

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, June 15th, 2011*. The meeting was called to order, and began with the Pledge of Allegiance.

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

Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman
Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

ADOPTION OF MEETING MINUTES for May 19, 2011

So moved.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the minutes are adopted.

* * *

PUBLIC HEARINGS ADJOURNED TO SEPT. 2011 FOR TOWN BOARD ACTION

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

Mr. David Douglas stated we're waiting for Town Board action with regard to that matter.

* * *

CLOSED AND RESERVED DECISION ADJOURNED TO JUNE, 2011 FOR TOWN BOARD ACTION

A. CASE No. 01-10 Zuhair Quvaides for an Interpretation of the definition of outdoor storage and vending machines on the property located at **2072 E. Main Street, Cortlandt Manor.**

Mr. David Douglas stated we're waiting for Town Board action. I believe at the work session we had talked about further adjourning this until September to give the Town Board some more time. Somebody want to make a motion in that regard?

So moved.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case 01-10** is adjourned to September.

Mr. John Klarl stated Mr. Chairman, I think on that there's a committee that's working on that right Mr. Hoch?

Mr. Ken Hoch responded yes, there is.

Mr. John Klarl stated the Town Board is going to take the input from the committee on that issue.

*

*

*

CLOSE AND RESERVED DECISION

A. CASE No. 14-10 Michael Parthemore for an Area Variance for a 3rd freestanding sign for **CRISTINA's** restaurant at **15 Baltic Place, Croton-on-Hudson.**

Mr. James Seirmarco stated Mr. Chairman we've had a number of meetings regarding this site. It's an unusual site and tried to get the best signage plan for the entire site. We came to the conclusion at the last meeting that the signs were in arrangement that we preferred but we wanted one additional thing and that's a spreadsheet that shows the existing signs and where they are so that years from now we can always tell which sign was where. Sometimes the continuity is a problem. The spreadsheet was put together. It's called "The Sign Chart for **case #14-10.**" There was one minor change. We have an addition to it today. I'm not going to go through the whole signage arrangement but it seems to be very fair to everybody at this moment. I don't have any further comments.

Mr. John Mattis stated I would make a comment that we got a revised copy of this tonight but I think the references to the sign numbers on the D&O since the line numbers changed on that would have to be corrected.

Mr. Ken Hoch stated yes, I have to fix that.

Mr. John Mattis stated so we could just correct that.

Mr. James Seirmarco stated I make a motion on **case #14-10** that we approve the wall signs, hanging signs and size of signs hanging on this site as per the drawing with the correction that John just mentioned , this is a type II SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Decision and Order as described is adopted.

* * *

ADJOURNED PUBLIC HEARINGS

- A. CASE No. 18-09** **Post Road Holding Corp.** for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**

Mr. David Douglas stated I believe we got an email from the applicant requesting that this be pushed back until July. They're waiting for some information from the Department of Public Health and they believe that if they give them until July they should have that information.

Mr. Raymond Reber stated I so move that we adjourn **case 18-09** to July.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #18-09** is adjourned to July.

- B. CASE No. 01-11** **Bojan Petek** for an Area Variance to construct a new garage on property located at **28 Hollis Lane, Croton-on-Hudson.**

Mr. David Douglas stated this had be adjourned until this month and we got an email from the applicant requesting an adjournment – I think the applicant wanted to adjourn this until as late as September and at the work session we talked about the matter and I think the view of the members of the Board was that we should have this on for July so the issues can be addressed.

Ms. Adrian Hunte stated motion to adjourn to July.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #01-11** is adjourned to July. Mr. Hoch if you could just make sure to tell the applicant that it's on for July.

C. A. CASE NO. 11-11 William Caltagirone of 230 Watch Hill Rd. for an interpretation that Building Permit #20110152 granted to **Padraig & Deidre Carroll** for a new single family residence on property located at 10 **Rocky Ridge, Cortlandt Manor** was not properly issued.

Mr. David Douglas stated at the last meeting there was a hearing held on this and we received some additional information.

Mr. William Caltagirone stated I'd like to hear the additional information.

Mr. David Douglas stated I think we received some of it from you.

Mr. William Caltagirone stated the Board received my package two weeks in advance.

Mr. David Douglas stated what the Board also got in the interim is we got a January 31, 2008 letter from United General Title Insurance Company. I'm not sure if this is part of the same package, I think it might be part of the same package, July 24th, 2003 a letter from agents Abstract Corporation. We got some material analyzing the O'Mara vs. Town of Wappingers case which I assume that you put together.

Mr. William Caltagirone responded that case was quoted to me by the Town attorney and I reviewed the case, that's an irrelevant case, totally irrelevant.

Mr. David Douglas stated okay, but we got an analysis of it which I believe you put together and we got some discussions of the mining operation and a copy of the land reclamation which I believe we received from you as well.

Mr. William Caltagirone stated you got a copy of the New York State Law easement of necessity which would be clearly irrelevant in the case of this applicant because he doesn't own the road. That's in my original package.

Mr. James Seirmarco stated those are your opinions. I wish you'd preference those for the record that they're your opinions.

Mr. William Caltagirone responded they're not my opinions. They're in the law and it's clear in the law. You have a copy of that.

Mr. James Seirmarco stated those are your interpretations of the law. I would prefer that you put those into the record as your opinions of the law.

Mr. William Caltagirone responded I put the law in the record, not on my opinion. The law is in the record and I'll show it to you.

Mr. James Seirmarco stated I read that. I understand that.

Mr. William Caltagirone asked and what does it say?

Mr. James Seirmarco responded that's not the point.

Mr. John Mattis stated sir, we're not here to debate but what he's saying is you may – I apologize I was not at the meeting last month but I watched it three times on television and you make statements that the Town is doing things illegally, the state is doing things illegally – in the statement it's irrelevant, or not relevant.

Mr. William Caltagirone responded I didn't say that. I didn't say anything about the state.

Mr. John Mattis stated you talked about the state granting the permission to dig the driveway and called it a mine and said that's illegal mining. That's an opinion. We're saying it's an opinion...

Mr. William Caltagirone stated they gave an exception to the mining law. That's in my package. There was an exception to the mining law.

Mr. John Mattis stated and they're allowed to give exceptions but we're not here to debate that. What we're saying is you stating your opinions as fact and they are in fact opinions. We would like the facts stated not the opinions please.

Mr. William Caltagirone stated the fact is that **335a** reads that and I will read it to you and you can draw your own opinion. It's in the package.

Mr. John Mattis stated and that's what we're here to do.

Mr. William Caltagirone responded and in fact that was somewhat distressed to Mr. Klarl called me...

Mr. David Douglas stated for the sake of the person who's going to have to transcribe this session, we get a transcript for the minutes, let's try and talk one at a time because it's impossible for that person to do their job. One person talk at a time, that's all I'm saying.

Mr. James Seirmarco stated my only point was that when you bring to us information, laws and whatever, you're putting your interpretation and we're going to put our interpretation on how to apply that law. When you say that this is illegal and that's illegal and this is illegal that remains to be seen. That's all I was talking about. Try to keep it in say that "this is my opinion that the law says this. It's my opinion that the law says that" because, we are going to interpret those

laws.

Mr. William Caltagirone stated the copy of the law is in the package that I put together and gave to you and I stand on that. I'll read it to you and I won't interpret it. When it says that the land must be owned by the person giving the easement that's in the law. That's not an interpretation. That's a fact.

Mr. James Seirmarco stated I'm not going to repeat myself.

Mr. David Douglas asked I have two questions; first is there anything that you want to add? We had a fairly lengthy discussion last month about your application. Is there anything else you want to add to that?

Mr. William Caltagirone responded I think we left off that you felt, Mr. Chairman, that we're really only talking about Wilson V. Ford and that's a factual issue but there's also procedural issues. Those are in my package. One of the procedural issues is that the Town did not follow their own law regarding tree removal because there's supposed to be notification, a map was sent around, which was a reduction of this document to page size which was totally illegible. So, therefore there was no notification of tree removal.

Mr. John Mattis asked are you saying that there was no notification because it was illegible?

Mr. William Caltagirone responded absolutely.

Mr. John Mattis asked but you did get it?

Mr. William Caltagirone responded I did get it and I sent it certified letter and return/receipt regarding that [inaudible 12:07] by the Town Court and all the involved parties. That's also in the record that I submitted.

Mr. Raymond Reber stated the main purpose of most notifications is that they can be – packages are very complicated, not just one sheet but there can be dozens of plans, those don't normally get sent out. The purpose for a notification is to say “this is happening. This gives you some information on it.” If you are concerned or interested, you then come in and you look at the original plans and the extensive documentation. The Town has no obligation to send complete, legible packages of all kinds of technical material to every resident. It just has an obligation to notify. It could have easily sent you a letter saying that “if you're concerned come to the Town and review our records.”

Mr. William Caltagirone responded in my opinion the Town actually has no obligation to follow its own Code. There's a lot of law on that but as a matter of being a citizen of the Town and let's hope there's some sort of tenant of Jefferson democracy that the Town does follow its own Code but there's a lot of law on the fact. You don't have to follow your own Code...

Ms. Adrian Hunte asked excuse Mr. Caltagirone do you have anything new to add to this? This has already been gone over before would you please move on to the next item? Thank you.

Mr. William Caltagirone responded I have some amplification, the fellow behind the fence there is a retired Town employee. His house is falling into the pit.

Mr. David Douglas asked is this a copy for us?

Mr. William Caltagirone responded you may have that copy and you may have this one too. This one looks like 911.

Mr. John Klarl asked when were the photographs taken?

Mr. William Caltagirone responded within the last three weeks, two weeks.

Mr. John Klarl asked who was the photographer?

Mr. William Caltagirone responded I was the photographer.

Mr. John Mattis asked has this gentleman notified the Town?

Mr. William Caltagirone responded which gentleman? Angelo Noto?

Mr. John Mattis responded the retired employee.

Mr. William Caltagirone responded Angelo Noto has his tail between his legs because Angelo...

Mr. John Mattis stated come on, you don't make statements like that.

Mr. Raymond Reber stated we will not listen to that kind of discussion.

Mr. William Caltagirone stated Angelo is a Sicilian immigrant as my grandfather was and in Sicily the Mafia runs this type of stuff and you keep your mouth closed.

Mr. John Mattis stated that's enough.

Mr. William Caltagirone stated it's not enough.

Mr. David Douglas stated we're not going to engage in an...

Mr. John Mattis stated I asked a simple yes or no question: did he notify the Town?

Mr. William Caltagirone responded I don't sleep with the guy.

Mr. Raymond Reber stated if it's a problem for his property it's up to him to decide to notify the Town or the appropriate authorities not you.

Mr. William Caltagirone stated but it's up to the Town to protect its citizens.

Mr. Raymond Reber responded yes it is.

Mr. David Douglas asked can I make a request? I don't understand why it is you feel the need to fight with us. All we're doing is trying to hear what your case is and then we're going to contemplate what we think the proper result is. We're not here to get you. We're not angry at you. We're not against you. We're trying to hear what you're trying to say.

Mr. William Caltagirone stated I'm trying to say basically I'm out a half million dollars because my house is unsellable now. Basically, the way housing breaks down, very young people don't live in housing. They live in apartments. Older people live in Florida. If you want to have kids...

Mr. John Mattis stated those are opinions again, please stick to the facts. It's irrelevant.

Mr. William Caltagirone stated you want me to quote the case Shiller Index. Housing is one of my areas of expertise...

Mr. John Mattis stated where people live is irrelevant.

Mr. William Caltagirone responded it's not irrelevant. It is relevant. It's relevant to the value of a house. That's a ridiculous statement.

Mr. David Douglas asked is there any points you want to add? Please return to the podium.

Mr. William Caltagirone responded New York State SEQRA law **147.4B10**, very few...

Mr. David Douglas stated we talked about SEQRA last month didn't we?

Mr. William Caltagirone responded it was mentioned in passing and I'm wondering if that was researched by the Board. Almost everything in SEQRA is up to the Town. You can have a Negative Declaration, you can set off a nuclear blast in your backyard if there's a nuclear declaration. It's fine so far as the Town is concerned, so far as digging next to our largely contiguous to a park, that's where you have to – you're required by state law to do that. However, the state has never yet sued a Town on that but who knows maybe you'll be the first.

Mr. David Douglas stated are you saying this is a requirement under SEQRA? Is that what you're saying?

Mr. William Caltagirone responded it's probably the only exception, the **147.4B8, 9 and 10**, if

you're next to a historical site, if you're next to a historical landmark, or if you are next to a park then you have to go to a type II. I don't even think there was a Negative Declaration. Maybe Mr. Klarl knows.

Mr. John Klarl stated I think you got a little mixed up. Type II doesn't take any compliance.

Mr. William Caltagirone stated I'm sorry type I, you're required to do a type I.

Mr. John Klarl stated a type I typically takes a – is a pos. dec. and leads to a DEIS and an FEIS.

Mr. William Caltagirone responded that's correct, and that wasn't done, and this would be a type I according to the law.

Mr. John Klarl stated there's a lead agency and the lead agency has to make a determination as to the SEQRA determination at the end of a case.

Mr. William Caltagirone responded except in the case of being contiguous to a park.

Mr. John Klarl stated I'd have to take a look at the language on that.

Mr. William Caltagirone stated and you'd have to review the case law on that because that's what the SEQRA law references is the case law on digging...

Mr. John Klarl stated what happens when you do your SEQRA analysis you also involved interested and involved agencies so in involving those, they speak to the environmental issues.

Mr. William Caltagirone stated the agency in this case is the Town. I don't quite understand.

Mr. John Klarl responded there's other agencies too. When you talk about park you have different agencies, you have a county agency, you have a state agency.

Mr. William Caltagirone stated but in this case the acting agent is the Town.

Mr. John Klarl responded the lead agent.

Mr. William Caltagirone stated who is giving the Permit is the action the Town is taking – giving the Building Permit.

Mr. John Klarl stated they are, yes.

Mr. William Caltagirone stated I'm glad you have the pictures. I would be glad if you'd review those and you put those in your calculations. I think it greatly devalues the Town. It makes for a precedent for our **R40**. Additionally, there is an immense danger to the school children, both in elementary schools and the middle schools. You have cars exiting that property and, in fact, you

have a natural gas truck...

Mr. David Douglas stated excuse me, I think we talked about traffic issue last month. I just don't want to rehash what we did last month. Do you have any other aspects that you want to discuss that we didn't talk about, but we talked about traffic at length.

Mr. William Caltagirone responded we did but I'm glad you're rehashing that...

Mr. David Douglas stated I don't want to rehash it.

Mr. William Caltagirone stated no, but now that you rehash because it's seems that when we left off you wee – the only issue was the right of easement.

Mr. David Douglas stated no, I asked you last time and I guess I'll ask you again, in your packet you put together for us, you have **14** points and what I think I asked, and it's a month ago and I don't remember the details but I think I asked which of the points that you wanted to emphasize. Which ones do you think are your most important points?

Mr. William Caltagirone responded well, the case in chief, is that what you want to call it?

Mr. David Douglas responded no, I want to know what your most important points. I don't want to play lawyer, that's my day job, this is my night job. I want to know what you think the most important salient points, the most important points are of the **14**, so it can help me focus on those – I'll look at all the points but I'll look at those first and that'll be my primary focus.

Mr. William Caltagirone responded the most important point you can start at is the guy had no right to that road. He has no easement, that's because of the 1947 deed.

Mr. David Douglas stated easement issue, right?

Mr. William Caltagirone responded easement issue, there's a second and I believe it's point **2** in my package that there is a legal right to having the continuance of a neighborhood in its form...

Mr. David Douglas asked sir, besides the easement issue, what are the other points that you think are the most important points?

Mr. William Caltagirone responded the whole environment, the mise en scene if you will, that you change and you make this look like 911...

Mr. David Douglas asked which number point are you referring to?

Mr. William Caltagirone responded I'm referring to point **3**, a general plan for the neighborhood of **lots 1** through **7** created by implication on the map filed **exhibit 1**.

Mr. David Douglas stated so points **2 and 3**. I just want to know what to focus on first. Points **2** and point **3**. Which other ones do you think are most important? Again, I'll look at all **14** of them.

Mr. William Caltagirone responded and certainly point **4**, the one word "overburden" that is the point that runs through the longstanding law from 1913, the Wilson V. Ford overburden, overburden, overburden. It runs over and over again through that case.

Mr. David Douglas asked so those of your **14** points, **2, 3, and 4** you think are the most central?

Mr. William Caltagirone responded interesting that I ended up with **14** points, I didn't even realize that. I suppose that puts me in good company. So far as overburden, there's a), b) and c) and so forth to that. There's the sanitation which is the letters from the county on the sanitation. There's issues of drainage, of dust, of the water table...

Mr. David Douglas asked which number are you referring to now?

Mr. William Caltagirone responded I'm adding that. That would be a subset that's implied in the idea of overburden.

Mr. David Douglas stated I'm being very simplistic here. You gave us a document that had **14** points that are numbered. I just want to know what to look at first; **2, 3, and 4**, I should focus on those first?

Mr. William Caltagirone responded look at them, the killer thing, this guy should have never been there because he doesn't have an easement?

Mr. David Douglas asked that's point **2**?

Mr. John Klarl stated it's your memo to the Zoning Board of Appeals, and the Chairman's correct, it recites **14** points and then it comes to a summary.

Mr. William Caltagirone responded the Chairman is referencing the easement issue that is point **1**.

Mr. David Douglas stated so, points **1, 2, 3, and 4** those are the key ones?

Mr. William Caltagirone responded I suppose those would be the key ones and really **5** should be an a) to the idea of overburden or an a), b), or c).

Mr. David Douglas stated I'm not saying that all your points aren't important and we won't consider them. I want to know which ones – in most situations people say "the key points I want to make are 'a', 'b' and 'c' and there's also some other things that are important." I just want to know what are the ones in bold, in capital letters that you want us to look at first.

Mr. William Caltagirone responded well, you can look at the easement issue first and you can look back at the 1947 deed which I put in there and then you can look at the law regarding the general implication of what the neighborhood should be like.

Mr. David Douglas stated so points **1, 2, 3,** and **4** are the ones you think we should look at first. That's all.

Mr. William Caltagirone stated look at number **1** first and that should close the case really.

Mr. David Douglas stated that's fine, then I will personally look at number **1** as my primary focus and the other ones will be secondary. I'm happy to do that.

Mr. William Caltagirone stated I will even give you the reference on that is if you look at – you might have it in a large law library, the reference is escaping me now but there's a publication that comes out quarterly, it's quite expensive, it deals with real property law particularly it deals with easements. I know it's very expensive. You probably have it in your library. I know you're a fairly large firm...

Mr. David Douglas stated I can get anything I want off the internet.

Mr. William Caltagirone stated actually that's a subscription that would cost you over **\$3,000** to download the first quarter.

Ms. Adrian Hunte stated sir, we're really not interested in the cost of anything at this point.

Mr. David Douglas stated those are my questions, I don't know if anybody else -- anybody else have anything else that they want to add?

Mr. Wai Man Chin responded basically he said it.

Mr. David Douglas asked do we want to close the public hearing on this? Do we want to continue it to next month? It's up to you.

Mr. John Klarl stated if we close, Mr. Chairman as we discussed the matter, we should close and reserve.

Mr. John Mattis stated I think we should close the public hearing.

Mr. Raymond Reber stated I will then make a motion on **case 11-11** that we close and reserve decision.

Seconded with all in favor saying "aye."

Mr. Brian Orser stated I just want to reface an existing sign. I work for New York Field Distributors. We're trying to open up a 2030 Albany Post Road. It was an old Citgo site that fell under. We took over the project. We're almost completed and I'm just trying to get this sign package approved. I believe that the existing sign has been there for **25** or **26** years, we were just refacing that sign with the same square footage and somewhere along the line, it appears that it may have changed somewhere. I'm not really sure. You guys have on your records that it was **30**...

Mr. Wai Man Chin stated **30** square feet.

Mr. Brian Orser stated **30** square feet that sign, but that sign's been there for...

Mr. John Mattis responded **11** years.

Mr. Brian Orser responded it's been there forever.

Mr. John Mattis reiterated **11** years.

Mr. Brian Orser asked has it been that long?

Mr. John Mattis stated it was approved...

Mr. Brian Orser stated it may have been approved then...

Mr. John Mattis stated actually April of 2002, **9** years.

Mr. Brian Orser stated I believe it was approved then but that sign was there prior to that. I spoke to Ryan Luposello. He said it's been there for at least **25** or **26** years.

Mr. John Mattis stated there was a Variance granted on that in 2002 to increase it from **24** square feet to **30**.

Mr. Brian Orser stated I don't believe anyone has ever changed that sign even from then.

Mr. Wai Man Chin stated but right now the sign is existing at **48** square feet.

Mr. John Mattis stated and it's supposed to be **30**.

Mr. Brian Orser stated and that's the way we purchased it. When I originally filed for the application I filed for like for like and actually the building signage that was supposed to be – that was approved in the package we didn't want to put on the building. I thought it was actually less square footage so I didn't think there was an issue at all with it. It was after the fact that Code Enforcement called me to tell me that....

Mr. James Seirmarco asked is that the same size as the Citgo sign?

Mr. Brian Orser responded it's the same one if you look at the...

Mr. James Seirmarco stated see the Citgo sign was supposed to be **30**.

Mr. Brian Orser stated but it's not and it never was. That's what I'm saying.

Mr. James Seirmarco stated that's the problem we run into all the time.

Mr. Wai Man Chin stated but you're saying this sign's been up there **10** years almost.

Mr. Brian Orser responded more.

Mr. Wai Man Chin stated at **48** square feet.

Mr. John Mattis stated no, he had **24** square feet and applied for **30** back in 2002 so if he had **48** then we would have known it. That sign was not that big back then. The pumps were over in front of Luposello's at that time. The pumps weren't over there. That's why they moved the pumps.

Mr. Raymond Reber stated at that time yes.

Mr. Brian Orser asked **11** years ago they moved the pumps?

Mr. John Mattis responded yes.

Mr. Brian Orser stated I'm not really sure of the history.

Mr. John Mattis stated so it's been a while.

Mr. Brian Orser stated we were just trying to reface the existing sign and remove the signage from the building that was approved to go on the building. We're not putting that signage on but it still puts us over – I guess according to whatever was approved in 2002.

Mr. David Douglas stated here's the dilemma. What was approved in 2002 was **30** square feet and apparently the prior owner just sort of ignored that, which happens.

Mr. John Mattis stated we generally have the signs measured when they go up now so it doesn't happen anymore.

Mr. David Douglas stated it doesn't happen as much because we got burned by that too many times.

Mr. Brian Orser stated Ken asked me to go measure it to be sure. I even measured the height.

Mr. David Douglas stated here's the dilemma that I see, is that it should be a **30** foot sign and what you're saying is because the last guy cheated, I'm not sure it's a fair word but I guess it is, Mr. Seirmarco says it's a fair word – so what you're saying now is because he cheated and nobody caught him for the last **10** years that you should get the benefit of that.

Mr. Brian Orser responded no, I'm asking for a Variance for that only because we didn't find this out until after the fact and we purchased the signs in their custom and they were already fitted. After they were fitted to make sure that everything is good, now after that...

Mr. David Douglas stated but we hear that all the time also because people come in and say "oh, I already made the signs." But the Code says – regardless of what sign was up there before the Code does say what's allowed and what you have to get a Variance for so if somebody had checked the Code then they would have realized that they shouldn't make the sign before they know that they can get a Variance and instead what was done here, as is often done, is that somebody comes in, they ignore the Code, then they come in and say "oh, I already made the signs and it cost me money."

Mr. Brian Orser stated I understand that.

Mr. Raymond Reber stated I have a little problem with this because, yes, in fact we have people that have signs made up that they don't get approval and then after the fact cry the blues to us but this is different. This is a sign – I agree, because the first thing I noticed when I went down there to look at the sign and said "that's the same sign that was there, they just refaced it." My argument is "maybe the Town made a mistake, who knows, but that sign's been there for **10** years and I don't remember people running to the Town to say "oh my God, this sign is ugly and it's detrimental." It's a typical gas station sign and I do, in this case, feel that for this applicant he did a normal thing. I think that if I bought a station and I simply refaced the sign, I would assume it was legitimate. To me, to penalize him I think in this case is different than those guys who are going to put up signs that weren't there and then say "well we didn't know better." To me, I would grant the Variance here. It's been that big. They just changed the name. It hasn't been a problem for **10** years. I think it's being very petty on our part since we do have the ability to grant it, to then tell this applicant that he's got to take that sign down and rebuild it.

Mr. David Douglas stated I don't agree at all that it's petty. When the Town has an Ordinance that says you're allowed to have up to **24** square feet and the applicant decides not to look at what the Ordinance requires and then when we say maybe that's problematic I don't see that as being petty. I also don't see any reason why this sign has to be as big as it is. This is not a situation where anybody could possibly – I pass this. I live in the neighborhood and I can't imagine in anybody not realizing that that's a gas station. That gas station is there and having a sign that's **24** inches square feet or a **30** square feet or **48** square feet – this is not a situation where it has to be a – there's some equitable reason why you need an oversized sign to alert people that there's a gas station there. You can see the gas station from hundreds of yards away

and everybody who drives there knows there's a gas station there.

Mr. John Klarl stated it's a prominent parcel on the road as you get to the highway as a gas station, everybody knows it to be a gas station.

Mr. Brian Orser stated I understand.

Mr. James Seirmarco stated the other point I was going to make is the purpose of that sign is to let people know the prices of the gas.

Mr. Brian Orser responded correct.

Mr. James Seirmarco stated that we wouldn't want to see any smaller. That's the most important part of that sign is the price of the gas for the various grades of gas of fuel.

Mr. Wai Man Chin stated the price of gas is supposed to be one foot high if I'm correct.

Mr. James Seirmarco stated I think that's on the pump itself.

Mr. Brian Orser stated I don't believe so...most signs are $6\frac{3}{4}$ the numbers that are out on the street. I've seen some smaller.

Mr. John Klarl asked are you aware of any county or state requirement as to the size of the numbers on the pumps and on the freestanding sign?

Mr. Brian Orser responded it's standard for a county Code. You can't purchase a larger one or a smaller one. There's just one in the industry that goes out there. We all purchase from the same guy.

Mr. John Klarl asked what size is the numbers on the freestanding sign?

Mr. Brian Orser responded $6\frac{3}{4}$ I believe.

Mr. Wai Man Chin asked when did you take over this property?

Mr. Brian Orser responded December. I had an application – you guys just found this information recently, the application has been in, so it was just brought to my attention now. I was just still going through the motions because the place has been closed so long and I was trying to get it finished.

Mr. Wai Man Chin stated I understand that. I happen to agree with Mr. Reber on this thing because it's been there so long. You purchased the property not realizing the sign was larger than what it was given.

Mr. Brian Orser responded I wasn't aware and I applied for the application. I did everything that I was supposed to do and then, after the fact, I found out that something was done later on.

Mr. Wai Man Chin stated again, I would not have a problem with this because of those certain reasons. By giving the **48** it will be the **100%** maximum that we allow by and since it's there and has been there for **10** years, again, I can't see penalizing him for this.

Mr. John Mattis stated I'd like to comment on that. I was the one that brought this to the attention when we had our work session and I said "did somebody play with these pictures?" Because I saw **30** square feet as the approval previously and said "if that was **30** square feet did you make that bigger so they look the same?" And, I said "that's a little insulting to us if you did that." I did not know that this was **48** square feet.

Mr. Brian Orser responded it is what it is.

Mr. John Mattis stated exactly. Maybe, we on the Board, know a little more about Code than everybody else, but if I were a businessman and replaced a sign like for like on the same size I don't know that I'd have to look at the Code to make sure that it was an approved size because I would think that it was legal or the Town wouldn't allow it.

Mr. Brian Orser responded that's what I thought, especially that there's an inspector there...

Mr. John Mattis continued that's a totally different circumstance than somebody that takes a building, puts a sign on it and says "oh my God it's too big. I didn't know that" when they put a new sign on. This fellow did what he thought was right. He refaced a sign. There's nobody in the audience that's a neighbor that's coming in that's saying it's too big. The Town has never had a complaint that it's too big. It's going to look the same size that it always is and I think it's unfair to penalize the person in this case.

Mr. David Douglas stated I think the message you're sending there is that if you put blinders on and don't look at the law then it's okay and we'll let you do it. I'm not saying you were malicious in any way but what a businessman should do is find out what the Code requires and I'm sure that business people do do that. They find out what is required under the Code and if there's something that exceeds what is required under the Code they know what procedure they need to do and that's what wasn't done here. It wasn't out of malice, it just wasn't done and I don't think that that's actually factually correct about saying that a businessman would not think to look at what the Code requires.

Mr. John Mattis stated when you're refacing a sign, I don't know that I would and I'm aware of the Code.

Mr. Brian Orser stated if I were starting this project from scratch, yes that would be the case but I got plans from you guys to finish the building.

Mr. John Mattis stated and we also have Architectural Review Council approval on this.

Mr. Brian Orser stated you know what I'm saying? I just finished the building and it was what was there, I assumed that that's what was right.

Mr. Wai Man Chin asked anybody in the audience? I make a motion on **case 16-11** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated I make a motion on **case 16-11** to grant the existing sign that is **48** square feet which is **100%** more than what is required by Code and **18** square feet larger than what was originally approved back in 2002 and that there's an area Variance for the size of a freestanding sign, SEQRA type II no further compliance is required.

Mr. David Douglas asked all in favor? "Aye," any opposed? "Opposed."

Mr. James Seirmarco stated and I want to make an explanation. I think that the sign that you have up there should be for gas prices. The part that has the gas prices is left alone and the two sections on the bottom are removed, everybody would be happy. The gas prices would be fine, readable, good position, it's just the section on the bottom there that's fluffed and doesn't have to be there and we can go back to the right size. So, that's why I'm saying "no" to the **48** feet. To me, if you could figure out a way to remove those two panels on the bottom.

Mr. John Mattis stated let's see how the vote goes before that's necessary.

Mr. James Seirmarco stated I'm just saying why I'm voting "no."

Mr. David Douglas asked you want to poll the Board Mr. Hoch?

Mr. Ken Hoch asked Mr. Reber; yes, Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; no, Chairman Douglas; no, Mr. Chin; yes, Mr. Heady; no. Motion passes **4** to **3**.

Mr. David Douglas stated your Variance is approved. Aside from the sign I'm looking forward to having a gas station in my neighborhood again.

Mr. James Seirmarco asked do you have to finish paving around where the gas tanks are?

Mr. Brian Orser responded we have to finish paving. We have to do one more drainage connection.

Mr. John Mattis asked so you'll be open within a couple weeks then probably?

Mr. Brian Orser responded I'm hoping within the next three weeks.

Mr. John Klarl asked when is opening day?

Mr. Brian Orser responded like I said, I'm hoping in the next three weeks. We also didn't anticipate having to install new tanks.

Mr. John Klarl asked were the new tanks put in because of an ownership issue?

*

*

*

ADJOURNMENT

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

*

*

*

**NEXT MEETING DATE:
WEDNESDAY JULY 20, 2011**