

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, November 18th, 2009*. The meeting was called to order, and began with the Pledge of Allegiance.

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

Charles P. Heady, Jr. (absent)
James Seirmarco
David S. Douglas
Adrian C. Hunte
Raymond Reber

Also Present

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

ADOPTION OF MEETING MINUTES for 10/21/09 and 2010 MEETING DATES

Mr. John Mattis stated any comments or do we have a motion? So moved, seconded with all in favor saying "aye."

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CLOSED AND RESERVED DECISIONS ADJOURNED

- A. CASE No. 51-08** **John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**

- B. CASE No. 06-09** **Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **Case No. 33-08** Decision and Order.

Mr. John Mattis stated they are waiting the lifting of the Moratorium. We discussed these at our work session. We felt that they should be adjourned to January. Do we have a motion for that? So moved, seconded with all in favor saying "aye." Those are adjourned until January.

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CLOSED AND RESERVED DECISION

- A. CASE No. 23-07** **Congregation Yeshiva Ohr Hameir** for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing, non-conforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at **141 Furnace Woods Road, Cortlandt.**

Mr. John Mattis asked do we have an update before we move to adjourn that?

Mr. John Klarl responded it's before the Planning Board. The Planning Board's conducted three public hearings: July, August and September. They've closed. They're on a reserved status and were awaiting the resolution of the Planning Board. We'd also discussed at our Monday work session that we would adjourn this to our January 2010 meeting.

Mr. John Mattis asked do we have a motion? So moved, seconded with all in favor saying "aye."

- B. 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. John Klarl stated Mr. Chairman that's once again a matter that's on the agenda of the Town Planning Board and it's still being processed before that Board and once again at the Monday work session we discussed adjourning this matter to January 2010.

Mr. John Mattis asked could we have a motion? So moved, seconded with all in favor saying "aye."

- C. CASE No. 31-09** **Paul G. Feliu** for an Area Variance from the requirement that no accessory structure (above ground pool) is permitted to be installed in the front yard on the property located at **103 Eton Downs, Cortlandt Manor.**

Mr. John Mattis stated we will hold that over and recall that later.

Mr. John Klarl stated that's a Decision and Order but you might want to wait and leave at the applicant.

Mr. John Mattis stated even though the hearing is closed we'll see if the applicant does show up tonight.

Mr. John Klarl asked second call for that?

Mr. John Mattis responded yes second call for that.

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Mr. John Mattis stated we'll recall that. It is a Decision and Order. The applicant does not have to be here.

Mr. James Seirmarco stated this is one of these unfortunate cases that come before this Board. Just for the record that this was for a pool in the front yard and this particular house has two front yards and we tried our best to facilitate this happening and there was no way that this was going to happen. I won't read this D&O. I make a motion that we adopt the Decision and Order on Paul G. Feliu, seconded with all in favor saying "aye."

Mr. John Mattis stated the draft Decision and Order is adopted.

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ADJOURNED PUBLIC HEARINGS

- A. CASE No. 08-09** **Jorge B. Hernandez, RA for M & S Iron Works** for an Interpretation if a structural steel & iron erector is a Special Trade Contractor on the property located at **439 Yorktown Road, Croton-on-Hudson.**

- B. 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. John Mattis stated they are both in front of the Town Board. We discussed those and we discussed holding those over until January. Can we have a motion for that also, so moved, seconded with all in favor saying "aye."

- C. CASE No. 27-09** **Brie Gallagher** for an Interpretation/challenge of Steep Slope Permit No. 20090271 on the property owner by Kyler Cragolin on the property located at **222 Mt. Airy Road West, Croton on Hudson.**

Mr. Dan Adams presented himself to the Board and stated and John Delano for the applicant Brie Gallagher. Mr. Chairman, last time we were here we provided the Board with information. We've had some discussions on that before the Board. Before I left, I believe member Douglas

had asked if my firm could provide a memo of law to assist the Board in determining at least our opinion of what the law is as far as the Zoning Board of Appeals and the Building Inspector's role in determining whether or not a waiver should be granted. I sent down about seven or eight copies. I believe Mr. Flandreau called and asked for a couple more and we sent out a couple more copies. So, I trust you had those in enough time. If you needed to look at them or wanted to look at them, you could. When I had left Mr. Chairman, my sense was that the Town Zoning Board of Appeals was looking to the Building Department for answers as to why the waiver was granted. That was my understanding when I left. I do know, however, that Mr. Delano had a few items he would like to bring to the Board's attention if they could entertain that.

Mr. John Delano presented himself to the Board and stated engineer from Batey & Watson in follow up from towards the close of our last meeting here at the public hearing in response to some items Mr. Cragolin had mentioned I did come up and make rebuttal to those. There was a few comments that I know I did not have a chance to make rebuttal because I wasn't prepared and I wasn't thinking as quickly as I could because it was getting late. I would just like to get on the record that when Mr. Cragolin spoke of the different branches of the government, the executive branch being allowed to use judgment in applying the law, I think he may be talking a branch or two up. I know, down here, there's an executive branch in Town government, it's not quite the same as if Mr. Obama or our friend up in Albany but I believe, and it's my opinion anyway, I'm not an attorney as I stated before that as we come down further and further the degree of latitude allowed for judgment is a little more restrictive and a little more well defined in the Code and I believe the latitude in the case that's in front of you tonight is pretty well defined as to what can be taken. That's my opinion, so I just wanted to get that out there. Mr. Cragolin further stated that it was the intent of the "Steep Slopes legislation to control development of unimproved property." That statement is entirely incorrect. What one would need do would be go to your Steep Slopes Ordinance into section **259-1: Legislative Intent** and one would find that "the purpose of this chapter is to establish regulations which prevent disturbance to steep slope areas. The intent is not to restrict development of the Town but to guide land use proposal to areas that best preserve and enhance the natural features and preserve and protect the visual character of the land." I believe Mr. Cragolin made a misstatement on the record. I just wanted to clear that up. There was also a statement Mr. Cragolin made that where he said "if they would have asked I would have given them" – I can't read the rest of my notes but I believe the implication is that if Mr. Cragolin was asked by the Town for something he would have been more than happy to offer it up. That's not how the process works. And you can refer to your technical staff, and I tell you as a professional that does a modicum of work in this Town. In regard to this particular Ordinance under **Permanent Procedures 259-7**: "an application to permit or disturb a steep slope shall be filed with the approval authority and shall contain the following information and such other information as required by it except when waived as not pertinent for the proposed disturbance and – it was said that the statute is different for developed properties versus undeveloped properties" and I believe if you go back and read other parts of that **259-1** I don't think that you'll find that statement is true. There is further information along in here that I cannot find at the moment. It is the applicant's responsibility to produce and provide what is required to make a complete application. It's not the Town staff's job to say "you need to give me this, this, this and that." The Town staff on many occasions are

very helpful and they have nice little lists they hand out to help the citizenry come in and deal with the process because people aren't used to dealing with it. There is a requirement that that onus lies on the applicant, not on the staff.

Mr. David Douglas asked under **259-7** doesn't it say that the approval authority has the right to waive. So, the onus, as a general matter might be on the applicant but the Town has the authority to waive certain requirements. Am I right?

Mr. John Delano responded yes and that was part of our previous discussion last month. There was some discussion and I apologize to the young lady, young woman.

Mrs. Adrian Hunte stated just say Board member.

Mr. John Delano stated I apologize in advance. We talked about a bit of the signing and sealing plans and how it wasn't specific necessarily in here that that's really maybe what it meant but I randomly went through the Code books subsequent to last month's meeting and two sections of the Code that I'm familiar with for work that I and my company do and there were numerous sections of the Code where it refers to when persons make applicants, they submit drawings, documents, reports, calculations, etc, things of those technical nature which are similar to documents submitted or should have been submitted in our opinion for this particular application and in those instances it says they should be prepared by an architect or an engineer and they should be signed and/or sealed and they were referenced in this nice small print in this memo of law which you can discuss with the attorney because it's a law thing, but I did review those in the Code and I spoke with the Law Clerk to help me prepare this so I pointed those quick references. There may be more in the Code. These are the ones that I'm rarely familiar with. The SEQRA documentation that we had talked about just something simple and I apologize if the copies aren't a 100%. That was part of my technical battle of the day. I'll just hit the highlights quick and then I'll give you copies for the record.

Mr. John Klarl asked what are you reading from?

Mr. John Delano responded this is from **6NYCRR part 617**.

Mr. John Klarl stated the SEQRA regs?

Mr. John Delano responded this is the SEQRA regulations of the State of New York. There are selected copies. I didn't copy the whole law because it goes on.

Mr. John Klarl asked John, just tell us what section it is.

Mr. John Delano responded **617-2: Definitions. Actions:** "actions include physical projects or physical activities such as construction or other activities that may affect the environment by change of the use, appearance, or condition of any natural resource or structure that are 1)

directly undertaken by an agency or 2) involve funding by an agency or 3) require one or more new or modified approvals from an agency.” That’s just the definition and its other parts apply.

Mr. John Mattis stated and you were at our work session and I think you know what the feeling of the Board is on that from the discussion at the work session.

Mr. John Delano responded I was at the work session. I don’t remember exactly what the feeling was. I could check my notes.

Mr. John Mattis stated we’ll get into that when we get through the points.

Mr. John Klarl stated and I have some information on that also.

Mr. John Delano stated “an approval means a discretionary decision as” – again **617-2** under **Definitions**: “a discretionary decision by an agency to issue a permit, certificate, license, lease or other entitlement or otherwise authorize a proposed project or activity.” And then we get into the general rules that say “no agency (which would be the Town) involved (this is **617-3: general rules section A**) in any action may undertake fund or approve the action until [complied] with the provisions under SEQRA a project sponsor may not commence with any proposed [something] alteration related to the action until the provisions of SEQRA have been complied with.” The only exceptions are **617-5c, 18, 21, and 28** of this part. **617-18**.

Mr. James Seirmarco stated I think what you’re saying, just to paraphrase, is if SEQRA application is required then it has to be filled out and...

Mr. John Delano stated what I’m saying is a SEQRA determination has to be made...

Mr. John Klarl stated I think he’s saying reading the SEQRA regs that no action or approval can be taken by an agency without a SEQRA determination.

Mr. John Delano responded correct and it’s our case in the review of our documentation up to that point in time where we were offered the review that there was no SEQRA application let alone a SEQRA determination.

Mr. John Klarl stated I understand your argument just so you don’t have to go through the torture of language. The tortured language essentially says...

Mr. John Delano interrupted I’m just going to tell you **617-18** is about severability and the other section that they talked about no longer exists.

Mr. John Klarl stated it’s a basic tenant of SEQRA that no action or approval should be conducted by the agency without a SEQRA determination. There are certain exemptions.

Mr. John Delano stated so what the worth I'll ask Mr. Adams to hand those up to Mr. Flandreau and he can distribute them. In your work session and I thank you very much for the courtesy that you extended to me in your work session. I really do appreciate it, especially in light of the fact that I was so rudely not permitted to participate in your site walk. That be neither here nor there.

Mr. John Klarl asked you did participate on the site walk on your client's property?

Mr. John Delano responded in theory the site walk had to do with the Cragnolin property.

Mr. John Klarl asked but you were able to go on your property first?

Mr. John Delano responded I was able to get anywhere I wanted on my owner, the complainant's property but I was not able to get onto the applicant's property. I asked permission. I was denied and I respect that.

Mr. John Klarl stated the applicant's property is your client's so you were allowed to get on your applicant's property.

Mr. John Delano asked huh?

Mr. John Klarl reiterated the applicant is your client. You said you were denied access to the applicant's property. You were able to go on your applicant's property.

Mr. John Delano stated in your work session you talked about your steep slopes findings and reports and if you read through the documentation you figure out when they should be done or where they should be done. In our opinion and in our experience they are done in the process as we work toward an approval and they are concluded before we get the approval. I mentioned a few particular projects where we, Batey & Watson, have done them recently. I brought you copies of the Steep Slopes finding reports that we prepared and submitted in connection with the permits applications which were eventually successfully completed. This particular package, this was for – although it does not say it on the documentation this was for the Montes subdivision which is a subdivision up at the end of Radio Terrace right next to the new daycare center, the Tots place up there. That's the document we prepared. That is the exact English that was taken from our word processor and sucked into the resolution approval for the subdivision. This is a Steep Slopes finding Permit. It is actually on file in the Town also which was prepared by our office in connection with the violation, not that I'm going off track, the violation that occurred on the Brie Gallagher property required a Steep Slopes Permit. This is the document just to show you what was typically prepared. This particular one, which is the last one I brought here this evening, has to do with an application we did for a woman named Elizabeth Papp who built a house down on Sherwood Road which is Sherwood Road School Street. Some of you may know of that. I know people in the Building Department are familiar with the weird stuff that went on down there. This is a copy of that application. I only brought with me one print of the site plan for that application and I will leave it with the Board. Just to give you an idea because we were talking about the requirement to provide cross-sections to the areas of steep

slopes which I believe are all multiple terminologies, multiple words, not singular but plurals in the language of your Code. This particular project only had one area of steep slope so we were only required to do one cross-section. The area outlined in pink is the entire frame of the cross-section. The area in yellow indicates certain things like where the street is, the property line, where the driveway starts and then the slanted line that shows you where the steep slope is and in the middle is the three-story house that's built on the slope. This gives people an indication of the degree of severity of the impact the proposed project on the slope and that's why applicants are asked to do cross-sections through areas of steep slopes disturbance on the property. This is a prime example. I apologize I only made one.

Mr. John Mattis stated that's fine.

Mr. John Delano stated I'm sure there are numerous uncolored ones on the Building Department files. I'll be more than happy to leave this here for your record. This is just a reference to another item where preparation of certain documentation for certain applications in Town dictate the use of licensed professional engineers and I think it's – when someone does a subdivision there's a lot count, there's a formula, there's a requirement to reduce areas of certain slope. That slope analysis is required specifically to be prepared by and certified by an engineer. Aside from that, those are all the notes I've made. Thank you for your time.

Mr. Dan Adams stated we think we've fully submitted our application to you. I don't have anything else to offer. Obviously were here if you have any questions for myself or John. We're happy to be here to answer those but other than that Mr. Chairman, we think our application is complete.

Mr. David Douglas stated I think at the last session we asked for a representative of the Town to be here and I think Mr. DiSanza is here. Mr. DiSanza, at the last session, as I think you're aware, at last month's meeting we went through Mr. Delano's points that he had made in his letter which had been laid and the Town's responses and one of the things we wanted to do today was to go through some of those. Before that, are you the person who visited the site in connection with the application?

Mr. Richard DiSanza responded I was the first person who visited the site. I was asked by Code Enforcement to go investigate and see what the environmental concerns were and to determine whether or not it needed a Steep Slopes Permit.

Mr. David Douglas asked could you tell us what it is you did and when you did it?

Mr. Richard DiSanza responded basically when I went to the site, I believe it was back in April, and I went to the site and I saw that...

Mr. John Klarl asked April of this year or April of last year?

Mr. Richard DiSanza responded this year, 2009. I wrote a report April 26, 2009. I went to the site and I determined that erosion control should be in place and I told the property owner to get that in place as soon as possible and he did. I subsequently went back to investigate to make sure it was in place and he actually put two rows of silt fence so that was covered. I looked to see what he was actually doing and it looked like part of his foundation was collapsing and he said he was doing an emergency repair and it seemed valid to me. Then I went back to Code and said regardless they still need a Steep Slopes Permit and basically that was all I was asked to investigate.

Mr. David Douglas asked when you said he needed a Steep Slopes Permit what was that based on?

Mr. Richard DiSanza responded based on the amount of disturbance on the site. Basically it's 500 square feet or greater and I determined that it was and actually after I went out I knew one of the Town engineers also went out to confirm that.

Mr. David Douglas asked did you have any conversations with Mr. Cragolin about what information he should provide to the Town?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked do you know if he provided any information to the Town?

Mr. Richard DiSanza responded no, that's not my role.

Mr. David Douglas asked who's role is that?

Mr. Richard DiSanza responded that's Code Enforcement.

Mr. David Douglas asked did you have any discussions with him about what the requirements of the Steep Slopes Statute were?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked do you know if anybody from the Town did?

Mr. Richard DiSanza responded no I don't.

Mr. David Douglas asked when you went out there did you take notes? Did you do field notes?

Mr. Richard DiSanza responded yes, I always do field notes and I come back and I write a report.

Mr. David Douglas asked do we have those field notes as part of our...?

Mr. Richard DiSanza responded no I just basically write it and – if you have the report that’s the summation of what I found out at the site.

Mr. James Flandreau stated Mr. Douglas, none of the information for the Steep Slope Permit or violation I believe was put into your packet. If you want I can get that from Mr. DiSanza.

Mr. David Douglas stated that would be helpful. Do we have his report?

Mr. Richard DiSanza stated I have a copy.

Mr. David Douglas stated so this is an April 29th report that has the address, has the tax map number, is directed to Mr. Vergano, Mr. Hoch and Mr. Flandreau and says: “Steep Slopes Permit application” and then two bullet points: “property owner proposes to tear a slope and to prevent further erosion. A Steep Slopes Permit is required.” Then another bullet point: “property owner has protected the adjacent property from run-off by instilling silt fences as requested.” You said this was based on your field notes?

Mr. Richard DiSanza responded that was all there was to determine. The other question was “were there trees taken down?” I didn’t see any trees that were newly taken down. There were some older trees that were probably taken down a couple of years ago, but I didn’t see any trees that were taken down.

Mr. John Mattis asked and once you submitted this report and they went to the application of the Steep Slopes Permit you were pretty much out of the process?

Mr. Richard DiSanza responded exactly.

Mr. David Douglas asked you go to the site and for the actual application it then goes over to Code Enforcement and you had no involvement after that?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked have you seen Mr. Delano’s letter?

Mr. Richard DiSanza responded yes I have.

Mr. David Douglas asked have you seen the Town’s response to Mr. Delano’s letter?

Mr. Richard DiSanza responded the latest?

Mr. David Douglas stated the latest response that we got.

Mr. Richard DiSanza responded yes.

Mr. David Douglas asked I think we had some questions about the points that Mr. Delano made and the response to it.

Mr. John Klarl asked so essentially Mr. Douglas you're asking about the Zoning Board of Appeals fact sheet that we all looked at Monday night and I think Mr. DiSanza has a copy of that fact sheet.

Mr. Richard DiSanza responded I do have a copy of that fact sheet.

Mr. John Klarl stated so we all know what we're talking about.

Mr. David Douglas stated I wanted to run through some of the points. Some of these things we probably don't need to run through but some of them we do. The first point he raises has to do with section **259-7.a** about whether or not the waiver by the approval authority has to be in writing. I don't know if there's anything. Were you involved in any decision about whether to waive any of the requirements?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked so you weren't involved in any of the decisions what should be waived?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked did you see any of the information that the applicant submitted?

Mr. Richard DiSanza responded the only thing I just saw a rebuttal to – when this came up, of issuing the Steep Slopes Permit.

Mr. David Douglas stated one reason I'm asking is I'm looking at the top of the third page, Mr. Delano's point regarding **259.7.a5** having to do with "the statement of the proposed work and purpose thereof, etc. The Town responded by saying applicant submitted information and documents deemed acceptable. There was no building construction or re-construction and no trees were removed." Did you see any of the information that's referred to there or any of the documents that are referred to there?

Mr. Richard DiSanza responded no. That's not my determination to make.

Mr. David Douglas stated then I would ask that the Town at our next meeting somebody come here who is familiar with this. I understand Mr. DiSanza you're familiar with certain aspects but not all but in my view at least, I can't speak for anybody else, but in my view I would like to hear what the Town has to say in response to the various points that Mr. Delano has said. You can speak to some of them but you can't speak to that. The next point that he makes regarding

259.7.a6 about the plans not being sealed and signed, it said “the scope of the work was minor and in the opinion of DOTS personnel did not prevent any potential for adverse environmental impacts to the property or surrounding.” Are you the person who made that determination?

Mr. Richard DiSanza responded I don't make any determinations but if asked I'd determine that it seemed to me at the time that it was an emergency situation. If that goes to someone in Coor a higher authority they make that determination based on that information.

Mr. David Douglas asked did you convey your view of that to somebody in DOTS?

Mr. Richard DiSanza responded yes.

Mr. /Raymond Reber stated we have in our files there's a note, an e-mail note from Ken Hoch, it's addressed to John Delano dated April 1st. It says “Rich met with the owner today. Corrected and removed the Stop Work Order. The owner will be filing a Steep Slopes Permit application.” The next day there's a statement on the Town of Cortlandt Department of Technical Services Planning Division letterhead dated April 2nd, it says “reference violation 222 West Mount Airy Road” to Ed Vergano, Ken Hoch and James Flandreau, Open Space Committee. “The property owner was working on a steeply sloped area without a Steep Slope Permit. Silt fence should be in place at the tow off of the area. The restoration plan should be prepared and approved by the Town.” I assume that was your?

Mr. Richard DiSanza responded exactly. Yes.

Mr. David Douglas asked in that same section that I was talking about a minute ago, it's in the part of the Town's response it says that “DOTS personnel compared the sketches to field conditions.” Were you the person who did that?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked did you look into any information regarding the location of any septic?

Mr. Richard DiSanza responded no, I didn't.

Mr. David Douglas asked or wells?

Mr. Richard DiSanza responded no I believe engineering did that.

Mr. David Douglas asked did you look at into what the volume of the disturbed earth was?

Mr. Richard DiSanza responded yes I did that and actually engineering verified that.

Mr. David Douglas asked what did you find the volume of disturbance to be?

Mr. Richard DiSanza responded I sent engineering out to do that because that's their job. I just did a field observation and they did the calculations.

Mr. David Douglas asked did you do an analysis of the soil types?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked did you do any observation of the soil types?

Mr. Richard DiSanza responded just visual observation.

Mr. David Douglas asked what did you observe?

Mr. Richard DiSanza responded I observed that it was fairly sandy in that area and the foundation was eroding.

Mr. David Douglas asked did you do an analysis of whether the proposed work would have an adverse impact on the site or the surrounding area?

Mr. Richard DiSanza responded yes. I determined that it would not. If proper erosion controls were in place and they were. That's why I went out later on.

Mr. David Douglas asked did you have any discussions with anybody about whether cross-sections of the steep slope area should be provided?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked did you have any discussions regarding any of the stone – there is a stone wall near the end of the property, do you recall that?

Mr. Richard DiSanza responded yes.

Mr. David Douglas asked did you have any discussions with anybody about that wall or any work involved in that wall?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked did you have any discussions with anybody about whether a SEQRA form would be needed?

Mr. Richard DiSanza responded no.

Mr. David Douglas asked as I think you're aware one of the provisions of the Steep Slopes sections and it's section **259.6** says "in denying, granting or granting with modifications any

application for a Permit as required by this section the approval authority shall consider and make specific findings addressing the consistency of the proposed activity with the findings set forth in an earlier section, section 2, and each of the following standards” and then it runs through whatever it is **a) through i)**. Did you make such findings?

Mr. Richard DiSanza responded I wasn't asked to.
application referred to the CAC (Conservation Advisory Council) for its opinion?

Mr. Richard DiSanza responded I really don't know.

Mr. David Douglas stated thank you Mr. DiSanza I appreciate you telling us what you did. I would, again ask the Town to provide – Mr. DiSanza has certain knowledge but he doesn't have all the knowledge and I would like to hear what the Town has to say as to the other aspects that he doesn't know about.

Mr. James Seirmarco asked if you were to rate this in the scope of a job, so to speak, was this is a very small, small, medium or large job?

Mr. Richard DiSanza responded it was small.

Mr. John Mattis asked and you felt that any disturbance would be only located in that particular area?

Mr. Richard DiSanza responded it was very localized.

Mr. John Mattis asked and wouldn't impact any of the surrounding properties?

Mr. Richard DiSanza responded right.

Mrs. Adrian Hunte asked Mr. DiSanza when you said you thought this was an emergency, what did you mean?

Mr. Richard DiSanza responded if you saw the foundation, the foundation was undermined.

Mrs. Adrian Hunte asked the foundation of the house?

Mr. Richard DiSanza responded of the house, yes. That's what it looked like. He was trying to save the house from sliding down the hill. That's why I perceive that as an emergency.

Mr. James Seirmarco asked did you have a discussion as to what he – how he intended to do this?

Mr. Richard DiSanza responded he didn't discuss that with me. Again, that's a Code building situation.

Mr. John Mattis any other questions from the Board? Anyone in the audience would like to speak?

Mr. John Klarl stated I think you have to ask them from the Board.

Mr. David Douglas stated you can't ask Mr. Richard DiSanza.

Mr. Dan Adams asked if I look at the Steep Slopes Permit under section **259d** it says "Director of Technical Services or Deputy Director of Code Enforcement shall be the approval authority with respect to all of the regulated activities." If we may, if the Board considers it prudent perhaps they could just confirm that Mr. DiSanza does not hold either of those titles.

Mr. John Mattis responded that's correct.

Mr. Dan Adams continued I would also ask that Mr. DiSanza's professional background at least be determined whether or not he has any engineering degree at all or has any professional licensures as an engineer. I'd also like to – I'm hearing some different things, I want to make sure on the record, I though I heard for the Town's Building Department a fairly brief response that there was no construction going on which is one of the things they took into consideration when they did what they did and yet Mr. DiSanza clearly said that there was in his words "emergency structural" work going on. There seems to be different words. Just want to make sure I'm clear. If no one from the Building Department's going to be here tonight to answer if I may, just for the record, this is not the first place we went to try and resolve this. We tried to have a meeting an informal meeting with the Building Department personnel and that was back in July and at that time we were told that they were going to provide us with what we're asking you to get them to provide us now. It is now middle of November, it appears to me likely that this is going to have to continue on now for at least one more meeting that hopefully we can get somebody from the Building Department to sit down and explain what they did. I would like the Board to know we tried to get this without taking up this Board's time in a voluntary fashion and it was my understanding that was supposed to be provided to me this past August. So, here we are today you folks asked the Building Department to be here and your own Building Department hasn't responded. I'd like to make that clear for the record as well.

Mr. John Delano stated just a few points. I know we talked about them but the issue with the wall was talked about at the work session. It was considered a maintenance item. If someone were really to go out and take a look at the situation, you look at the walls across from the Cragolin property which is not his wall. He doesn't own across the street. Those are typical of the walls throughout many of the properties in such a Town. They're old farm walls or rubble walls that are basically stone-piled walls. The wall in question which we're bringing to light here on the Cragolin property is not such a wall. It is a stone, finished, smoother stone and masonry wall. This was not a wall that was similar to a farm wall that was taken apart and neatly reconstructed with a better fit. We stand by our position, our previous statement and we believe that this should be looked into and that a Permit was in fact required because it is a structure

under your Code and it wasn't simply a repair regardless of what was represented in my absence on your site walk.

Mr. David Douglas stated I just want to state for the record that the members of the Board who were on the site had an opportunity to see firsthand what the wall looks like.

Mr. John Delano stated a lovely wall.

Mr. David Douglas continued we'll draw our own conclusions.

Mr. John Delano stated it's a lovely wall.

Mr. David Douglas stated we saw it. We've seen what it is.

Mr. John Delano continued a lovely wall. I'd be happy to escort any of the Board around the balance of Ms. Gallagher's property for a comparison of other walls in the area if one would so...

Mr. David Douglas stated that won't be necessary. I'm also familiar with what the walls are in the neighborhood since I live in the neighborhood and I've got walls on my property. We all know what stone walls in the area look like.

Mr. John Delano stated there was a statement made here this evening by Mr. DiSanza that no trees were cut.

Mr. John Klarl stated newly cut trees. He said "no newly cut trees."

Mr. John Delano responded there was pictorial evidence offered at our last representation here where there was what looked like a fairly newly tree on the property. Sawdust looked pretty fresh. I believe the Chairman actually made note of that himself that it certainly did look like there was freshly cut tree on the property. I ask that the Board revisit the pictorial evidence. If anything's missing or you don't see something that looks like a fairly freshly cut tree let me know and I will get that picture to you.

Mr. Raymond Reber did check at the site based on the fact that we had that picture just to see what trees had been cut. The stumps that we did see there obviously indicated trees that if they had been cut recently they were already dead. You could tell by the stumps that these were not living trees or trees that were cut recently.

Mr. John Delano stated and these stumps were pointed out to you by the owner of the property? Mr. Raymond Reber responded we checked all of the stumps around his house. We took a walk around and we checked them.

Mr. John Delano asked did you check in his front yard?

Mr. Raymond Reber asked you mean in front of his house?

Mr. John Delano responded in the front of his house to the right side of his parking area. In between the other tree that's there and the large stone on the steep slope.

Mr. Raymond Reber responded that one I can't be sure of. We were looking mainly in the area he was working in.

Mr. John Delano stated that's where the fresh cut tree is.

Mr. Raymond Reber stated but residents are allowed to cut a tree. They can't clear-cut.

Mr. John Delano stated residents are not allowed to cut a tree in excess of four inch diameter, one and one-half foot above ground on a steep slope. That requires a Steep Slopes Permit.

Mr. Raymond Reber stated that's true, on a steep slopes, you're right.

Mr. John Delano stated we believe this tree may well have been on a steep slope. It's not that easy to tell because the topographic information was inconsistent or absent but that was the tree in question. Mr. DiSanza came up this evening and made reference that silt fences were installed. I believe if you check the record some of the photographs I offered at the last meeting and the statements I made that the silt fences were not installed correctly, regardless of how they did the job or didn't do the job, they were installed incorrectly. It was not done correctly. I don't know that Mr. DiSanza is qualified as a CPESC which is a Certified Professional Erosion and Sediment Control or if he's qualified as a licensed professional engineer or if he has other qualifications in the area of erosion and sediment control and if he doesn't I think his statement should be stricken from the record or it should be so qualified for the record. The CAC, to the best of my knowledge, I tried to find out if certain applications I have in this Town ever get sent to the CAC and just to share with you I'm often confounded and confused because certain things that I submit to this Town, the way I read your Code, should go to the CAC but when we get memos back they're from Open Space. I don't know that that's the case in this particular thing but it's just another point of general confusion I share with you. I know you asked if the CAC was involved. It's not clear to us that they were. I don't recall seeing a memo from the CAC in the file. Some of the memos, and I forget which, and I won't bore you with going through the file that Rich produced in connection with this and an adjoining issue which we're not talking about tonight.

Mr. John Mattis stated nor will we talk about.

Mr. John Delano continued nor will we talk about. They're missing important things on them like the date, I bring that to your attention. That's a very important thing. We're human, we forget that but when things are that important or could become important, that's important. The "emergency situation" and the construction or no construction, we noted in the photographs that

we submitted that part of the house was literally taken down and I believe the owner admitted that he took it down. That wasn't on the Permit application that he submitted. There was this mention of, I believe from him and certainly from the Town's representative, that this was an "emergency situation." If one were to go back and check the timing and again I won't do it bore you with my thumbing through the record, if one were to look at the time the violation was violation and the time that lapsed before the Permit was done and the time that subsequently lapsed before the work was completed, I find it hard to believe that that was an "emergency" at least by common definition or common reasonable understanding. There was an emergency up the road the other night, this by comparison was not an emergency.

Mrs. Adrian Hunte asked Mr. Delano that's not really necessary. We've already determined that we need someone else from the Town to come in to address our concerns. I have to believe you've gone over this ground before.

Mr. John Delano stated I'm just trying to respond to Mr. DiSanza's concerns where...

Mrs. Adrian Hunte continued ground before again and again and again.

Mr. John Delano continued where Mr. Adams may not have exactly hit them but I think the rest of them have been enough.

Mrs. Adrian Hunte stated we have your brief. We have your written documents. I think your point has been taken.

Mr. John Delano stated I did find the area which I'll just read into the record quickly here for you which is in **259-6**, there's an **i**), there's a **j**), there's a **2**), just prior to **259-7** in the permanent procedure section is the section of the Code which says "with respect to applications involving proposed disturbance or alteration of any steep slope with a grade of 30% or greater, the applicant shall have the additional burden of demonstrating again by clear and convincing evidence that the applicant's circumstances are compelling, conceptual including at a minimum demonstrating by clear and convincing evidence that no reasonable use of the site or parcel is possible without disturbance to the steep slope having a grade over 30%." There was one other item that came to mind, it has to do with the SEQRA documentation. If there are other agencies involved to issue an approval in connection with a project which every agency has determined lead under SEQRA cannot issue that approval until they've heard from that agency. No one bothered to call up the Health Department. We still maintain that the septic system is an important issue here. Hopefully it was not compromised and glossed over but no one really knows and our opinion I can tell you from my personal experience since sitting on the Planning Board in my home Town, if such an application came to our Board as opposed to the Engineering Department, it would have been referred to the Health Department for input and we would have required the engineer to show that system and we would have required a communication back from the Health Department before we permit a cut and fill operation on the property.

Mr. James Seirmarco stated I have two questions: this gentleman said that the erosion control was provided and it was adequate and you're saying is not.

Mr. John Delano responded I'm saying it was installed incorrectly.

Mr. James Seirmarco asked could you elaborate on that?

Mr. John Delano responded the silt fence was installed incorrectly.

Mr. Wai Man Chin stated elaborate on it.

Mr. John Mattis asked what is correct and what is incorrect?

Mr. John Delano responded a silt fence is typically a fabric, a finer mesh fabric, the cheap basic stuff comes out as a 2' x 2' or 1 1/2' x 1 1/2' wood post with a point stapled to it every several feet. People unroll it and they stand it up and they pound stakes into the ground. That's wrong. What they're supposed to do when they lay it down on the ground is dig a trench six to eight inches deep along the tow of that, stand that fabric up with the posts on the appropriate side, pound that fabric in and then backfill that trench so that fabric is buried so there's no way possible for any water or erosion or siltation running down the hill to bypass the fabric by going underneath. We've seen installation, you've probably seen where the stuff's flopping in the breeze. If that bottom is not secured there's always the possibility that stuff could get by. It was nice that Mr. Cragnolin put up two of them. I think, because I didn't go on the property, I think Mr. Cragnolin may have actually weighed it down the fabric on grade on the uphill side in an effort to have the fabric work in a proper manner.

Mr. David Douglas asked Mr. Delano did you inspect this silt fence?

Mr. John Delano responded I took photographs of it.

Mr. David Douglas asked so the photos that you showed us that's what your conclusions based on? So we have the photos so we can take a look at it as well.

Mr. Raymond Reber asked I have a question for Mr. DiSanza, you stated earlier that you had inspected the silt fences and did you feel that they were adequate for the need at the time?

Mr. Richard DiSanza responded yes, and I believe you have the report.

Mr. Raymond Reber stated that's it. How methods they may not be according to certain standards but as far as you were concerned it was efficient to do the job?

Mr. Richard DiSanza responded yes and that's why he actually – my concern was erosion to the adjoining property and I told the property owner to install two in case one collapses which they often do.

Mr. David Douglas asked Mr. DiSanza, Mr. Delano asked a question about your credentials. Could you just put on the record what your duties and responsibilities are at the Town and what your credentials are be it academic or otherwise.

Mr. Richard DiSanza responded of course, my title Environmental Analyst actually that's a Civil Service title and you have to take an exam for it and to do what I do. My role is not to interpret the Code. My background is actually I have a Masters in Planning and also Landscape Architecture and an undergrad in Environmental Science.

Mr. John Mattis asked I think the other question that was raised was the emergency nature of the property and what was happening to the structure.

Mr. Richard DiSanza responded yes, when I saw the building, I didn't see a building taken down at that time. Mr. Delano maybe came out there later on but at that time I saw the building propped up at one end and that's where I saw that it's a problem.

Mr. John Klarl asked and all your courses and certifications, did you study placing silt fences the proper placement of silt fences?

Mr. Richard DiSanza responded yes, I've taken numerous courses.

Mr. John Klarl asked in silt fences?

Mr. Richard DiSanza responded it was one of the things that we looked at.

Mr. John Mattis asked there's no specific course in that? In the number of courses it does come across?

Mr. Richard DiSanza responded Mr. Delano's cited the certification which I don't have that certification.

Mr. Raymond Reber asked could you repeat your technical Civil Service title again?

Mr. Richard DiSanza responded Environmental Analyst.

Mr. John Delano stated the silt fence issue if your construction site is inspected and your silt fence is installed incorrectly you will be violated by the DEC of the State of New York. Regardless of how silly of an issue it may or may not be, you will be violated because it's in contradiction of State Law and I do personally know Mr. DiSanza from working in the Town, I like the gentleman, I respect the gentleman, he's a wonderful arborist and he does a great planting job and I've met him on several jobs and worked with him. I'm not here to belittle the gentleman or make a bad record or grudge against him.

Mr. John Mattis responded and we don't take it as a silly issue either.

Mr. John Delano responded thank you.

Mr. David Douglas stated just to clarify for the record. The reason I asked about the CAC (Conservation Advisory Council) in particular is there's a provision in the Code that's part of **259.7** that talks about referring applications to the CAC. That was the reason for my question before.

Mr. James Seirmarco stated Jim you heard the questions that David posed to this gentleman over here and there were certain things that he referred to the Building Department, were you involved in any of those?

Mr. James Flandreau responded I wasn't part of this application at all.

Mr. James Seirmarco asked do you know who was so we can for the record?

Mr. James Flandreau responded Ed Vergano who is the Director of Technical Services.

Mr. James Seirmarco asked he made a site inspection?

Mr. James Flandreau responded I don't know if he made a site inspection and Ken Hoch was the one who processed the paperwork for our department.

Mr. James Seirmarco asked who would have made the site inspections that Rick suggested was necessary?

Mr. James Flandreau responded I would think it would have been Ed or one of the other staff engineers who would have made the site inspection but I can't say for certain who did.

Mr. James Seirmarco stated I am putting you on the spot because I'd like to make it part of the record as to who to invite to come to the next meeting.

Mr. James Flandreau responded I would think that the next person to come to the next meeting would be Ed Vergano. He would be the one who is the ultimate one for approving the application.

Mr. John Mattis asked any other questions? Anyone else in the audience? Mr. Cragolin?

Mr. Kyler Cragolin presented himself to the Board and stated 226 West Mount Airy Road. I don't feel a necessity to go through these things again for a tenth time, point-by-point. One point, there were three tiers of silt fence and they were installed exactly as Mr. Delano has described, with a trench, buried, three tiers, subsequently hay bales. That's a non issue in my mind.

Mr. Dan Adams stated I believe that Mr. Cagnolin said that it's 226. I don't think that's true. It's 222 and it may seem like an innocuous thing to the Board. It's been an ongoing problem. I don't know why Mr. Cagnolin continues to try to adhere to that address. He's not supposed to. It's even part of his application, it was shown to be wrong. We are finding out how difficult it is to stop somebody from using somebody's mail address but it can be disconcerting at a lot of levels. I just wanted to point out for the record he just did it again and it violated his Permit application.

Mr. James Seirmarco asked Jim, for the record you have the information in your office. What is it 226 or 222? He has the tax card.

Mr. John Mattis asked well I can ask Mr. Cagnolin. I understand for the last meeting, if I'm correct, your correct address is 222 but you receive your mail at 226?

Mr. Kyler Cagnolin responded yes. It was always a common mailbox. As I've said, I've been there for 30 years and have always used 226 from day one.

Mr. John Mattis asked for mailing addresses? But the legal address is 222?

Mr. Kyler Cagnolin responded my lot number designation is otherwise.

Mr. John Mattis stated I think for all parties concerned we're all aware of that.

Mr. James Flandreau responded the lot designation is 222.

Mr. John Mattis stated the legal determination is 222 but the mailing address is 226.

Mr. David Douglas stated Mr. Adams I agree with that, I don't know if the microphone picked up, but I agree with what you just said I don't think it matters. There are a lot of substantive issues. I don't want to waste time talking about it.

Mr. Dan Adams stated it doesn't matter if with this application I agree. It matters for other things and it's an ongoing problem.

Mr. David Douglas stated it doesn't matter for this application.

Mr. John Mattis stated for the record, we're going to set it straight. The property is 222 Mount Airy Road West. The mailing address is 226 Mount Airy Road West so that's where he receives his mail but the property in question is 222. If there's any references to 226 we know that it's 222. So we can put that to rest.

Mr. James Seirmarco stated to facilitate these gentlemen, the applicant has been patient, to facilitate maybe being a little more efficient at this possibly we set a special meeting in addition

to our workshop to one evening so that we can spend enough time to get our answers and understand them.

Mr. David Douglas stated I would prefer that we keep our work sessions for the scheduled time, speaking for myself, I'm juggling many things in my life and I'd not like to have another night.

Mr. John Klarl stated it's only two nights different.

Mr. John Mattis stated there's probably six or eight things in question that we could easily go over at the work session. If Mr. Vergano was there he could help us out with that. I'd prefer that he appears both at the work session and at the meeting.

Mr. John Klarl asked for the December meeting?

Mr. John Mattis responded yes, the December meeting is December 16th and the work session would be the 14th.

Mr. Wai Man Chin stated I would like to talk about a site visit. Basically, there was a few members at the site, myself included. It was a rainy day and I was looking at the site and looking at the property around there and I didn't see any disturbance downhill from his property myself. I was walking around there and everything else to see if there was any kind of disturbance or any kind run-off or anything like that. It seemed like it was a natural – the bare woods that it was before and I don't think it changed. Number two: the area of excavation, I think Mr. DiSanza said it was about 500 square feet, I kind of walked it myself and it's approximately 30' x 10' it's almost 300 square feet from what I saw. The tree in question – I saw a tree that was cut down on the left hand side but it had a big, giant hole in it. It looks like half of it might have fallen down before and he cut the other half down. Basically there was a giant hole inside that big tree and then there was a couple of trees in the back up the hill from there that might have been cut down a few years back. You could see the mushrooms growing on them and everything else. I think they were just dead trees or they might have fallen and he just cut them down and cut them apart. Again, my biggest problem was I didn't see any disturbance on the lower portion below that common road that's shared by everybody. That's why I was walking down over there checking it out and I just didn't see anything. I see normal land that looks like it's been there a long time and nothing overflowing it or anything like that.

Mr. John Mattis asked anyone else?

Mr. John Delano responded English technicality to Mr. Chin. It's not a common road, the property is owned by Ms. Gallagher and Mr. Cragolin has rights across the road.

Mr. Wai Man Chin stated excuse me it's an easement then.

Mr. John Delano stated Mr. Cagnolin, based on my observations during my attendance or non-attendance whatever you want to call it at the site walk Mr. Cagnolin took the liberty of extending the placement of gravel from his parking area out onto Ms. Gallagher.

Mr. John Mattis stated we're really getting off the issue now and splitting hairs.

Mr. David Douglas stated Mr. Delano, stop. We just want to focus on this application. I know that the neighbors don't get along. We all know the neighbors don't get along. We care about this application. The gravel on the edge of his driveway has nothing to do with this, please.

Mr. John Delano responded in fact it does because in my photographs which I submitted last month prior to Mr. Cagnolin constructing the property they show the accumulation, the beginning of accumulation of siltation from his property and driveway.

Mr. David Douglas interrupted we have your photographs.

Mr. John Delano continued onto the driveway and that area was subsequently covered by the gravel driveway.

Mr. David Douglas stated we have the photographs. Mr. Delano we have the photograph.

Mr. John Delano responded I'm just trying to clear the record.

Mr. David Douglas stated the record is perfectly clear. You've given us the photographs. It is crystal clear.

Mr. John Delano stated I believe it was clouded a little bit by Mr. Chin.

Mr. Wai Man Chin responded no, it wasn't clouded by me.

Mr. David Douglas stated listen to our subtle and not so subtle hints.

Mr. Wai Man Chin stated I didn't see any disturbance beyond that road that everybody drives on. Everything I saw was natural. I didn't see piles of dirt going down that way. That's what I'm saying.

Mr. John Mattis stated we're here to look at an Interpretation of a Steep Slopes Permit and we keep getting off track. I think the completion of the project was satisfactory. The question is what steps were taken in the Steep Slopes Permit? What steps were waived? Why they were waived and what backup they have for waiving those. All these other things are peripheral and I'd like to stay right on task and try to next month stick directly to the issues of what was waived in the Steep Slopes Permit, what might have been done wrong in the Steep Slopes Permit and what the impact of that is on whether or not we should revoke it or we should approve it or what we should do. We're getting off on a lot of issues and it's apparent that there's friction between

the people and that's bringing a lot of this up and I'd like to just stay away from all of that. Anyone else?

Mr. John Delano stated the official record of the proceeding of this Board is it by videotape, is it by transcript?

Mr. John Mattis responded yes by videotape and transcript.

Mr. John Delano asked there's a transcription?

Mr. John Mattis responded we have notes. We approve notes.

Mr. John Delano stated because I know you guys broadcast it on the internet.

Mr. John Mattis stated you can have my copy of the draft of the notes from last month if you want them.

Mr. John Delano responded no, I have plenty of paper. Thank you very much.

Mr. John Klarl stated we have minutes of the videotape.

Mr. John Mattis asked any other comments?

Mr. David Douglas stated I move that we adjourn the hearing until the December meeting, seconded with all in favor saying "aye."

Mr. Raymond Reber stated for the purpose of having the appropriate individuals representing the Town on participating in making the decisions on the Steep Slopes Permit. If that doesn't happen we'll keep adjourning or we'll make a decision?

Mr. David Douglas stated and the applicant will have the right to respond to what the Town says.

Mr. John Mattis stated what we've done with other people is, these are Town employees, I don't think there's a reason for an adjournment. We've done this with other people if they don't show up for one month we let it go, the second month we fine against them or we abandon the case. In this case we can't abandon the case because then the plaintiff loses. If they don't want to show up then we base our findings on what we've seen and so far we haven't had a lot of questions answered and I'd have to find in absence of backup of this, I know what my findings would be and I think the rest of the Board probably knows what their findings would be. It's incumbent on the Town to show up next month.

Mr. John Klarl stated we certainly appreciate Mr. DiSanza showing up tonight.

Mr. John Mattis stated yes we do. We're adjourned to the December meeting.

D. CASE No. 30-09 **Dominick Santucci** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. John Mattis stated again that's before the Town Board and do we have a motion to adjourn that? Again, I'd like to adjourn that to January, there'll be no action on that in the next few months. Do we have a motion? So moved, seconded with all in favor saying "aye."

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NEW PUBLIC HEARINGS

A. CASE No. 37-09 **Charles and Diana Jones** for an Area Variance from the requirement for the front yard setback for a proposed covered porch and open stair on the property located at **95 Valley View Road, Cortlandt Manor.**

Mr. Kevin Malnar presented himself to the Board and stated with RJ Stahl Architect. I'm the project manager. I'm here tonight to represent Charles and Diana. I have a letter from them saying that I'm allowed to speak on their behalf as they were the applicant.

Mr. John Mattis asked can you bring that up here for the record please?

Mr. Kevin Malnar stated the application is for a front yard Variance. Charles and Diana are the resident owners of 95 Valley View. They've been so for the past several years. They purchased this house after it was already constructed, therefore they didn't have the option at the time to have the porch put on. As time as gone by and they've lived in the community, it's a very frontal community and they've missed not having that porch. Now that time has gone by and finances have settled down, they're looking to add the porch to the home. They are seeking a 5.7 foot Variance where 30 feet is required to reduce that front yard to 24.3 feet. The addition is not going to create an undesirable change in the neighborhood. On the cul-de-sac that they're on there's three or four homes which have a very similar, if not the same porch, already on the front of the home. The benefit that they're seeking for this porch you can't really achieve a front porch anywhere else but on the front of the home. The Variance I've already gone over. There would be no adverse impact on the neighborhood. It's a cul-de-sac. It's not a through road. The neighborhood is in support of the porch. I have a petition that Charles and Diana had taken around. Eight out of the fourteen neighbors that were home on the day they went around have signed the petition in support of their application and I'll bring this up.

Mr. John Klarl asked do you know if any of those names are from adjoining property owners?

Mr. Kevin Malnar responded yes, directly to the right and two of them are directly across the street. You've had a long night so I'll leave it at that if there's any questions.

Mr. James Seirmarco stated I did get an opportunity to spend some time out there today and you're correct, it's a cul-de-sac and I came back and I discussed it with Mr. Flandreau and we took an inventory – I think there's 11 or 12 homes there of which four homes have the exact same porch and about two additional have a portico porch. That's 6 out of 12, so that's 50% of the houses have a porch similar to what you're requesting. Unfortunately, they seem to be within their setbacks. I'm not exactly sure, we didn't obviously go out there and measure them. This is a 278 cluster subdivision I assume so the houses are large for the lots. The zone is R-10.

Mr. James Flandreau responded it's an R-20 area but this cluster subdivision brought it down to an R-10.

Mr. James Seirmarco stated that's an unusual circumstance. Normally, we wouldn't even entertain something like this. We just do not like to encroach on a front yard setback but I'm undecided right now as to which way I would vote. I agree with your list you just went through: the adverse effect, I don't think that this porch would be an adverse effect but yet it is in the front yard. Right now I'm on the fence here. I'm leaning towards approving it because it's not a 10 foot porch. It's not a big porch. It's similar to the porches that are on the other houses. Its design seems to match the house. Its demarcation on the house is exactly where the other ones are. It doesn't go past the garage so there's some forethought here. I'm not sure which way I'm going to vote but I would like more time to think about this and maybe go back and take a look at it more closely. But, I do understand that this particular piece of property we would be encroaching on the front yard setback and I'm not sure of the other ones. Normally, we would be worried about you being the first of the kind to get the porch and setting a precedent and the neighbors – but 50% of the houses already have a porch and about 30% of them have the exact same porch. It's not clear cut as to turning it down.

Mr. John Mattis stated I'd like to comment on this. My feeling is a little bit different. There are four houses there that are almost identical that have porches. The main difference is they're all constructed within the setback. None of them required Variances and that's the major difference. I remember when that was built. We had one case in front of us in the Zoning Board and it was one of the properties around the circular part of the cul-de-sac for a width Variance, because it was a pie-shaped property. There were no other Variances given so the other houses were set back far enough to allow them to have a porch within the setback. This would move the setback further. This would stick out further than any of the other houses on that street. When I look at something whether it's substantial or not, a full porch across the whole house, obviously it can't go across the garage or you couldn't get in or out of the garage, is substantial. A portico is not substantial and it doesn't look like this is sitting out in front of all of the other houses. We've debated back-and-forth about precedent but unless there are extenuating circumstances that we would allow this, this does have an adverse effect on the neighborhood because the person directly next door who signed that petition has an identical house right at the front setback and he

could come in next month and ask for the same thing and all of a sudden everybody's out further. The Town makes a Code for a reason. We're here to see if it makes sense. A lot of the streets we have one house is up further, one house is back further and if you give a porch you don't really notice whether it sticks out. This would, in my opinion, stick out like a sore thumb because they're all in a row whether they have a porch or not, the porches that are there come out to the same 30 foot setback. All of a sudden you're going to have something encroaching five or six feet out further and I can't support that.

Mr. Raymond Reber stated I have even stronger feelings. If you check in the Town, our tenants with the smallest lot available, 30 foot setback from the street is the smallest setback allowed within the Town. Under the 278 cluster they agree to let the builder build these houses using the R-10 setbacks. In any development when there's multiple units, quite often there's a variation of the architecture used. Obviously, in this development some decided to put porches on and some they did not. Whether that was done because on that particular lot it would be inconvenient for the builder to put the porch and set the house that much further back is irrelevant, the point is those decisions were made at the time when the development was made. It was agreed that they would go to the limit, the 30 foot setback. They wouldn't give themselves any extra room. I think it's totally inappropriate for us on a minimum setback. If this was one of those zonings where it was a 500 foot setback or something and they wanted to encroach a little bit, you wouldn't notice it. Five foot encroachment on a 30 foot setback is significant and it does begin the change of the potential character of the neighborhood. To me, just because they want a porch, it's not like it's an absolute necessity. It wasn't there. They bought the house without it. I think it would be totally inappropriate for this Board to start caving in on the absolute minimum setback used in this Town which is 30 feet so that somebody can have a porch. To me that just is too cavalier on our part and it doesn't meet any of the criteria. It's self-created, it's not needed, it can change the character of the neighborhood, and there's no alternative way to put on a front porch than to put on a front porch but so-be-it. It's like some places you can't have room to put in a three-car garage, so-be-it. To me, this is just a totally inappropriate request as the records show all these houses meet the 30 foot setback. Nobody's encroaching and I don't think it's up to us to say "put a porch on across the front of the house and change that setback."

Ms. Adrian Hunte stated I'd like to say that I did visit the property and that this Board, because the Code says that you may not do something you are certainly entitled to come to this Board for relief. In some cases we can grant it and in some we cannot and in others we have the discretion to grant it and we may choose to do so or not to do so. The neighborhood, it already has six or seven houses that have porches and I do not think that this particular porch is going to extend such that it would be an eyesore because it doesn't extend that far. The fact that these are smaller lots and it's unfortunate that this particular house and the individuals purchased it after it was constructed and we don't know whether the reason it didn't come with a porch initially was because of the Variance issue or whether it's just...The house across the street has a porch and I believe on either side or at least one or two doors down has a porch as well.

Mr. Kevin Malnar responded two doors down on the right hand side.

Ms. Adrian Hunte stated I don't believe that there would be an undesirable change in the neighborhood. I don't think that this is – it may be substantial in terms that this is almost 15% or 20% because of the amount of footage there. In terms of our concern that it would set a precedent I think each case has to be looked at on its own merits. In this particular case I do not think that it is that much of a detriment – it's certainly not to the environment and in terms of the house itself I don't think it's going to produce an undesirable change of character of the neighborhood or to the nearby properties.

Mr. Wai Man Chin stated actually I happen to agree with both sides on this one. I would like to have another month to think about this myself. I went there today. I drove by it and I saw what was in the neighborhood and yes I agree that a porch on here would not be a detriment to the neighborhood because it's not really going to change it that much but yet I see the point of even a Variance which is a little further – well not further than anybody else because they don't need a Variance on the adjoining properties. This is something that I'm really torn right now about. I would like to adjourn this until next month.

Mr. John Klarl asked if you did it that way would you like him to stake out where the porch would come out to?

Mr. Wai Man Chin responded that wouldn't be a bad idea just to stake it out that way I can see how far it is. I know how the road is. All we need is the yellow ribbon saying this is coming out to here two points. I'm thinking of both ways but I've got to decide one way or another and that's not going to be tonight.

Mr. David Douglas stated I'm glad Mr. Chin said that because I was going to say I would really like another month to think about it.

Mr. John Klarl stated the Board looks like they want to study it more.

Mr. James Flandreau stated just for clarification to the Board when Mr. Seirmarco came in today and we looked at the properties on that cul-de-sac, out of all the properties there, there was only three, this property being one of them, that wasn't issued a Building Permit with some sort of front covered porch. Some of them seemed like they weren't built. What I would do if the Board adjourns it is I'll look into all the applications of that and tell you what was approved, how far each one was approved for what size porch.

Mr. John Mattis stated I look at that as being irrelevant because we're looking at Variances, not how many houses – we're not doing a headcount of how many houses have porches. We're looking at a Variance that brings the property out in front of every other property on that street and we have other houses there that are identical houses that would come in and ask for identical Variances. There is no uniqueness on this and the fact that there's no uniqueness means that we can't turn down any other one because they're all identical and then we have basically said we have taken the smallest zoning in the Code and the minimum setback and we basically allowed that to fall by the wayside in that neighborhood. And, that's not what we're here for.

Ms. Adrian Hunte stated I will say this about the street. It's not a straight street. It curves. Those houses are not lined up.

Mr. Raymond Reber stated setbacks are setbacks.

Mr. John Mattis stated we agree to disagree and I think we'll have month to go out and take a look at it again and make up our minds.

Mr. John Klarl asked would you like them to put out two cones that show the corners of the porch?

Mr. Wai Man Chin stated for me I would like just to drive by and take a look at it again. It could be just two little ribbons, anything, two cones on each side to say okay it's coming out this far to see it better.

Mr. John Mattis stated generally we do a site inspection. It interferes with some people, everybody can't get there but if they can put the cones out there say a week and a half before, everybody should have an opportunity to go by on their own and I think that should be sufficient. Is there anyone else in the audience that would like to speak?

Mr. James Seirmarco stated I make a motion on **case number 37-09** to adjourn until the December meeting to give us additional time to revisit the site to look at the exact dimensions of the porch and to think about this a little longer, seconded with all in favor saying "aye."

Mr. John Mattis stated that's adjourned. For your information the next meeting is December 16th.

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RECERTIFICATION OF TELECOMMUNICATIONS SPECIAL USE PERMIT

- A. CASE No. 35-09** **Sprint Spectrum LP** for a recertification of an existing Telecommunication Special Use Permit on the property located at **0 Rte 9, Montrose.**
- B. CASE No. 36-09** **Sprint Spectrum LP** for a recertification of an existing Telecommunication Special Use Permit on the property located at **0 Quaker Ridge Road, Croton on Hudson.**
- C. CASE No.38-09** **Nextel of New York, Inc** for a recertification of an existing Telecommunication Special Use Permit on the property located at **3100 East Main Street, Mohegan Lake.**

D. CASE No. 39-09 Nextel of New York, Inc for a recertification of an existing Telecommunication Special Use Permit on the property located at **0 Mt. Airy Rd, Croton on Hudson.**

Mr. Doug Warden presented himself to the Board and stated I'm an attorney with the law firm of Snyder & Snyder. I'm here on behalf of Sprint and Nextel. Spring and Nextel, although they maintain two functionally distinct networks have technically merged.

Mr. John Klarl asked are you going to be here on **case numbers 35, 36, 37, 38 and 39?**

Mr. Doug Warden responded each of the following four applications.

Mr. John Mattis stated we're familiar with your law firm. They represent most of the applications for cell towers that have come before us.

Mr. Doug Warden responded we do a fair amount of that work yes.

Mr. John Mattis asked this is just a re-certification which is required every five years? This is on Quaker Ridge Road.

Mr. Raymond Reber stated I think the question here really is to Mr. Flandreau in terms of these existing cell towers. Had there been any problems, any complaints, any issues in their operation that we should be aware of?

Mr. James Flandreau responded on all four of them I have not gotten any complaints from public or anybody else about either one of the towers. Since I've been here for five years, some of these have been opened they didn't get re-certified at the first five-year period. This would be the ten-year for some of these applications. Now that we do have a contact we'll make sure that these re-certifications come to us every five years.

Mr. Raymond Reber asked but you have nothing on record that would indicate there's a problem here that we should for any reason not grant a re-certification?

Mr. James Flandreau responded we have nothing on record that has any complaints.

Mr. Wai Man Chin asked it says there are no other carriers on your towers, is there any possibility of getting that?

Mr. Doug Warden responded these are existing, the towers, remember one of these is a rooftop facility. The towers themselves are Con Ed towers. Sometimes people think of a cell tower and they think of like a monopole or a tree or something. This was an existing Con Ed tower.

Mr. Wai Man Chin asked it's individual?

Mr. Doug Warden responded the reason why we choose to do that is because it reduces the unnecessary proliferation of other cell towers. It's a good thing that these are here. It eliminates the need to construct new towers which sometimes people object to.

Mr. James Flandreau stated the one that's on the building is at the Cortlandt Town Center. That's on the building and there's a separate monopole.

Mr. Wai Man Chin stated that was only about five years ago.

Ms. Adrian Hunte asked Mr. Warden there's mention in the letter to Mr. Flandreau of October 29th from Ms. Thorne of Nextel concerning a Building Permit **20070201** that was originally to replace six antennas and add one equipment cabinet. Do you anticipate any of that type of work happening in the near future?

Mr. Doug Warden responded there may be some work needed on that particular site in the near future but if it is required would of course come to the Town, go through the appropriate processes, get any amendments to the Special Use Permit or site plan approvals and any Building Permits that are required.

Ms. Adrian Hunte asked do you know why that was abandoned?

Mr. Doug Warden responded I don't but I can tell you that the nature of these facilities is such that there are upgrades in technology that are coming out on fairly frequent basis and that may be the requirement. There are new data services that people are offering and this is all just speculation on my part. I don't know what that might be but I do know that we would fully comply with the Town's requirements as far as any modifications that would be required going forward.

Ms. Adrian Hunte asked Mr. Flandreau our Engineering Department has contacted Nextel/Sprint to determine that everything is in order and we've had proper notice given to whomever needs to get notice.

Mr. James Flandreau responded yes, the proper notice was given. That was handled through Code Enforcement office. We had the signs placed out at the properties. I know there was some discussion at the work session that one of the signs wasn't there but I did have one of my officers put the signs out. I know that it was installed at the right property and as per the rest of the parts of the letter that they have to give us for the re-certification everything was approved for that. The one case that you were talking about there was an open Permit that was voided because they didn't do any of the construction. That was approved under the Special Permit. If they want to come back for a Building Permit to redo that they can because it already has that approval for the Special Permit to change those but any other changes would have to come back to the Board.

Mr. John Mattis asked any other questions? No one in the audience. I think we can vote on this and then we can take the other ones and see if there are any questions. We technically should vote on each of these separately. This is **35-09**.

Mr. Wai Man Chin stated I make a motion on **case number 35-09** to close the public hearing, seconded with all in favor saying "aye." I make a motion on **case number 35-09** to give re-certification for Special Permit, seconded with all in favor saying "aye."

Mr. John Mattis stated **case number 36-09**.

Mr. Raymond Reber asked Mr. Flandreau these are for five years these re-certifications?

Mr. James Flandreau responded yes they are. The way the Code reads is that you have to come in before the five year anniversary. I believe it was six months.

Mr. Raymond Reber stated I make a motion on **case 36-09** and on **38-09** to close the public hearings, seconded with all in favor saying "aye." On **case 36-09** Sprint Spectrum LP re-certification of Special Permit for a wireless telecommunication facility at Quaker Ridge Road and **38-09** for Nextel on 3100 East Main Street, Mohegan Lake for re-certification of Special Permit for a wireless telecommunication facility in both cases I make a motion for re-certification for five more years on both cases, seconded with all in favor saying "aye."

Ms. Adrian Hunte stated on **case number 39-09** Nextel of New York Inc. at 0 Mount Airy Road I make a motion to close the public hearing, seconded with all in favor saying "aye." On **case 39-09** Nextel of New York Inc. 0 Mount Airy Road I make a motion to approve a five year re-certification for Special Permit for wireless telecommunications facility at that address, seconded with all in favor saying "aye."

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ADJOURNMENT

Mr. John Mattis asked do we have a motion to adjourn? So moved, seconded with all in favor saying "aye."

**NEXT MEETING DATE:
December 16, 2009**