering where the other two homes that were up there. I think your driveway is in the middle between two driveways?

Mr. Brown: There...there's a house...shown.

Mr. Levin: There's no driveway yet.

Mr. Brown: No driveway yet. There's a house shown here a...the lot behind this is still vacant. Correct? Is still vacant a...so I...I don't know which lot you referred to a...

Mr. Levin: The sign was in the middle of two roads.

Mr. Brown: Well that's...yeah, that's at a...at the entrance to the a...right-of-way is where that is. There are houses on all these lots on Still Hollow Road. This...this lot is...about two hundred and seventy-five feet beyond that in the back and again it's twelve acres. It's a large piece.

Mr. Donovan: Charlie, I...I have a couple of questions.

Mr. Brown: Okay.

Mr. Donovan: Still Hollow Road is a...

Mr. Brown: Private.

Mr. Donovan: ...a private road.

Mr. Brown: Yep.

Mr. Donovan: On your plot plan you make reference to R&K Real Estate Management Inc., filed map 9463?

Mr. Brown: That was subdivision that created the Still Hollow Road and all the lots on Still Hollow Road.

Mr. Donovan: Does...does this property on that filed map, does the driveway to this property show?

Mr. Brown: The right-of-way shows. The right-of-way shows. The right-of-way existed before the subdivision. The road for the subdivision actually follows the right-of-way that was originally created for this lot. That right-of-way went all the way down to North Fostertown Road. And when they did the subdivision for K & K they followed the right-of-way through this property for Still Hollow Road.

Mr. Donovan: Do you have any knowledge if there is any Road Maintenance Agreement and whether this property contributes or doesn't contribute to that?

Mr. Brown: A...this...at this point the property does not contribute. He's willing to contribute a...as...as a user of the road. A...I don't know if there's an agreement in place at this time. (to Mr. Dickinson) Do you? Is there? No, there is not.

Mr. Donovan: So it could actually...any road maintenance agreement does not include this lot or exclude this lot? To your knowledge if you know.

Mr. Brown: There is no maintenance agreement in place I was just informed.

Mr. Donovan: For...for Still Hollow Road.

Mr. Brown: Still Hollow Road, right.

Mr. Donovan: And how many lots are on Still Hollow Road?

Mr. Brown: Two...four...seven? Seven or eight...seven...eight...this would be the ninth lot.

Mr. Donovan: And the R&K Real Estate Management subdivision did that create Still Hollow Road?

Mr. Brown: Yes it did and that was in 1989.

Mr. Donovan: Do you have a copy of that map I just...for my own...?

Mr. Brown: We do. We do have it here with us.

Mr. Brown approached with map

Ms. Gennarelli: Charlie, you might want to grab that mic just in case you decide to talk.

Mr. Brown: The history of the deed was all... Can you hear me? The history of the deed...the history of the deed was all submitted with the package but I do have a copy of that with me.

Mr. Donovan: So...so Charlie what I'm looking at here is...the filed map indicates there is supposed to be a Road Maintenance Agreement was to be filed in the County Clerk's office. You don't think that that was done?

Mr. Brown: To the best of my knowledge and to that of my client's there is no a... filed Maintenance Agreement for Still Hollow Road.

Mr. Donovan: The a...this map seems to show that that road is short of this lot though.

Mr. Brown: The road itself, yes.

Mr. Donovan: Yeah. Okay.

Mr. Brown: The...the right-of-way again, we submitted all the deeds with the application and they...they describe the right-of-way a...through this property. And again that right-of-way went all the way down to North Fostertown Road. Still Hollow Road actually followed that right-of-way when...when they did that subdivision map and they built the road.

Mr. Donovan: And you may not know the answer to this but a...let me just ask you if...if you do. Was there any requirement by the planning board at the time that the road be improved to any...any kind of specification or standard?

Mr. Brown: A...that...that I don't know a...I wasn't doing subdivisions at this time back in '89 but I would assume there would be some design standards. I started working in '92.

Mr. Donovan: I mean there's the typical section shown on the map...

Mr. Brown: Right.

Mr. Donovan: ...on the Eustace & Horowitz map.

Mr. Manley: Well I think the first question that the Board is going to have to first determine is the road itself and the right-of-way. That's going to be our first hurdle to overcome then once we overcome that hurdle the second question is going to be is the road going to be acceptable to be able to be used for the applicant. And I'm going to probably need to defer that to our Town engineer and ask the Town engineer to take a look at it and provide a report back to the Board.

Mr. Brown: You...you are talking about the...the condition of the road or...or as far as zoning? Because the Town of Newburgh Zoning doesn't limit the number of lots on a private road.

Mr. Manley: Correct but in order...if the Board is going to grant a variance to that section of the Town Law, the State Town Law this Board has to determine that that is not going to negatively impact the health, safety and welfare of the residents.

Mr. Brown: Understood. Okay.

Mr. Manley: Ambulance, fire trucks...I think Counsel makes a good point that you know the a...maint...Road Maintenance...

Mr. Donovan: Betty did you get that?

Ms. Gennarelli: What...I'm sorry...?

Mr. Donovan: That Counsel made a good point.

Ms. Gennarelli: Yes.

Mr. Manley: ...the a fact that there's apparently no Road Maintenance Agreement what about the wintertime if there's ten inches of snow, twelve inches of snow emergency vehicles have to get in, access is going to be a...I think at least in my mind, is going to play a big part in whether or not you know, I would be willing to approve something like that. I don't know how the rest of the Board feels but I think that the engineer being the professional needs to take a look at it and opine to the Board his concerns or non-concerns.

Mr. Brown: Alright, should...should I...should I make the effort on that to contact Jim and make an appointment with him out there or...?

Mr. Manley: I think that I'll probably have either our Counsel or our Zoning Board Secretary reach out to the Town engineer and ask him to go out there I may even go out there with him to discuss specifically what his concerns are and ask him to put it in a...form of a letter.

Mr. Brown: I'd like to be kept in the loop on that.

Mr. Donovan: Yeah, just one of the issues in 280-A is whether or not the road is suitably improved so you generally do analyze things like fire, access for fire, emergency vehicles, that type of thing.

Mr. Brown: Suitably improved.

Mr. Donovan: Suitably improved...

Mr. Brown: Okay.

Mr. Donovan: Suitably improved. And before we...let me just if I...I'm sorry, did you need a moment? You can...

Mr. Fuchek: Yeah, I just want to tell Charlie he should mention, alright I'll talk. My name is Ray Fuchek I a...my name is Ray Fuchek I sold the building lot to a...Dan Dickinson and Elissa Dickinson. The a...road that is there's a Maintenance Agreement with the existing homes that were on that road. The first piece of property that was sold on that road at the end of Still Hollow Road to the left of where you saw the posting for the variance... Alright? ...was not on that Maintenance Agreement. Okay? So the road which was upgraded probably four years...four or five years ago for access for safety, fire vehicles to access that area was a...I'll say it was repaved and is accessing for the existing eight homes or seven homes on that driveway. Alright? I just wanted to give you that information.

Mr. Donovan: And Charlie, do you know when your clients purchased did they get Title Insurance insuring access out to (North) Fostertown?

Mr. Brown: A...yes.

Mr. Donovan: The reason why I'm asking a...it's just a little odd that the...the deed from 2015 says together with and subject to a fifty foot right-of-way as shown on filed Map 9463 but that doesn't seem to go up to this lot. On the filed map it seems to stop short of the lot.

Mr. Fuchek: When I sold the a...building lot the a...I'm not sure here when I sold building lot 6-1-26.1 I had a right-of-way agreed upon with the owner that I sold the property, Mr. Leroy, I had agreed upon the...the right-of-way through his building lot to that building lot.

Mr. Donovan: Okay.

Mr. Fuchek: And the only contingency on that is I would not connect that to a through road to make it a through path through Still Hollow.

Mr. Donovan: Understood. I'm just trying to figure out if...when the Dickinsons purchased the property if they got Title...on the deed there's a reference that looks like a title company reference this RCAW253150 is generally a reference from whatever the title company is that recorded the deed. And I just have a question whether or not they insured access from this property out to (North) Fostertown if you know...if you don't know...it would be...

Mr. Fuchek: Yeah, I don't know...I had Title Insurance...

Ms. Gennarelli: Could you just get to the microphone please this is being recorded. Thank you.

Mr. Fuchek: I purchased the property; I had Title Insurance which gave me access to all three building lots cause I bought three building lots with that property. I bought 26 or 6-1-26-1 or dot one and I bought a...6-11...6-1-11 and 6-1-12 and the Title Insurance gave access the addendum A to all three building lots.

Mr. Donovan: Right, if...if you have the ability to provide that cause that...I need to advise the Board whether or not there is legal access and that would be helpful to me. That's just the deed so you...

Mr. Scalzo: How does...? Since you just mentioned tax lot eleven...

Ms. Gennarelli: Excuse me Darrin...also pull your microphones in, please everybody pull your microphones in. Thank you.

Mr. Donovan: Or talk really loud like me.

Mr. Scalzo: It's a really big map I had to push it away.

Ms. Gennarelli: Yeah, I know.

Mr. Scalzo: Tax lot eleven if you look at our...what came out later. Sir, you were saying your deed gave access to twenty-six, one, twelve and eleven. How do you access to eleven? Would it be through lot twelve?

Mr. Fuchek: Here...it could be through lot twelve but I'm not going to go that route now but a...it's a...

Ms. Gennarelli: Can you take the microphone? Thank you.

Mr. Fuchek: Sorry, yeah. It's laid out in Schedule A in the package, if you look at the package. It says a...it's stated in there in the bottom I'll say paragraph...it says together with right-of-way of Buhl, Buhl and Glas across lands formerly go to Chadwick which Chadwick was the owner of Still Hollow Road. Okay? Said right-of-way from Chadwick being reserved by Buhl, Buhl and Glas which was the owners of those three building lots. Alright? For all ordinary purpose of egress...ingress and egress of the adjoining properties and I state adjoining properties in Liber 2299 as described on subdivision map a...lands now or formerly of R&K Realty a...Real Estate Management Inc. as resolved in Town Board, planning board meeting December 10, 1987.

Mr. Donovan: Now what...

Mr. Scalzo: Alright now help me understand a little bit, a few minutes ago you had said you came to an agreement with the lot #12 the property that you wouldn't continue through it.

Mr. Fuchek: Right. No I wouldn't continue through it to connect it to an existing road. Alright? When I...when I agreed it was just to get access to that middle lot...

Mr. Scalzo: To be able to go through that middle lot...

Mr. Fuchek: No to...well to the middle lot...I only agreed to the middle lot.

Mr. Scalzo: Okay.

Mr. Fuchek: And that's what the a...right-of-way that was approved by a...Mr. Leroy on the sale of the property.

Mr. Scalzo: So we're not considering any access to lot eleven at this point in time as well.

Mr. Fuchek: No.

Mr. Manley: At this point does the Board have any more questions at this point? Or if not, I'll open it up to the public to get comments and then we can go back and go around if you need.

Mr. Scalzo: Sir, pardon me, just one more question. In you quoted Liber 2299 page 233, the right-of-way. Is it described in metes and bounds a...courses and distances, is that described that way in that particular deed? Or is it just a generalized fifty foot right-of-way?

Mr. Fuchek: I think it's a generalized fifty foot right-of-way and then what I did was on the sale of the property on the recommendation from Michelle Anderson my lawyer, that when I sell the first lot because there was several right-of-ways, there's a horse trail right-of-way that comes from Fostertown Road that's a twelve and a half foot wide horse path so I just had based on the recommendations from my lawyer was to have the right-of-way on the right hand side of his property. Alright? A fifty foot right-of-way for the additional home.

Mr. Scalzo: Charlie, I just have a housekeeping item for you. The schedule B description your total distance for the north ten, thirty, nineteen west one ninety-three fifty-three is correct but as...as you follow the schedule B I see one o six ninety (Inaudible) eighty-six sixty-two so they do equal one ninety-three fifty-three but there's a three tenths...

Mr. Brown: (Inaudible) Okay.

Mr. Manley: Don't worry; we won't bill you later for that Charlie. It's a little free...

Mr. Brown: Thank you.

Mr. Scalzo: That's why I called it housekeeping.

Mr. Manley: There is a charge for housekeeping. At this point we'd like to open this up to the members of the public if they have any questions, comments, concerns for the Board. Just if you would when you step forward please state your name and address for the record.

Mr. Specht: Henry Specht, 24 Still Hollow Road. I guess we'll start out on the right-of-way. This is the original right-of-way...

Ms. Gennarelli: Can you just...?

Mr. Donovan: Please use the mic it's being recorded so just...

Ms. Gennarelli: Take the mic with you it pops off.

Mr. Specht: This is the original right-of-way given to a...Stephen Buhl and Aneta Buhl in 1982 to the first lot which is the one that Mr. Leroy now owns. Do you have the Still Hollow subdivision map?

Mr. Maher: Yeah, it's down here.

Mr. Specht approached the Board

Mr. Specht: Should I take that down to him?

Mr. Donovan: They are just as important as I am so you...

Mr. Specht: Well this is the right-of-way issue.

Mr. Donovan: It might be easier to put it up on the board and explain it to everybody that way Darrin won't be left out.

Mr. Specht: So that's the right-of-way that you see going in to this first lot right here and it ends there that is a...originally on this twenty-five feet wide...sorry, twenty-five feet wide...

Ms. Gennarelli: Thank you.

Mr. Specht: ...which was a...I am not a public speaker.

Ms. Gennarelli: That's okay.

Mr. Specht: Twenty-five feet wide and then when the R&K Real Estate subdivision was done it was apparently increased to fifty feet wide. That right-of-way is an only...was tried to extend from Mr. Glas to themselves, they were co-owners and that's why they use...they keep using the term reference reserved right-of-way a...reserve of right-of-way on Still Hollow Road. So they gave themselves a right-of-way from here to here but that did not...they did not have the right to give themselves a right-of-way over all this other private property hence trying to piggyback the right-of-way. We've had this a...exhaustively researched by a Mr. John Wood of Hill-N-Dale Abstract. There is no right of way. Also their title insurance company River City Abstract has told us and told them there's no right-of-way. We were informed this week that their title insurance, Mr. Dickinson's title insurance company who has spoke to me directly the a actual insurance attorney I suppose a...you know wanted to know the situation. A few months went by, we were informed this week that he was a...compensated for the lack of right-of-way on Still Hollow Road.

Mr. Dickinson: That's not true.

Mr. Specht: Well that's what we were told so...that was from...from a...the River City Abstract. So whether that's true or not but our attorney has researched it as well. The right-of-way ends at Mr. Leroy's lot and that has tried to be piggybacked on...on top of that.

Mr. Manley: The question I have is do you have anything from either of those two sources that you're referencing to back up the a...is there anything in writing that states...from the title insurance company?

Mr. Specht: We have a... (Mr. Specht approached the Board)

Mr. Manley: Just give us a second for us to review this.

Mr. Specht: This is one of the first letters submitted from all the neighbors with the pertinent clauses highlighted.

Mr. Manley: Did you want to enter this into the record?

Mr. Specht: Sure can.

Mr. Manley: Would you like to enter this into the record as well?

Mr. Specht: Sure you can.

Mr. Manley: Okay the first thing I'll read into the record is an email from John M. Wood, President, Hill-N-Dale Abstracters, Inc. out of Scotchtown Avenue in Goshen. This is Dave, from what I understand you insured or are about to insure a parcel situated in the Town of Newburgh, 6-1-12. There seems to be an issue with the access that the owner is trying to assert over adjoining lands belonging to David Leroy, 12-1-26.1. You insured Leroy under your file RCAST44458. He by the way is my nephew when you insured Leroy the seller at the time reserved an easement over Leroy's property. This seems to be an issue at hand, he certainly had the right to reserve an easement however, he does not have the right to utilize the two easements that Leroy has for ingress and egress. I'm only bringing this to your attention to alleviate a potential claim you...you may receive. If you do in fact insure access over Leroy's property over the other two easements and his neighbors utilize. Attached is a letter from the adjoining owners which I feel is self-explanatory. I also believe this letter was delivered to you. Let me know if I can help. John. John M. Wood, President Hill-N-Dale Abstracters  
The next...

Mr. Specht: That's the letter that was attached.

Mr. Manley: ...letter that I'll read into the record is to the Town of Newburgh Building Department, 1496 Route 300, Newburgh, NY regarding Still Hollow Road, private road August 24, 2015, Dear Sirs: it has come to our attention that a Building Permit is being considered for SBL #6-1-12. We have been informed that the owner of said lot would like to access his land through Still Hollow Road. As you know, a Road Maintenance Agreement was approved by the Town of Newburgh Planning Department when R&K Real Estate Management received its Final Plan of subdivision and filed with Orange County Clerk April 27, 1989, Map # 9463. This Road Maintenance Agreement is attached to all lots within the subdivision and has been part of all the deeds filed with the Orange County Clerk. Whereas this agreement clearly states Liber 3294, page 168, line #9 "and will not be extended for the benefit of any adjoining lands not part of said subdivision. This particular sub...this particular provision relating to the dedication of the said fifty foot wide roadway as a public road and the location of the same not to be subject to amendment". Whereas this agreement also states Liber 3294, page 169, line #10, "no owner of any lot set forth on the aforesaid subdivision shall permit any sixteen foot private roadway to be extended or any portion of any such lot to be used to provide access to any lands other than those lands set forth on the subdivision". Therefore no owner of any lot can grant access to any lands not part of the subdivision and the owner of section, block and lot 6-1-12 would need to travel on private land for approximately seventy-five feet in order to gain access to Still Hollow Road a

private road permission is not granted and is considered trespassing. Whereas the owner of lot...SBL #6-1-12 does have access to his property across the separate right-of-way granted and approved by the Town of Newburgh planning board from Tarben Way which is currently paved and awaiting dedication as a public road. Therefore we must ask that his request for an easement onto private lands to access his property through Still Hollow Road be denied. We the undersigned specifically ask you to not assume SBL #6-1-12 has right-of-way privileges through our private lands when there is already a separate right-of-way approved and available for this lot from a soon to be dedicated paved Town road, Tarben Way. And it's signed, Lori Fakler, 11 Still Hollow Road, Thomas Gabriele, 14 Still Hollow Road, Tamara Hoffner, 6 Still Hollow Road, Joaquin Bagtas, 20 Still Hollow Road, Henry Specht, 24 Still Hollow Road and Andrew Hennessy, 5 Still Hollow Road. And a CC was sent to the Town of Newburgh planning board, River City Abstract and Ray and Dawn Fuchek.

Mr. Brown: A...regarding...I would like to comment regarding the a...Tarben subdivision and the alleged access. A...that map has not been filed. Yes the road was constructed however, it's my understanding that they have to go back to the planning board because they made modifications to the map a...in addition to that a party of that subdivision, Gus Gekakis has since deceased a...so now they have to negotiate with a Paul Gekakis his heir. In addition to that the engineer that stamped that drawing John Trumbol died in 2012 so there is no guarantee that the Tarben Subdivision is ever going to be filed. It's a...it was approved years ago; they did put in a road however it's not a filed map. This...this a...fee access to this lot does not exist a...they can't dedicate the road until they file the map so you know, all of that is...is not true.

Mr. Specht: It is my understanding though that there's a right-of-way from Lot 11 and 12 that goes all the way to Revere Road through that property.

Mr. Brown: It doesn't exist until the map is filed. In addition to that...

Mr. Specht: But the right-of-way existed prior to building that road.

Mr. Brown: In addition to that that right-of-way goes right...and is actually not the right-of-way it's fee access goes right in to a Federal wetland and a...we don't know if we'd even be able to cross that Federal wetland in the event that the map was filed and that access did exist. At this point it does not exist.

Mr. Manley: Has your applicant explored that option and do you have anything that you have explored that route?

Mr. Brown: We have no control over when they file that map a...we do have documentation from the engineer a...that did that did that subdivision that shows that this proposed fee access a...dead ends into a Federal wetland. I can find that kind of documentation but again the map hasn't been filed. We don't know whether that's going to change a...I know that a Mr. Gekakis is re-negotiating his fee access a...through this subdivision a...I...I'm actually shocked that they built the road before they filed the map. I mean, that's essentially unheard of because the developer is at risk but that access does not exist at this time. It is not an option that is on the table.

Mr. Manley: But part of this Board's deliberation process has to be whether or not there is another option for the applicant and that's part of what we have to weigh in our deliberating process.

Mr. Brown: I understand that. What I'm saying is that it's not an option at this time and we have no idea whether it's going ever be an option or not. It's not an option at this time. The map has not been filed.

Mr. Specht: If I may ask does this Board have the power to grant an easement over someone else's private property that doesn't exist?

Mr. Donovan: Does this Board have that power?

Mr. Specht: Yes.

Mr. Donovan: No.

Mr. Specht: Thank you. Do you have any questions that I might be able to answer?

Mr. Manley: Nothing more at this time. Is there any other residents regarding this application that have a question of comment?

Mr. Dickinson: I'd like...

Mr. Manley: Yes sir.

Mr. Dickinson: ...Mr. Specht to clarify how...

Ms. Gennarelli: Excuse me; can you come to the microphone?

Mr. Dickinson: I'd like to ask Mr....

Mr. Manley: Keep in mind that you direct your question to the Board and then if we need any...you know, direct your comment to us and then if the Board wishes to follow up with the a...public we'll do that.

Mr. Dickinson: Sure. I'm Dan Dickinson; I bought the lot in question. I'd like to have Mr. Specht clarify how the Buhls the original owners gave the easement to themselves. That's not clear and I think that a...provide documentation of that I have not seen that. I've also done an exhaustive research myself.

Mr. Manley: Okay. You can certainly provide this Board any documentation that you have but we're not going to cross-examine the...the public. If he wishes to comment on you know what your question is he can certainly come back to the microphone and clarify it but I'm not going to have cross.

Mr. Donovan: And just for clarification on a 280-A variance there's a couple things that are important to the Board and the Board has to consider before granting a variance. One is the condition of the road we talked about that before. The other thing that's important for the Board to consider is whether or not you have legal access to use the private road. You say you do. They say you don't. We're going to have to...we're going to have to figure that out in some fashion either by title insurance, an opinion of title, an independent I don't know how the Board wants to handle that but that...that issue needs to be resolved.

Mr. Dickinson: I...I do...you have the document the easement was insured. I'm not sure where the confusion is with that also.

Mr. Donovan: I don't have a title insurance policy in the packet. I have a series of deeds; I don't have any title insurance. Title insurance would have to specifically say that it's insuring access to (North) Fostertown Road because you can get insurance, title insurance with exceptions. So I don't have...I don't have clarity whether there's a legal right to use this.

Mr. Dickinson: It's my understanding on my deed it's mentioned on my deed that's what they insured and that was my understanding and that again is in front of you.

Mr. Donovan: What I am saying is that that's insufficient proof.

Mr. Dickinson: Okay.

Mr. Donovan: Relative to that issue.

Mr. Dickinson: Thank you.

Mr. Specht: You asked me a question this is the a...

Mr. Manley: Actually what I need you to do is to address the Board if you want to respond to...

Mr. Specht: This is the a...document in question about how they gave it to themselves. This was from Buhl...

Mr. Specht approached the Board.

Ms. Gennarelli: Could you just take that mic? I'm sorry I know no one is used to doing this thing.

Mr. Specht: ...they were co-owners of the properties apparently at one time but here is this document from Buhl to Glas.

Mr. Donovan: And all of that important but it stands for what it stands for what it says on the deed and let me tell what I'm talking about by way of example. I represented a young couple once that bought a house and there was a shed in the back of the house. Well you search the title

you come to found out that this smart lawyer next door gave himself an easement to the shed because he built the shed on the wrong property. So he gave himself an easement but you can't do that. I can't give myself an easement on your property.

Mr. Specht: Right.

Mr. Donovan: So the fact that it's reflected in a filed instrument doesn't necessarily make...make it so.

Mr. Specht: Right.

Mr. Donovan: That's why I'm looking for some independent verification whether title insurance was granted or whether the Board wants an independent opinion of title whether or not this property has the right to use this right-of-way. You may want to consider that to have someone that doesn't have any stake in the outcome to just give an opinion because the legal access is...is a valid issue and an important issue for the Board to consider in...in determining whether or not to issue a 280-A variance.

Mr. Specht: Can further documentation be submitted to this Board at a later date?

Mr. Manley: As long as the Public Hearing is open we can certainly consider anything you provide the Board but again it's going to be needed to be reviewed by Counsel which that takes time so we do have certain deadlines to submit stuff. Ms. Gennarelli can give you that timeline at the end of the meeting and let you know so if you want to submit something by our next meeting more than likely this probably will be held open because we'll be waiting for some information.

Mr. Specht: Okay, thank you.

Mr. Manley: And it's going to be up to the Board to decide as a group whether or not they want to require you know, independent a...you know, an independent opinion for title.

Mr. Specht: Okay, thank you.

Mr. Manley: Yes, sir.

Mr. Leroy: Mike Leroy, 36 South Dix Avenue, my son owns at 19 Still Hollow he had to leave so I would like to say a few things. Everybody on that road have been taken care of, they do pitch in when they got washed out during that last hurricane Mr. Specht got that road fixed in what maybe a week and nobody called the Town to say what can you do for us, they did it themselves. They all chipped in and fixed that culvert. That was a hole that was twenty feet wide by fifteen feet deep by the length of the road and then some. No problem they fixed that in a week, they did that themselves as you saw the blacktop beautiful street. In other words, this is one of the few Town's private roads that everybody gets along and they are taken care of it. Somebody stole the street sign they bought a new street sign. They did it not the Town. They...they paid for it themselves so what I'm saying is don't ruin that. If you start adding people on to this what if they decide no, no now you've made the road...there's too much traffic,

they're tearing it up I'm not paying for it anymore. I'd hate it to ruin what it has going for it. Thank you.

Mr. Specht: I just want it noted that this access issue has gone all the way back to when R&K Real Estate, Richard Lang had to have his attorney send letters to Buhl telling them to stop using Still Hollow Road to access the back lots in which there was a letter I believe from in the Town of Newburgh's attorney, I believe I have a copy of that that's why I wanted to ask if I could further submit documents that a stated telling him to do not continue to use the road for logging. They were getting some wood out of there. Because you do not have access the access is only to the first lot only. This is an ongoing issue. This isn't something that was sprung on anybody. When the land was for sale many people came to look at it, previous to their ownership and all these issues always came up. Even Mr. Leroy when he purchased the land his land surveyor told him, you know you've got a lot of right-of-way issues here. (to Mr. Leroy) And did he not? You know, so it's been an ongoing thing, it's not a new thing and now it is...it appears they're just trying to be able to take something that's not theirs. They don't have the right-of-way over it. It's a road that we've all...private property that we all bought and paid for by purchasing our lots, have a substantial amount of money invested in repairing it, keeping it up to date, major culvert washing out in Irene and now someone just wants to come in and be able to use it whether they want to be part of the road maintenance or not, it's private property and I guess it does come down to the right-of-way, you know. We believe it doesn't exist and that's...that's where it stands. Thank you.

Mr. Manley: Does the Board have any further questions at all for the applicant?

Mr. Levin: I think we should hold the meeting open.

Mr. Manley: And are there specific things that you're going to want to see from th...

Mr. Levin: (Inaudible)...papers they want to supply.

Ms. Gennarelli: Richard, can you...? Where is my sign?

Mr. Scalzo: Where's your sign, Betty?

Mr. Levin: I apologize.

Ms. Gennarelli: Thank you.

Mr. Brown: We'd like to have the applicant submit some information also we have no problem with it being kept open.

Mr. Scalzo: I...I do have one additional question. It was mentioned before that access to Lot 11 which is not the lot that we're discussing here this evening. But access to Lot 11 was going to be a different direct...coming in from a different way. Perhaps getting into Lot 11 can be extended to 12 which would eliminate this completely.

Mr. Brown: There's a timeline, you know, issue with that the a...owner of Lot 11 Mr. Fuchek has you know no urgency to build a house. Where it is his son-in-law a...he wants to build a house now I mean a...they need a place to live so that...so that's the situation it just...

Mr. Scalzo: Just putting it out there.

Mr. Brown: I appreciate that.

Mr. Manley: Charlie, the Board may decide and they might want to request a...an independent opinion from a title company. If that is the case, is the applicant willing to escrow that? So that we can request that and have that for our next meeting.

Mr. Brown: We're talking about somewhere less than a thousand dollars, right?

Mr. Manley: I...I...we would have to...

Mr. Donovan: I would think so Charlie but I...I'd have to get a quote before I could. I can't commit and I mean being that you know, I see Hill-N-Dale, I see River City, it would have to be someone you know, not...preferably not in the area.

Mr. Brown: Okay.

Mr. Donovan: You know and I would have to get a quote from them. I mean typically what the Code provides if you've been through the planning board process before this you've reimbursed for consultant's fees but I...I don't...I don't want you to get hit with a fifteen thousand dollar fee. That's not fair so I...I would try to get an estimate beforehand but you know it's up to the Board if that's what they want. But since...since we have a disparity of viewpoints here I do think it is important.

Mr. Brown: That's a reasonable request. Yes we're okay with that.

Mr. Maher: Charlie...Charlie one thing too. On the map that you gave us the original subdivision...

Mr. Brown: Right.

Mr. Maher: ...and...and your layout here if you could be a little more clear on the...on the cul-de-sac there the...the one lot in the rear on...23.21 isn't show on...well it is to a point but the lines aren't clear on...on the cul-de-sac where the line is.

Mr. Brown: You're right. I could have that and a...

Mr. Maher: Yeah, just a...we need a little more information on cul-de-sac to see where all the lines are based on...does it match up to this and then the Town map too would be helpful.

Mr. Scalzo: I'd like to see the...the existing driveway that comes off the paved portion of Still Hollow and that would at least orient me a little better.

Mr. Brown: Okay.

Mr. Maher: And if possible the...the...the issue of where the sign was placed currently on the cul-de-sac it seemed to be the right of where your...it's to the right of your location that's on the map here of the right-of-way.

Mr. Brown: You're talking about the Notice sign?

Mr. Maher: Where the Notice sign is currently so it looks like it's almost on another parcel. So I wasn't clear...looking at the map here...it...what appears to follow the driveway...a driveway...versus where the sign it's almost to the right of that.

Mr. Brown: Well if we put it all the way back on the lawn nobody would even see it.

Mr. Maher: No, I...I understand that I'm just trying to...just trying to get some clarity as far as where the actual access point is.

Mr. Brown: I can...I can actually locate the sign on the map.

Mr. Maher: Well either that or just locate...yeah that would work. Whatever...whatever it makes it a little easier to see.

Mr. Scalzo: Just a...let say the driveway that...that...

Mr. Brown: Some...give you some...some reference points out there.

Mr. Scalzo: Yeah that would help.

Mr. Brown: Right, right. Okay.

Mr. Manley: What is the Board's position on requesting an independent individual from a title company to provide us with an opinion with whether or not right-of-way does or does not exist?

Mr. McKelvey: I think we should hold it open to get that.

Mr. Levin: I would suggest we should too.

Mr. Manley: Darrin?

Mr. Scalzo: Dave, this appears...I mean we're here for certain purposes but this, in my opinion, should be something that's resolved before it even gets to us or that's...that's what I'm having a problem with.

Mr. Donovan: Well...in a perfect world, you're...you're correct. I will tell you, you know, there's a court case from about five years ago where...where the court sustained the denial of a 280-A variance finding that the Zoning Board may properly consider in the context of a variance application pursuant to Town Law Section 280-A whether an applicant has shown that he or she has shown a lawful right to use proposed access road. So it's within our purview to do that. Should...should it have been resolved? Yeah, because then we would just talk about whether or not the road is suitably improved which is the typical. You...you don't have legal...you don't have legal frontage on a Town road so the issue is whether or not it is suitably improved. And generally the legal right to use is pretty easy but it's not here obviously. People are raising issues that need to be resolved and it's in our purview to resolve those.

Mr. Brown: Can...can we refer this to the Town engineer at the same time so we can run both things concurrent?

Mr. Manley: That would be our plan.

Mr. Brown: Okay.

Mr. Scalzo: That and my other concern is if...if we were to vote to look for a third party independent interpretation of what's going on both parties would have to agree that...that's the end of it.

Mr. Donovan: Well I think they're going to do that. Right? I mean and that's...that's the...that's...

Mr. Scalzo: Someone is not going to be happy.

Mr. Donovan: But that's...yeah that's life. Right?

Mr. Specht: I won't agree that's the end of it.

Ms. Fakler: Absolutely not.

Mr. Specht: Just because somebody that one person's independent opinion...

Ms. Gennarelli: Henry, Henry, I'm sorry...I'm sorry...if anybody talks just please...

Mr. Scalzo: Well if it goes your way that would be the end of it.

Mr. Specht: Well then that's the way it works.

Ms. Gennarelli: You can tilt that mic down or take it off and just give us your name.

Ms. Fakler: My name is Lori Fakler, I own the property at 11 Still Hollow Road and I am also in opposition to Mr. Dickinson's request.

Mr. Maher: Let me ask a question, is it...? So with Mr. Specht there is a Road Maintenance Agreement in place currently?

Ms. Fakler: Yes.

Mr. Maher: And it encompasses each and every parcel on the property...on...on the road? So, 26.1 and 24 are part of that?

Mr. Specht: 26.1 is not. They had an existing right-of-way from 1982 and then in 1987 or '89 when the subdivision was done that right-of-way was already through Chadwick's property so I guess, you know, it was existing before the subdivision was done so that lot was not subject to our Road Maintenance Agreement. The other six lots created by R&K Real Estate Management obviously were subject to the a...Road Maintenance Agreement.

Mr. Maher: So the 26.1 has their own...their own access above and beyond that of the Road Maintenance Agreement?

Mr. Specht: Yes. 26.1 is Mr. Leroy I believe. Just making sure I'm getting the numbers correct, five point six acre lot the first one.

Mr. Scalzo: Five point six acres, correct.

Mr. Specht: We have no...you know, we have no legal recourse to make Mr. Leroy a part of that however, he is a gentleman and contributes in every way, shape and form.

Mr. Manley: It's going to be the Board's determination as to what course of action they want to a...take with respect to determining whether there is or is not a right-of-way but we can't get to the next test which is whether or not the road meets the standard in order to grant the variance without knowing the answer to the other question. So if anybody on the Board a better suggestion on how to get there I'm all ears.

Mr. Specht: Just for the record our attorney is Marsha Jacobowitz, Jacobowitz & Gubitz and they have researched it as well and a...so, that's why we feel that we're on a firm footing.

Mr. Manley: They did not provide you with any opinion or...in writing?

Mr. Specht: We discussed that this week she felt it wasn't necessary at this point for this meeting. That's why I asked the question, she said it's not...it's not in your authority a...easements over private property. Hence, the reason, I guess, you have to get the answer of whether the right-of-way does exist and so she felt it wasn't necessary at this point to a...provide anything. But if the Board feels that it is we can have something provided.

Ms. Fakler: So back to your earlier comment about would this be done if you got an independent person to give and somebody wouldn't be happy, you know, our group of homeowners is prepared to retain, you know, we've retained Jacobowitz and we're prepared to proceed with

whatever monies that needed to be contributed to make sure that our...our properties were protected.

Mr. Manley: Does the Board based on the fact that there's nothing that we have in our packet to substantially show us whether or not there is a legal right-of-way if we make that determination if we close the Public Hearing and we deny the variance based on the fact that we do not have sufficient evidence at this point to make a decision could the applicant at that point when they have the necessary...? If they do get something they could re-apply to the Board again when they have the necessary or once it's denied, it's denied. I'm looking for another option that that...

Mr. Donovan: No, understood.

Mr. Manley: ...the Members could consider.

Mr. Donovan: In terms of whether or not this property has legal access over the right-of-way to get out to (North) Fostertown Road...I mean I don't know the answer to that question. So we have one side saying definitively yes, we have one side saying definitively no. Do I...the proof that's in front of us, you know I'm not prepared to say one way or another...I think that the...

Mr. Specht: May I...may I interrupt?

Mr. Donovan: No, no. That the better course of action would be more information. Now it's up to the chairs...I'm getting old I don't want to forget what I want to say.

Mr. Specht: Me too that's why I tried to...

Mr. Manley: Yes, do you have a statement?

Mr. Specht: Now I forgot what I was going to say already a...yes...a...I forgot what I was going to say for a minute.

Mr. Manley: It will come back to you. Don't worry.

Mr. Specht: It will.

Mr. Manley: Alright, I'll just ask, is there anyone else from the public that has any other comments or questions with regard to this application? If not I will then defer back to you for your...

Mr. Specht: I just wanted to say, is there any document there that even...there's no document there that states that here is a legal access that has been granted over Still Hollow Road to that lot. There's not one document there that states that.

Mr. Manley: And what the Counsel has advised the Board is that whether it's written or not in the deed what we would need to see to show that there is definitively a right-of-way would be in a title policy. We don't have it from either side. We don't have from Hill-N-Dale which would

have been the people that gave you the advice that it did not exist but yet the applicant is stating his title policy it does exist. We don't have any of those documents to look at tonight so you know that's why the Board coming up with an idea to kind of establish whether or not it exists or not is to ask an independent party that's independent of this, is there or isn't there but we need something in order to rule on and right now we don't have a...in our advice of Counsel, sufficient evidence there to rule either way.

Mr. Specht: Thank you.

Mr. Manley: Anyone else have any comments at all? If not I'll come back to the Board and ask the Board at this point what is their pleasure with respect to the application? We've discussed with Mr. Brown some of the items that we're going to need.

Mr. McKelvey: We're going to need more...more items.

Mr. Levin: (Inaudible)

Ms. Gennarelli: Please come closer to your microphones because it's not picking up...

Mr. Levin: I would hold the meeting open.

Ms. Gennarelli: Thank you, thank you.

Mr. Levin: ...till we get those documents.

Mr. Manley: Okay, the other question is are we going to ask the applicant to escrow funds in order for the Board to go out and request an independent opinion from a title company.

Mr. Maher: Well I think we need it obviously we have two different sides here we need something that's independent so that we...I'd agree with that.

Mr. Scalzo: I'm still staying with my belief this is a legal question and not a zoning or code question. I don't know that we're...we should be rendering an opinion on whose right-of-way it is.

Mr. Masten: Yeah.

Mr. Donovan: Well...the...the issue that we need to resolve that I would suggest is proper for the Board to resolve is whether or not the lot in question has the right to use this private road to get to the public road and you know I'd just cite in support of that this case from the Town of Carmel Zoning Board of Appeals from 2011. And I can see I have not persuaded you one bit.

Mr. Brown: Unfortunately Darrin, we can't get a Building Permit from the Building Department unless this Board renders a decision in our favor so you know, we're...we're kind of stuck here.

Mr. Manley: The next question would be and...welcome Mr. Canfield.

Mr. Canfield: Thank you. I'm sorry I'm late.

Mr. Manley: That's okay. Do you have anything that you can share from the Town's perspective with respect to anything that the Town found with respect to the right-of-way perhaps through the Town attorney or through the engineer? Have any of them shared with you a...an opinion as to whether there is or is not a legal right-of-way?

Mr. Canfield: I think Darrin best described our department's opinion exactly even though we have not had this conversation before. The applicant on many occasions has produced many documents claiming that they did have rights of ingress and egress over the easement inclusive of using the private road. All of those documents have been reviewed by our Counsel simply because I didn't see enough that made me feel warm and fuzzy enough to okay and issue a Building Permit. That coupled with the neighbor's concerns and the information that they provided us left us totally undecided and that was what made our decision to go to Counsel for the Town. Counsel for the Town advised the Building Department that the documents that were produced was not enough evidence to display that they did have legal access. So we did not issue the Building Permit and referred it to your Board a...for the a...for the variance which is an area variance. I agree with Darrin totally. I think it's a legal question a...whether they do or do not have access. I can say also I don't know when a Zoning Board in this Town, not only this Board, has ever sought legal or a title company advice going out for a third party in that sense. It's always been up to the applicant to provide that information to the Board. That's all I have to add. I mean I totally don't know. I haven't been convinced that the documents that we've seen provide legal access and I'm very concerned about issuing the Permit at this point.

Mr. Manley: Another question for you, if we were to hold open the Public Hearing and transmit a request to the Town attorney to opine as to whether or not the Town believes whether or not there is or is not the legal right-of-way and if he returns back a decision in either way could that be used as this Board's determination that this is our advice from the Town. If he says yes there is then we can then proceed to make a decision. If he says no there's not we could proceed to make a decision.

Mr. Donovan: But...just...his determination would not be binding on us, I mean, if the Board elects to go in that fashion in terms of this issue I...I you know I would want a...what I'm not satisfied with is the level of proof that we received. There's a couple of copies of deeds, a couple if an email, each people have said this and that, you know, there's no...there's no...and not that anyone knew they needed this tonight. There's no proof by affidavit, there's copy of the title insurance policy where someone says whatever the cost of the lot, we're putting our title insurance premium on the...on the line here is to say the cost of the lot is seventy-five thousand dollars. If we're wrong it cost us seventy-five thousand dollars that...that title insurance policy would show that. An affidavit as opposed to an email from the...from the title company would be helpful cause I'm just not seeing enough evidence one way or another to give my opinion.

Mr. Scalzo: Notice me nodding; now you...I agree Dave.

Mr. Brown: We would appreciate the opportunity to...to a...provide the title insurance policy and additional documentation from the title a...company. So, you know, relative to the Town attorney at this point I think is a little premature because again we...we have additional documentation that we didn't...again...know that we were going to need tonight that we're willing to provide.

Mr. Donovan: So then if the Board has considered to hold it over for submission of whatever proof either side is going to submit to make their case to the ZBA? Would you like to do that? I still would suggest, you know at some point in time, you should go to the...the Town engineer relative to the condition of the road just so we have something in the record on that.

Mr. Specht: As far as proof on our side it's kind of hard to prove a negative. If something doesn't exist we can only put forward the documents that are available and you know, either a determination is made that it exists or not is kind of hard for us to prove any further is something...

Mr. Manley: Well if...like Counsel said if there was an affidavit that was available from Hill-N-Dale Abstract...

Mr. Specht: Okay.

Mr. Manley: ...that said, you know, an affidavit is a sworn statement...

Mr. Specht: Yeah.

Mr. Manley: ...that this...that...that...there does not exist a right-of-way in a sworn affidavit that it does not exist that's something that this Board could use because it's a sworn affidavit. Just like if you were able to provide a title policy that you showed if you somehow able to show that there was no right-of-way that you know, that's evidence that we can use.

Mr. Specht: Even if it's...if a title company insured a right-of-way but if they made a mistake and the right-of-way didn't exist that still doesn't prove that the right-of-way exists just because they insured it.

Ms. Fakler: At all...at all.

Mr. Donovan: Well my...my point is the evidence that is submitted is insufficient for me to render a determination and the Board is looking for a legal determination from me on this issue.

Mr. Specht: Yeah.

Mr. Donovan: Because Darrin is right it is a legal issue.

Mr. Specht: Yeah, we can get the affidavit no problem.

Mr. Dickinson: You mentioned a family member working for that law firm can you clarify that?

Mr. Specht: No family members work for the law firm.

Mr. Dickenson: Whose...

Ms. Gennarelli: Excuse me, excuse me...

Mr. Manley: This isn't the venue for cross-examination. At this point, does the Board wish to hold over to allow the applicant and if the public wishes to submit some additional documents for review next month?

Mr. Scalzo: I'll make a motion to hold the Public Hearing open.

Mr. Levin: I'll second that.

Mr. Donovan: And that's the June 23, 2016 correct?

Mr. Scalzo: Correct.

Ms. Gennarelli: Okay, Richard is the second. Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is held open.

Mr. Brown: Thank you.

Ms. Gennarelli: To June 23<sup>rd</sup>.

Mr. Manley: And just so the public that's here for this application this evening if you want to listen up? The Public Hearing is going to be held over until June 23<sup>rd</sup>. There will not be a re-notice so this is your notice that you need to be here to bring your case back before the Board on the 23<sup>rd</sup> at 7 PM wherever it falls on the agenda, more than likely it will be at the end of the agenda. In addition to that make sure that you get anything to our Zoning Board Secretary ten days before the meeting. That will be by the 13<sup>th</sup> of June.

Mr. McKelvey: As a reminder, the agenda would be on the website, to remind you of when the meeting is.

PRESENT ARE:

RICHARD LEVIN  
MICHAEL MAHER  
JAMES MANLEY  
JOHN MASTEN  
JOHN MC KELVEY  
DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY  
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:35 PM)

ZBA MEETING – JUNE 23, 2016

(Time Noted – 9:30 PM)

DANIEL & ELISSA DICKINSON

STILL HOLLOW ROAD, NBGH  
(6-1-12) R-1 ZONE

Applicant is requesting an area variance for N. Y. Town Law 280-A - No permit for the erection of any building shall be issued unless a street or highway giving access to such a proposed structure has been duly placed on the official map or plans.

Mr. Manley: The next item which was held open from our May 26, 2016 meeting is the application of Daniel and Elissa Dickinson, Still Hollow Road, Newburgh, seeking area variance for N. Y. Town Law 280-A - No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plans. All of the postings and mailings were in order, correct?

Ms. Gennarelli: Last month, yes.

Mr. Manley: Good evening.

Mr. Brown: Good evening, I'm Charles Brown the engineer for the applicant. We were here last month and a...I went through the various items required for a variance a...I can recap that if the Board feels it's necessary but in general to paraphrase it's not going to be out of character of the neighborhood. This is a very big lot, it's a...roughly a...twelve times, thirteen times the required minimum lot size. A...we're asking for a single family house so it's not going to be out of character with the neighborhood. At the last meeting, a lot of questions came up from the neighbors regarding the ability or right of this lot to access Still Hollow Road. Since that meeting there's been a substantial amount of research through the deeds and the filed maps a...and other a...other documents that are on file with the Town and the County. In 1984 a right-of-way was...was created over vacant land that was to become the Still Hollow Road Subdivision and a...(inaudible) created Still Hollow Road. That right-of-way was...was not clearly defined as far as a legal description. In 1989 the subdivision creating Still Hollow Road was...was filed. That right-of-way and that map show a fifty foot right-of-way to the lot 6-1-26.1 which I'm going to call the Leroy lot. That lot was not part of the subdivision. In 2002 a...at that time the Leroy lot a...the lot that's under review by this Board and the lot behind it up here all under the same ownership. The owners of those lots granted a right-of-way, a fifty foot right-of-way a...to the back two lots and it's clearly a...clearly labeled Liber 5847 page 329 which I do have copies of all this. I'd like to present a full package to this Board if...if there's a need to do that. After that Fuchek purchased all three lots, subsequently in 2009 they sold the lot 26.1 to Leroy. He hired Anthony Valdina to create a...a survey map for his Building Permit Application. That survey map clearly shows the fifty foot right-of-way that we have here on this map. I do have a copy of that map with us also. A...we went...a Fuchek then sold this lot to their son-in-law and he's proposing to build. The other thing that the a...adjoining homeowners brought up was about a maintenance agreement a...until today I hadn't seen it. I do have copies of it and have paraphrased a couple of sections out of it. Those sections actually have exceptions that allow exactly this. So I do have multiple copies of that and I prepared to submit those to...to this Board.

Mr. Manley: Do any of the Board Members have any questions, comments on any additional materials that have been received by the Board since the May 26<sup>th</sup> meeting? We do have some additional submittals by the neighbors which are actually it's actually from...one is from Mr. Leroy and one is submitted by Mr. Specht it looks like. There were two items which I will enter. There's also a letter from a resident which I'll read into the record. The first item that was received was from Hill N Dale Abstractors Inc., dated June 13, 2016. This is addressed to the Town of Newburgh Planning Board, 1496 Route 300, Newburgh, NY 12550.

To whom it may concern: Please be advised that I have examined Title to premises known as section six, block one, lot twelve situated in the Town of Newburgh, County of Orange and owned by Daniel and Elissa Dickinson. My search was conducted for the sole purpose of determining if the above referenced property has a legal recorded right-of-way/easement over private roadway known as Still Hollow Road, a private right-of-way leading to North Fostertown Road. After conducting a thorough examination of Title, I find no right-of-way easement of record recorded in the Orange County Clerk's Office in favor of tax lot 12 to utilize Still Hollow Road. Please call should you have any questions. Very truly yours, John M. Wood, Hill N Dale Abstractors Inc.

The other item that was submitted which I'm not going to read it in its entirety but it's a letter submitted by Mr. Specht from Scott and Hoyt Attorneys and Counselors at Law, dated August 25, 1997. It's addressed to Mr. Donald Glan, 84 Summer Avenue, Yonkers, NY 10704. Town of Newburgh, Orange County Logging Project:

Dear Sir, This office represents Richard Lang who is the owner of lands off North Fostertown Road through which runs a private road designated as Still Hollow Road. Title searches indicate that there is a right-of-way over Still Hollow Road to a certain 5 acre lot to the northwest. We are advised that there is a logging operation you are involved with which is logging from substantial additional acreage beyond the 5 acre lot and that access thereto is over Still Hollow Road. Since the right-of-way granted to the 5 acre lot over Still Hollow Road benefits the 5 acre lot only, the right-of-way cannot be enlarged or enhanced to go beyond the 5 acre lot to the other premises. Use of Still Hollow Road is confined for the benefit of the 5 acre lot only and not to any additional or adjoining lands. Therefore this letter is to advise that use of Still Hollow Road for the benefit of the back land beyond the 5 acre lot must be discontinued immediately. This matter has been reviewed and discussed with the Town of Newburgh municipal offices and they are in accord with Mr. Lang's position. Very truly yours, Julius Larkin Hoyt

And there is a second letter to Mr. Lang, that letter to Mr. Lang is from Mr. Scott (Mr. Hoyt), dated September 22, 1997 and in the letter it states that 'the Title Report makes no mention of the 25 foot right-of-way from Chadwick as benefiting Lots 11 and 12. The report's conclusion was that rights of ingress/egress could not be insured. And that letter was signed by Julius Larkin Hoyt back on September 22, 1997. The third item that was sent to the Zoning Board Office to be entered into the record is from Dr. Joquin Bagtas, MD, 20 Still Hollow Road, dated 5/31/2016 to the Town of Newburgh Zoning Board of Appeals:

Dear Members, On May 26, 2016 a petition was presented to the board on behalf of several land owners on Still Hollow Road, including myself, in opposition to the Dickinson variance request, a case which is still open. I would like to all parties

involved in this case to know that I hereby abolish my stance on the matter as well as rescind my signature as it appears on that petition. After having the chance to research the matter on my own accord, it appears the Dickinson's lot does benefit from a long-standing and historical easement through Still Hollow Road to his property, SBL 6-1-12. I must admit that at the time of signing that petition, I was both, acting on emotion as well as limited and misleading information from another land owner, Henry Sphect. It is my intention that this request be added to the record and considered as the case moves forward on June 23<sup>rd</sup>, 2016. Furthermore, I can attest to Mr. Dickinson's sound moral character as I believe his family would be a valuable addition to the Still Hollow community. Thank you for the opportunity to present these facts.

And it's signed, Dr. Joaquin Bagtas, MD. And those are all the submittals that we had since the last meeting. Do any Board Members have any other question for the applicant?

No response.

Mr. Manley: Anybody from the public here wish to be recognized if you would...yes sir, in the back, if you would come up to the microphone and state your name and address for the record.

Mr. Hoffner: My name is Paul Hoffner I live at 7 Still Hollow Road. I've lived at Still Hollow Road and purchased the property twenty-five years ago, predates the 1992 easement that the engineer referenced. I have the original deed from my property. I'd like to read two excerpts from it.

Mr. Manley: Certainly.

Mr. Hoffner: I'll paraphrase. It says, lots hereby agree to cooperate and promptly execute such deeds of conveyance, releases, covenants or other documents as may be required in order to dedicate the said 50' wide road-way for the Town; provided, of the location of the said roadway so dedication conform to the location of the same on the filed subdivision map and will not be extended for the benefit of any adjoining lands not part of the said subdivision...

Mr. Donovan: I'm sorry to interrupt sir. Could you just tell me again what document is?

Mr. Hoffner: This is...this is my deed.

Mr. Donovan: Okay.

Mr. Hoffner: If you'd like I could present it to you?

Mr. Donovan: No, I take your word for it; I just want to make sure.

Mr. Hoffner: This...this deed was...was filed June 19, 1989 that's on page 3, paragraph 1. Page 4, it says, again and in any such event and all future owners of said lots hereby agree to cooperate and promptly execute such deeds of conveyance, covenants and whatever a...to effect such extension, this particular provision relating to such extension not to be subject to

amendment as herein provided in paragraph 10 and...and survive the delivery of the declarant. Again speaks to no lot owner can extend their easement to any other lots. If you'd like to see that I'll show you.

Mr. Manley: Would you allow us to just have that at least just to the end of the meeting? And perhaps...

Mr. Hoffner: Sure.

Mr. Manley: ...our Zoning Board Secretary when we adjourn for a bit we can have her make a copy.

Mr. Hoffner: (Inaudible)

Mr. Donovan: If you want to submit it we'll make a copy of the whole thing.

Mr. Hoffner: And I also have the original site plan when I bought the property it lists six lots on our subdivision, two of those lots were further sub-divided by the original developer and that was within his rights. It does show a proposed easement to this one lot. If you'd like I'll bring it up and show to you.

Mr. Manley: Yes, please.

Mr. Hoffner: It does show...it does show the proposed easement to the land of Glas...it says proposed easement, right here to this one lot. It is my understanding from Mr. Lang this is the lot that they're referring to and it goes to here. It was my understanding from Mr. Lang that there were no further lots allowed to access this road. This road is somewhat of a hazard, it has the valley and...and crowns. It has limited sight vision on to North Fostertown Road.

Mr. Manley: May we make a copy of this also?

Mr. Hoffner: Yes.

Mr. Manley: Thank you. Thank you.

Mr. Brown: Again, Charles Brown, engineer for the applicant a...that language in his deed is somewhat mirrored in a maintenance agreement a...it's specifically it tied to if the road is ever turned into a Town road a...that restriction doesn't apply as long as Still Hollow Road is a private road. A...and again all three of these lots were owned by the same owner and they granted this additional easement prior to selling this lot and that was done in 2002. I do have a copy of the road maintenance agreement and I do have a copy of a survey done by Tony Valdina for Mr. Leroy that shows that and all the references to that right-of-way, I have a copy.

Mr. Manley: Yes, sir.

Mr. Hoffner: A few more comments if you don't mind.

Mr. Manley: Certainly.

Mr. Hoffner: Dr. Bagtas is no longer a homeowner on Still Hollow Road.

Mr. Manley: Okay.

Mr. Hoffner: He's since moved so I don't know that his testimony has any bearing. Number two, the homeowners generally believe that this is a civil matter and that you don't have any jurisdiction in determining whether they can cross private road or not. There's multiple interpretations, he has an interpretation, six of us have our original deeds it clearly says that there are no further subdivisions, there's no further extensions. If they want to challenge that I don't believe that...that zoning has the...has the authority to make that decision.

Mr. Manley: Right, and that's the purpose of why we've been requesting all this documentation...

Mr. Hoffner: That's fine.

Mr. Manley: ...because we at that point we will compile everything and you know, the Board will make a determination as to whether or not there's sufficient evidence for us to be able to make a decision.

Mr. Hoffner: That's fine, I understand.

Mr. Maher: Just one question. You said Dr. Bagtas is not a resident of the road?

Mr. Hoffner: Correct.

Mr. Maher: When did he...did he move, sell his house or...?

Mr. Hoffner: He moved about six weeks ago, eight weeks ago and Henry is his neighbor.

Mr. Specht: Henry Specht, Mr. Bagtas had informed me he closed on his house prior to the previous meeting in May so it's a little surprising to see a letter dated from him after that date. I called him to remind him of the previous meeting and he said I am no longer an owner on Still Hollow Road therefore the matter does not pertain to me. We had a nice conversation that was that and then this letter pops up which he's listing his address. So something also interesting was that per the Town website that letter was mailed by Dan Dickinson. So that seems a bit odd. Also in the documents that I submitted you didn't mention a Title report. Do you have that? It was on the website, from 1987 to Steven Buhl, Aneta Buhl and Donald Glas. Schedule B...

Mr. Manley: Yes. I have that here. We have that as a Schedule. It wasn't a letter or something that we normally would read in because it's a...

Mr. Specht: Right, so this is their own Title report that they had done that says 'however, we find no right of way over tax lot 24;' which presumably was the one lot...one piece before Lang subdivided it, 'consequently rights of ingress and egress to and from the premises are not insured'.

Mr. Maher: Excuse me, do we know if tax lot 24 was in fact that or is that your assumption?

Mr. Specht: That's my assumption. And in the road maintenance agreement I don't see where it states what a...Mr. Brown said about whether it's a private road or a public road. It clearly states in our road maintenance agreement that no one on the road shall extend any sixteen foot wide private roadway to be extended or any portion of any such lot to be used to provide access to any lands other than those lands set forth on the subdivision. No determination about whether it was a public or private road at that point. Thank you.

Mr. Manley: Thank you. Does anyone else have any comments, concerns or anything further with regard to the additional information that's been submitted in regard to this application?

Mr. Maher: Did you submit that stuff to Betty, Charlie?

Mr. Brown: No, again I just got the road maintenance agreement today a...the...the...the survey from Tony Valdina actually we pulled from the Town it's with a...Leroy's a...Building Permit Application and the Leroy lot was not part of the subdivision so if Dickinson is excluded then so is Leroy...with that said, I'm a little confused about the logic here but a...I do have that with me. I can submit again I can submit a full submission, I can do the chronology; I have all libers and pages, I provide all the copies of all those that you described the fifty foot a...the description gets more and more defined as you go through, you know, go through the a...chronology, time line...

Mr. Manley: When...when did you obtain those documents? Just today?

Mr. Brown: I got the maintenance agreement today. I got the copy of the survey; we had to FOIL the Town we got that a...on Leroy's lot, we got that last week so...a...again this is a...this is a...only about a quarter of my file on this and a...I don't typically have files this...this a...large for a Zoning Board Application so...but I you know, I don't have a problem submitting those a...and defer this for another month a...my client wants this to be settled the right way so a...

Mr. Manley: My concern Charlie is, you know, I put a lot of weight in what the Title Company lists and the letter from the Title Company from June pretty clearly...

Mr. Brown: I have the Title report from when Fuchek bought the lots and that clearly says that they...they have the right.

Mr. Manley: And when was that done?

Mr. Brown: 2000...2006.

Mr. Manley: But this is 2016.

Mr. Brown: Well I did talk to an attorney about it he said once the right-of-ways there it can't be retracted without the beneficiary a...retracting it.

Mr. Donovan: I think the bottom line is we're no further ahead than we were last month.

Mr. Brown: Okay.

Mr. Donovan: You say black, they say white so I mean I don't what the ZBA, you know, I don't know what we're going to do for you to be honest with you. We don't have any...anything different than what we had last month. Your research shows X, their research shows Y.

Mr. Scalzo: Charlie, I do see in one of the Schedule A's in the Title Insurance report there was a right-of-way recorded on Liber a...Liber 260, page 403 and no one is talking about that.

Mr. Brown: That's the one I mentioned early on a...it's from 1874 a...restricted strip a...I have a copy of that also a...again that's...that's one I said existed prior to the subdivision a...it did not define metes and bounds, it said it followed a...a quote, unquote logging trail. Again that was...that was before the subdivision was...was done.

Mr. Scalzo: Mr. George Smith.

Mr. Brown: Yeah, do you want to see it?

Mr. Scalzo: (Inaudible).

Mr. Brown: Now I think holds the most weight is Tony Valdina's map. He's a licensed surveyor; and he shows on Leroy's lot the access to a...6-1-12, the lot that is in question right now. And I can give you this right here and now.

Mr. Manley: You're welcome to submit if you'd like.

Mr. Brown: Now? Or do you want me to bring...?

Mr. Manley: I'll pass it along everybody.

Mr. Leroy: Dave Leroy, I live at 19 Still Hollow Road, I've spoken to River City a number of times and he's told me numerous times that they originally they don't have a right-of-way to through Still Hollow Road, that he made a mistake and insured something that never existed so...I mean, that's pretty much...pretty much it.

Mr. Manley: And you submitted the information from Hill N Dale, yes?

Mr. Leroy: Yes.

Mr. Manley: Does the Board have any questions for Mr. Leroy at all?

No response.

Mr. Manley: Is there anything else that you would like to advise the Board?

Mr. Leroy: Not that I can think of at this time.

Mr. Manley: Okay, thank you. Are there any other individuals that have any comments or questions regarding this application?

Mr. Gabrielle: Thomas Gabrielle, I live at 14 Still Hollow Road.

Mr. Manley: Yes sir.

Mr. Gabrielle: I bought my house from Richard Lang who was very particular. He took thirty-five acres and made six lots out of it that other people were making thirty a...thirty plots out of. He allowed no...he put a lot of restrictions in a...there for example no vinyl siding, you can only have wood, stone or brick. No signs, clotheslines, no conversion of the garage into another unit and one of the things he told me was that the road would be extended for one more lot. There were other lots after that but they would not be part of the deal. So, I'm sorry, I have Parkinson's and it's hard to get it...

Mr. Manley: That's okay.

Mr. Gabrielle: ...but Richard Lang was adamant about that that the lot...the road would only extend for one more lot and not go past that. Anybody have any questions?

No response.

Mr. Manley: Any other questions?

No response.

Mr. Manley: Thank you. Are there any other questions or comments from the public regarding the application?

No response.

Mr. Manley: And does the Board have any final...?

Mr. Scalzo: I'm with Dave; I don't think we're any further along this month than last month.

Mr. Manley: At this point, do we have a motion to close the Public Hearing?

No response.

Mr. Donovan: So at five o'clock tomorrow afternoon my son is got to walk across the stage to get his diploma from High School so hopefully someone makes a motion before then so I can be there...of some sort or another.

Mr. Scalzo: I'd like to say to leave it open but I don't know what I'm looking for.

Ms. Fakler: I'm sorry, I'm Lori Fakler and I live at 11 Still Hollow Road and when we were here last month Mr. Scalzo you were perfectly clear in stating that this is really more of a judicial matter and you very clear about that...

Mr. Scalzo: And I still am.

Ms. Fakler: ...and you...and you thought that this was a legal matter because there was really no clear proof of a right-of-way and a...as a community and a road and a group of neighbors that's our position that there is not a clear cut right-of-way for this matter. And as a community we said last month that we've already retained an attorney, we're prepared to take this to court if necessary a...and then you said we could close this and we could mandate a...you know, potentially a third opinion and we got the abstract a...the Title company to give an opinion. So as you close the Public Hearing I don't know where that leaves us as a road and a community but we're still in this kind of feeling that there is no right-of-way so therefore there is no variance to be granted.

Mr. Manley: Well this is what the Board would do. If the Board chooses to close the Public Hearing at that point we go to deliberation, okay, at the end of the meeting and the Board Members will make a decision whether or not A) they feel that there's adequate proof that there is or is not a right, you know, a right to use that based on what was submitted and at that point that's how...how the chips would fall. If the Board votes that we don't see that there's adequate proof therefore we can't, because of that grant the variance to the applicant then it's denied. If the Board feels that there was enough evidence then at that point it would be granted. So that...that's where it's kind of left off. The Board has to decide something. They, they can't leave this up in the air. So that's kind of where we're at right now.

Ms. Fakler: Where the chips fall.

Mr. Manley: Correct.

Mr. Maher: (Inaudible) But to clarify Jim, a vote either way, the only proposal before us is is there a right-of-way or is there access as a parcel.

Mr. Manley: And we have to determine whether or not there's access.

Mr. Maher: Right.

(Inaudible)

Mr. Donovan: Well the 280-A variance has multiple permutations to it. The paramount one here which was in our purview to determine is whether or not there's a legal right to use the road. There's court cases that say that clearly that's within the purview of the ZBA to determine whether or not there's a legal right to use the road. I would closet if the Board determines either there is not or there's insufficient evidence to make a determination one way or another...

Mr. Maher: That's what I'm leaning towards, right.

Mr. Donovan: ...that's...

Mr. Maher: It's not necessarily a case that the Board feels there is no right-of-way, it's that we can't determine if one exists...

Mr. Manley: Correct.

Mr. Maher: ...or not.

Mr. Manley: Based on...based on what has been presented we can't make that determination therefore it only leaves one option which is...

Mr. Maher: No, I understand that.

Mr. Manley: ...denial.

Mr. Maher: I understand that.

Mr. Manley: Potentially that's again there's six of us here so you know, I can't speak for how the Board is weighing. You know, I can tell you know and I'll certainly give you my opinion. My opinion right now is the burden of proof hasn't been met to the point for me to be able to say yes, there's access and I don't feel comfortable making a decision, you know, you know and putting the Town on the...on the hook potentially granting a Permit and you know, and you know, the other thing to...the secondary thing is there is the potential for other access to the property so it's not like it's not possible to go somewhere else. The other option may be more costly, there may be other approvals that may be needed, maps that need to be...things that have to be done but that's...you know, that's an option so...

Ms. Fakler: There's definitely a right-of-way out the other side.

Mr. Manley: Correct.

Ms. Fakler: Okay, thank you for clarifying.

Mr. Brown: I did submit a map her from a licensed surveyor that shows that right-of-way so you're saying that that's not valid, a surveyor's map?

Mr. Scalzo: I, well I personally didn't say that but Dave you do a lot of real estate transactions typically aren't those survey maps when they are submitted, they are subject to any easements recorded...?

Mr. Donovan: Absolutely.

Mr. Scalzo: ...and...and although there are recorded easements on here, it may not be all of them, it may be more but there's...land surveying is a professional opinion.

Mr. Brown: I understand that but if there's a...if it's shown on that map then it exists, no?

Mr. Donovan: That I...potentially, yes so...so...so how...how does this Board weigh that versus the opinion of the Title Company that says it's not there.

Mr. Brown: Okay, well Tony's been a surveyor for...

Mr. Scalzo: A long time.

Mr. Brown: ...and he's still around and he's still surveying.

Mr. Donovan: Yeah, well Hill N Dale has been around probably I've seen...about '94.

Mr. Brown: Okay.

Mr. Donovan: So a long time, long before I was practicing law they've been around.

Mr. Brown: Okay. So bringing Tony in here wouldn't help?

Mr. Donovan: We're going to...well it's the same thing...

Mr. Brown: Yeah.

Mr. Donovan: When we're done you know it's...

Mr. Brown: Understood.

Mr. Donovan: Yeah.

Mr. Brown: Understood, thank you.

Mr. Specht: The first day that I met Mr. Dickinson was out in the a...end of the cul-de-sac and I had asked him who he was and what was going on and a...informed him of our position and a...he called that land surveyor on the phone and handed the phone to me. I spoke to him directly that day. That gentleman said I never said there was a right-of-way and he told Mr...he said, I told Mr. Dickinson, and he was on speaker phone, that Mr. Fuchek...he said, you're father-in-law said he had been working it out with the neighbors. And I asked him directly, so is there a

right-of-way? And he wouldn't answer that question, he just kept saying that he said he was going to work it out with the neighbors, figured you might want to know that...that he would not directly say to me that a right-of-way existed. And I'm just curious, what's the document? What's the one document that you're seeing that gives you any pause to say that there may be a right-of-way? I just...I'm not seeing the document that even says that there's a right-of-way over Still Hollow Road.

Mr. Scalzo: We haven't rendered an opinion. We may not have anything. I...

Mr. Specht: Okay.

Mr. Scalzo: ...I personally haven't myself.

Mr. Specht: Okay, thank you.

Mr. Manley: Are there any other questions from the Board?

No response.

Mr. Manley: At this point, does the Board have a motion to make of some sort?

Mr. Levin: I'll make a motion to close the Hearing.

Mr. Manley: We have a motion from Mr. Levin to close the Public Hearing. Do we have a second to that motion?

No response.

Mr. Manley: Well Mr. Levin's motion is going to die.

Mr. Scalzo: I'll second it.

Ms. Gennarelli: Thank you. Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing at this point is closed.

(Time Noted - 10:04 PM)

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ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:51 PM)

DANIEL & ELISSA DICKINSON                      STILL HOLLOW ROAD, NBGH  
(6-1-12) R-1 ZONE

Applicant is requesting an area variance for N. Y. Town Law 280-A - No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plans.

Mr. Manley: The next application is Angel Rios and Kathleen Sileno-Rios, 446 Strawridge Road, Wallkill that one has been moved to July 28<sup>th</sup> as well. The next application A. Duie Pyle, Inc. that has been referred back to the Building. The next application that we will be voting on this evening is the application of Daniel and Elissa Dickinson, Still Hollow Road, Newburgh. It's an Unlisted Action under SEQRA. If the Boar were to approve it we would require a Negative Declaration otherwise if it was to be deemed to be voted no, you would not need a Negative Declaration. Do we have discussion on the application?

Mr. Scalzo: Jim, I think you said it best, I don't believe the burden of proof has been established.

Mr. Levin: I agree with that.

Mr. Manley: I mean, I really think the Board is really encumbered with err on the side of caution and if the applicant were to develop new information at a later date...

Mr. Scalzo: They can always come back but I will sit on my first statement in the last meeting I believe this is a matter for the court not a matter for the ZBA.

Mr. Maher: There...there just seems to be as much information that it does exist and that says it doesn't exist so as you said the you know, whether or it the burden is a method it does exist...that's the difficulty.

Mr. Levin: Motion for denial.

Mr. Manley: Do you wish to make motion Mr. Levin?

Mr. Levin: For denial.

Mr. Manley: We have a motion of denial from Mr. Levin. Is there a second to his motion?

Mr. Bell: I'll second.

Mr. Manley: We have a second from Mr. Bell.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: No

Mr. Donovan: Just to clarify, so the motion is for denial. So a yes vote would be to deny the application.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried and the request for the variance has been denied.

PRESENT ARE:

DARRELL BELL  
RICHARD LEVIN  
MICHAEL MAHER  
JAMES MANLEY  
JOHN MASTEN  
DARRIN SCALZO

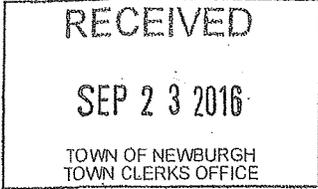
ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY  
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 10:54 PM)



Section 6, Block 1, Lot 12

TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

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*In the Matter of the Application of*

DANIEL DICKINSON

**DECISION**

*For area variances as follows:*

- *Grant of a variance from the requirements of New York State Town Law Section 280-a 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.*

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**Introduction**

Daniel Dickinson seeks an area variance as follows: (1) An area variance from the requirements of New York State Town Law Section 280-a 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.

The property is located at Still Hollow Road, is in the AR Zoning District and is identified on the Town of Newburgh tax map as Section 6, Block 1, Lot 12.

A public hearing was opened on May 26, 2016, notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code. The public hearing was continued to June 2016 at which time it was closed.

### Law

New York State *Town Law* Section 280-a requires that access to a single family home must be by a 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.

### Background

After receiving all the materials presented by the applicant and hearing the testimony of the applicant's engineer, Charles Brown, P.E., as well as the testimony of the property owner, Daniel Dickinson and the testimony of several neighbors who appeared in opposition to the requested variance<sup>1</sup> at the public

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<sup>1</sup> There was extensive testimony before the Board relative to this application. As always, the minutes of the public hearing, taken in verbatim fashion, are incorporated herein by reference and should be consulted for a detailed elaboration of the arguments both for and against this application.

hearing held before the Zoning Board of Appeals on May 26, 2016 and continued until June 23, 2016, the Board makes the following findings of fact:

1. The applicant is the owner of a 521,721 +/- square foot lot (tax parcel 6-1-12) located at Still Hollow Road.
2. The lot is vacant. The applicant now proposes to construct a single family dwelling on the lot.
3. The proposed access to this lot is *not* proposed to be by way of a street or highway that has been duly placed on the official map or plan of the Town of Newburgh nor is there an existing state, county or town highway that provides access to the lot nor is there a street shown upon a plat approved by the planning board nor is there a street on a plat duly filed and recorded in the Office of the County Clerk providing access to the property on a map that was filed prior to the appointment of a planning board in the Town of Newburgh.
4. There as extensive testimony before the Board regarding access to this property. Specifically the applicant and his representatives testified that there was an existing easement that provided this property with a means of ingress and egress, over the lands of others, to Still Hollow Road.
5. In support of the applicant's position, his representative, Mr. Brown, submitted various deeds that he maintained provided the subject premises with access over the lands of others to Still Hollow Road. Additionally, Mr. Brown made reference to a subdivision map entitled "R&K Real Estate Management, Inc.," and designated as filed map

number 9463 and a certain survey prepared by Anthony Valdina, L.S., as additional support for the existence of an easement benefiting the premises and allowing this specific premises access over the lands of others to Still Hollow Road.

6. Opponents of the requested variance submitted correspondence from the Law Office of Scott and Hoyt, dated August 25, 1997 as well as correspondence from a Title Insurance Company, Hill-N-Dale Abstracters, Inc., dated June 13, 2016 both of which stand for the proposition that the premises in question is *not* benefited by any easement that would allow them to cross the lands of others to reach Still Hollow Road.
7. The applicant's proposal is set forth on series of photographs and plot plan prepared by Talcott Engineering Design, PLLC dated March 24, 2016. Those photographs and plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

### SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act in as much as it involves the granting of an area variance(s) for a single-family, two-family or three-family residence [6 NYCRR §617.5(c)(13)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

### GML 239 Referral

This application is not required to be referred to the Orange County Planning Department for review and report.

### Findings

The Board finds itself confronted with a threshold issue which it is unable to resolve. That issue is whether or not the premises which are the subject of this variance application are benefited by an easement, that is to say, have the legal right to cross the lands of others to reach Still Hollow Road as their means for legal ingress and egress to and from their property.

Conflicting testimony has been submitted to the Board relative to this threshold legal issue. The applicant and his representative have submitted various legal instruments, i.e., deeds that have been recorded in the County Clerk's office, a filed subdivision map and a survey all of which they maintain demonstrate that the premises is benefited by an easement providing ingress and egress to and from Still Hollow Road.

Opponents of the application, consisting primarily of neighbors who use Still Hollow Road have produced correspondence from counsel and a very recent letter from a reputable title insurance company stating unequivocally that the premises are not benefited by an easement and does not have the right to cross the lands of others to reach Still Hollow Road.

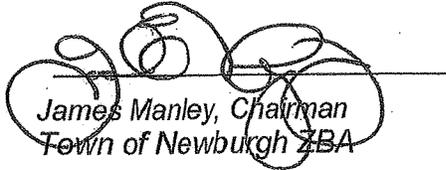
While this Board is quasi-judicial in nature, it is without jurisdiction to decide an issue which is purely legal in nature, i.e., does this property have legal access to cross lands of others to reach Still Hollow Road?

Accordingly, this Board has no alternative other than to deny the application in view of the inability to resolve the threshold issue of the ability to gain ac-

cess to Still Hollow Road.

In reviewing the facts presented for the requested area variance, the Board hereby denies the variance as requested.

Dated: June 23, 2016



James Manley, Chairman  
Town of Newburgh ZBA

*By roll call a motion to adopt the decision was voted as follows:*

**AYES:** Chair James Manley  
Member Darrell Bell  
Member Michael Maher  
Member John Masten  
Member Richard Levin  
Member Darrin Scalzo

**NAYS:** None

**ABSENT:** John McKelvey

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STATE OF NEW YORK )  
 )ss:  
COUNTY OF ORANGE )

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on June 23, 2016

  
BETTY GENNARELLI, SECRETARY  
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on SEP 23 2016

  
ANDREW J. ZARUTSKIE, CLERK  
TOWN OF NEWBURGH