

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 16th, 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 (absent)

Also Present

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

ADOPTION OF MEETING MINUTES for Oct. 19, 2011

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

Mr. David Douglas stated the October minutes are adopted.

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CLOSED AND RESERVED DECISION:

- A. Case No. 26-11** **Bojan Petek** for an Area Variance to allow an accessory structure in the front yard on property located at **28 Hollis Lane, Croton-on-Hudson.**

Mr. John Klarl stated as you know, we discussed this application at our last meeting and the Board directed me to write a Decision that would be favorable, granting the relief the applicant requested. Here, the applicant requested an Area Variance to allow an existing accessory structure, or shed in the front of his property. We have in front of us a two-page Decision and Order for consideration and essentially we go through the five factors in Town Law Section **267-B** for granting a Variance and find that the applicant has presented a favorable argument here. In addition, he underscores the entire application is that this shed has been in the front yard for about **45** years or so. So, given all the factors enumerated in the two-page D&O, we determined at the end that "the Board hereby grants the applicant an Area Variance to allow the existing shed, approximately **10** feet by **14** feet, located in the front yard of the applicant's property,

subject to the following one condition: that the existing shed is taken down by the present or future property owner, or by natural deterioration or act of God, the shed or any similar structure cannot be replaced in the front yard on this property.” This is a type II action under SEQRA so I’d ask that someone make a motion to adopt the proposed Decision and Order.

So moved.

Mr. John Mattis stated I’d like to make a statement before we vote on this please. This has been a case where we’ve been back-and-forth and there’s some bothersome aspects to this. I want to make sure that anybody who watches this meeting doesn’t get the idea that if you build something and just leave it there for a number of years that you automatically get this, that we’ll say it’s been there so long that you get it. There are some extenuating circumstances here. There’s also another troubling part of this. It seems like it was either partially or fully rebuilt by Mr. Petek. It’s not completely the original shed. At least the roof was completely done. He claims he put siding on it but we had a picture when this case came up before and it was just about falling apart. It’s really not exactly the original shed but, having said that, it’s been there for so long, there aren’t many neighbors there, it really is not an eyesore for the neighborhood so I will vote for that but it shouldn’t be a signal to people that; put something in your property, let it sit there for many years and we’re going to roll over it and let you have it because that’s certainly not the case.

Mr. John Klarl stated that’s a valid point in the case and I think we’ve pointed out in our Decision and Order that there were extenuating circumstances here that would weigh equities in favor of the owner but we can also distinguish this case for someone who just says “I have an old structure, let me have a Variance.”

Mr. John Mattis stated right.

Mr. James Seirmarco stated I would like to make one comment also. I always go back to the; if this was not built, not there, would we have approved this in today’s environment? And, I think that answer to that would be ‘no’ so, this is what gives me the greatest problem with this application.

Mr. John Klarl stated and I think that feeling is also recited in the Decision and Order.

Mr. Charles Heady stated I also agree with John Mattis on the way it was rebuilt. I was surprised that he rebuilt it before he came before us to try to get the Variance for the shed which I thought wasn’t right to do.

Mr. David Douglas asked any other comments?

Mr. Charles Heady stated I make a motion on the Decision and Order on **case 26-11** permitting a **10’ x 14’** shed in the front yard.

Mr. Wai Man Chin stated as per the D&O? I second that.

With all in favor saying "aye" with one opposed.

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

Mr. Ken Hoch asked Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; no, Chairman Douglas; yes, Mr. Chin; yes, Mr. Heady; yes -- **5 to 1**.

Mr. David Douglas stated Variance is granted by a **5 to 1** vote.

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CLOSED AND RESERVED DECISION ADJOURNED TO NOV. 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 I believe the Town Board has, in fact now acted on...

Mr. John Klarl stated as you know, this application's been on our agenda from time to time since January of **2010**. Essentially, it dealt with the issue of outdoor storage and the issue of vending machines. It's been adjourned periodically, certainly since April of **2010** for the Planning Board, Town Board, or others to look at a set of rules that we could live by for: vending machines and for outdoor storage. I think Mr. Hoch has more knowledge than I have on this score that there's been a committee that's worked on these two issues and they've come to some Resolution. So, given that Resolution, we can compare the application in light of the new rules. Maybe Mr. Hoch can tell us who constituted that committee.

Mr. Ken Hoch stated staff consisted of Ed Vergano, the Town Engineer, Tom Wood, the Town Attorney and Chris Kehoe our Deputy Director of Planning and they put together a number of criteria depending on the size of the structure, the floor area and a dimension of the gross area that would be available which is **10%** for outdoor display provided it doesn't block any sidewalks or access. There are a number of other conditions that are in the Resolution. Basically, it will provide for smaller stores to be able to display materials outside such as is done now with gas stations having windshield washer, oil, wood and outdoor ice machine. All of those would be subject to an inspection by Code Enforcement.

Mr. David Douglas stated it's my understanding from the Resolution that depending on the size of the store, there's a different treatment. If the store is greater than **2,500** square feet it needs

approval from the Planning Board but if it's less than **2,500** square feet then it can get a permit directly from the Director of Code Enforcement. In either case, it doesn't come before us.

Mr. John Klarl stated we're going to treat Home Depot different than we're going to treat a convenience store.

Mr. David Douglas stated with regard to this application, it seems that whether Mr. Quvaides store is more or less than **2,500** square feet it still resolves the issue that was in front of us, I believe.

Ms. Adrian Hunte asked the gross floor area, is that of the actual structure or of the whole premises?

Mr. Ken Hoch responded that would be the actual structure.

Mr. James Seirmarco asked that's the premises not the area that...

Mr. Ken Hoch stated that would be for example the gas station floor area, that would be the determining factor.

Mr. David Douglas asked the building not the lot?

Mr. Ken Hoch responded not the lot, not the outside, not the canopy...

Mr. John Klarl asked floor area of the structure?

Mr. Ken Hoch responded yes.

Mr. John Mattis stated I'm glad you mentioned the canopy.

Mr. Wai Man Chin asked so, basically on this case, is it more than **2,500** square feet or less than **2,500** square feet?

Mr. Ken Hoch responded on that particular file was in storage so I didn't have access to it but I believe it is less than **2,500** square feet.

Mr. John Klarl asked would someone like to consider making a motion to have Mr. Hoch administratively withdraw it assuming it was within that square footage?

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

Mr. David Douglas stated the matter will be administratively withdrawn.

Mr. John Klarl stated once again Mr. Chairman, this application really was the poster boy for similar situations. It really wasn't just about this one applicant and one property.

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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 e-mail the other day saying that something came up involving the owner so the applicant requested we postpone this until January.

Mr. James Seirmarco stated I make that motion.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #18-09** is adjourned until January.

B. CASE No. 14-11B **Capurro Contracting, Inc.** on behalf of Patricia Doherty for an Area Variance for a front yard setback to rebuild a deck and for the existing front steps; and the side yard setback for the existing house on property located at **122 Westchester Ave., Verplanck.**

Mr. David Douglas asked Mr. Hoch, have you heard anything from the applicant?

Mr. Ken Hoch responded I had an e-mail from Mr. Capurro that he had had discussions with the adjacent property owner, Mr. Carbone. Mr. Carbone was supposed to meet with the surveyor, I believe tomorrow, and they would try to resolve the issue of where the property line is. So, he asked for an adjournment until December.

Mr. David Douglas asked until the next meeting? I think we had talked about us informing him that we only do want somebody to come in December whether they've resolved it. They've been talking about trying to resolve this one way or the other. If they resolve it, great, but if they don't we still would like to have somebody appear at the next meeting.

Mr. John Klarl stated the issue we're hearing is that there's an issue about surveys not agreeing with each other. There's a disagreement among the surveyors.

Mr. Charles Heady stated I make a motion on **case 14-11B** to adjourn it to December.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #14-11B** is adjourned until December.

Mr. Wai Man Chin stated also a letter to the applicants to be here at the next meeting.

Mr. David Douglas asked Mr. Hoch, will you advise the applicant?

Mr. Ken Hoch responded I actually have already done that.

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Mr. David Douglas stated before we go into the next meeting, Mr. Petek, I just want to inform you. We already voted and adopted the Decision and Order granting your Variance subject to that condition that we discussed at the work session.

Mr. Bojan Petek asked is there something that will be mailed?

Mr. Ken Hoch responded yes, once we sign it you'll get a copy in the mail.

Mr. Bojan Petek stated thank you.

C. CASE No. 15-11 **James Meaney (revised)** for an Interpretation as to whether Local Law 12 of 2010 prevents the Green Materials application to the Planning Board, PB No. 28-08 filed 8/22/08, from proceeding; whether Local Law 12 negates the ZBA Decision and Order in Case No. 33-08; and whether the Applicant can obtain a Use Variance from Local Law 12.

Mr. Dan Pagano stated I'm the attorney for the applicant.

Mr. John Mattis stated this is an Interpretation whether Local Law 12 prevents the Green Materials from their application to the Zoning Board. So, they're asking for an Interpretation whether or not that applies.

Mr. Dan Pagano stated whether it applies, and I would also argue that the application was two years, three and a half years in prior to the re-zoning. So, I would argue that we're seeking them to find that it doesn't apply at all and if it does apply then to say that we should be granted a Variance or perhaps some kind of grandfathering in but that's our position yes.

Mr. John Klarl asked did you see Mr. Pagano, how it's been advertised now?

Mr. Dan Pagano responded yes.

Mr. David Douglas stated I think last time you had mentioned that you might want in the alternative seek a Variance. We now advertise it for a Variance.

Mr. Dan Pagano responded right, yes we asked for that too.

Mr. John Klarl stated so the Interpretation is broken down into three parts now.

Mr. Dan Pagano responded sure, I see that. If I could begin my presentation or should I answer questions, I don't know how you want to do this.

Mr. David Douglas stated why don't you give us some sort of presentation.

Mr. Dan Pagano responded the application was made in August of **2008** where we had met with tentacle people of the Town and actually they had advised us to pursue it in this form and matter that we did actually. Then, in September, the Town decided that they want to try and rezone the property. If you remember, they tried to make it a waterfront enhancement district which we felt was actually targeting us but nevertheless that's what the Town tried to do and when that failed, soon or immediately thereafter then that's when they implemented the Moratorium to prevent our operation on the property. Basically, under case Law, for example Rocky Point Drive vs. Town of Brook Haven, which I'm sure John's familiar with, we're arguing that we should be entitled to continue with our application. We attempted to go from, when our application was originally approved **33-08** by the Town on **August 20th of 2008**, we received a satisfactory Interpretation and we were satisfied with that. We had no problem with it. We could operate within the parameters of the approval that the Zoning Board had indicated. On **August 22nd**, our application was moved to the Planning Board but then at the Planning Board it didn't go anywhere for a few months and then this issue arose in February of **2009** which we attended this Board's meeting in **2009**. Basically, the Planning Board referred it back to your Board. We didn't know why, honestly. We appeared, and if you read the minutes from the meeting of **February 2009** we didn't know. The Board decided not to open up the Interpretation and in fact, the Board had indicated and it's both in the transcript and in your video, that the concrete material could compose of both stone and rock and it's in there and members had stated that and it's on page **48** of the minutes of **February 2009** meeting. Then, thereafter that meeting, response to a memo provided to me by the Town on **March 2nd of 2011**, I wrote a letter back on **March 11th of 2009** – strike that, I got the year wrong. **March 10th of 2009** I wrote a letter to Mr. Klarl indicating that “upon reviewing the notes and the video recording of the **August 20th, 2008** Zoning Board of Appeals meeting that we were satisfied with what we were granted, the approval, that we were not seeking anything more than that and we were willing to operate under those parameters.” We didn't know about the subsequent **March 18th** of this Board, or the DOTS sending out an application to Interpret the previous Decision, we weren't part of that process, we weren't notified of that process, we weren't present during that process but apparently there was a second application made which was I believe Zoning Board of Appeals **case 6-09** which we did not participate in. I think it's a very unusual thing that a Town would submit to the Local Zoning Board about a specific individual property and seek an Interpretation

about said individual property. I can't find precedent for that. I can find that they ask about Interpretations, how to apply to the Zoning Code in general to properties within a Zoning Code but not a particular property and certainly not notifying us. In any event, that application **6-09**, after the Moratorium, was withdrawn so I don't know what relevance that really had since it was withdrawn by the Town, to the case. In any event, we're ready and we've been waiting for three years to have a site plan approved and therefore, we feel that we can rely upon this Board's Decision of **33-08** which was approved on **August 20th, 2008** and we should be able to go to the Planning Board for a site plan. That's what our position is. That's the highlight of it all. I don't know how you want to proceed from here? I guess I can answer any questions or we can go over any facts, or any materials. I would urge the Board to review the video, as I have, of the **March 20th, 2008** meeting. I think it's very enlightening of the facts and what the approval was and what statements were made and as to any confusion about what our plans were, subsequent or alleged statements made by any of the staff for my client, that I think we rectified that or made that clear prior to the meeting occurring on application **6-09** that we were not seeking to do more than what we were approved and more than we were granted. We were seeking merely to recycle materials such as concrete. That's all we're looking to do.

Mr. David Douglas asked can I ask a question or two?

Mr. Dan Pagano responded sure.

Mr. David Douglas asked if I'm reading, not the application, I'm actually looking at the agenda, but the first issue is you're seeking an Interpretation as to whether or not the **Local Law 12, 2010** prevents your application to the Planning Board?

Mr. Dan Pagano responded correct.

Mr. David Douglas asked what is the crux of your argument for saying that it doesn't?

Mr. Dan Pagano responded we were before the Planning Board and that we were prepared. The case Law in this state is that if the applicant has their application submitted, but for undue delay by the Town we're not responsible for and we're not responsible for the delay and that we were well before the Moratorium was enacted or considered and that we should have been allowed to proceed with the Planning Board. We already had that Interpretation before the Moratorium was in effect, we had it before it was even considered and therefore we should be allowed to operate under that Interpretation and at that time the Law was in effect.

Mr. James Seirmarco asked what do you mean you already had the Interpretation?

Mr. Dan Pagano responded we already had a Decision. Our Decision from Zoning Board of Appeals **case 33-08** was adopted on **8-20-08**, we already had a Decision. I can show it to you if you'd like.

Mr. James Seirmarco stated no, I know what you mean.

Mr. Dan Pagano stated it was signed off on **August 25th**, date filed, of **2008**.

Mr. John Klarl stated Zoning Board of Appeals **case #33-08** resulted in a Decision and Order concerning this status of being a Special Trade Contractor right?

Mr. Dan Pagano responded and it said that we were.

Mr. John Klarl stated that was **33-08** and then **6-09** was the Decision and Order on the DOTS application.

Mr. Dan Pagano responded right, **6-09** was the DOTS which was withdrawn actually. They withdrew it.

Mr. David Douglas stated and the earlier one was a Decision regarding demolition and distribution of concrete aggregate.

Mr. Dan Pagano responded right, we had nothing to do with **6-09**.

Mr. James Seirmarco stated we're not talking about that.

Mr. David Douglas stated we're not talking about that, we're talking about the earlier one. So, your saying the Decision about the demolition/distribution of concrete aggregate, your saying that the – are you saying that that should be binding regardless of **Local Law 12**?

Mr. Dan Pagano responded yes, it was before.

Mr. David Douglas asked so you agree you would be bound by that Decision?

Mr. Dan Pagano responded yes, and that's what we said we were willing to do. We're willing to operate within that Decision. That Decision was satisfactory and we informed this Board on **March 9th of 2009** of that, I believe. The date was **February 18th of 2009** we informed the Board of that and that's when the Board actually stated that we would operate under that, that we were fine with that. In fact, members even stated on the record that concrete consists of rock and it consists of stone and they understood that when they granted the approval. That's on page **48** of the minutes of the **February 18th of 2009** meeting.

Mr. David Douglas asked did I hear you say that you weren't aware of the DOTS application?

Mr. Dan Pagano responded no. I became aware of it.

Mr. David Douglas asked and Mr. Meaney wasn't aware of it either?

Mr. Dan Pagano responded I can't speak to Mr. Meaney's knowledge. He's not here.

Mr. David Douglas stated he's the applicant.

Mr. Dan Pagano stated at the next meeting, we can ask him but no I have no recollection. If there's any confusion, I don't know, this is now three years or two years, but no, before the meeting occurred, no.

Mr. John Mattis stated I may be able to clear that up a little bit. As what's happened with other Interpretations when the Town asks for them, it was not asked for that specific property, it was asked in a generic fashion.

Mr. Dan Pagano stated I have to be honest, I've practiced Municipal Law for **14** years, I've never heard of that and I've asked several Town Attorneys and no one can understand...

Mr. David Douglas asked heard of what? The Interpretation was done generally.

Mr. Dan Pagano responded generally yes, but not by a specific property.

Mr. John Mattis stated it wasn't for the specific property. It was general.

Mr. John Klarl stated as any similar operation in the Town.

Mr. John Mattis stated there was no reference to Mr. Meaney's property at all in that.

Mr. John Klarl stated right, and in terms of Mr. Meany knowing about the application, I think, and I have to go back to the old files, that the application came about because they talked to Mr. Meaney about making the application and he said he didn't want to make the application, and they said "well, we'll go to the Board as the Director of DOTS to seek an understanding of the Interpretation." I think Mr. Meaney was offered the opportunity to do so and said 'no' and he knew that they were going to pursue it.

Mr. David Douglas stated that was my recollection which I admit at this point is a little bit fuzzy, but that's how I remembered it as well.

Mr. James Seirmarco stated and James Flandreau made the application as he had done at that time many times by other things.

Mr. John Klarl stated the Town would have deferred to the applicant...

Mr. Dan Pagano stated I have to say though, it is confusing because numerous memos that I received from the Town did indicate though that **6-09** was very much about Mr. Meaney's property.

Mr. James Seirmarco stated it was not.

Mr. Dan Pagano stated I have memos from the Town, about three or four of them...

Mr. John Klarl stated and other properties similarly situated.

Mr. Dan Pagano stated it doesn't say that though, unfortunately.

Mr. John Klarl stated it can be binding upon anybody...

Mr. Dan Pagano stated if you read the memos it's confusing and that's why I had that impression that it was about his property.

Mr. John Klarl stated hopefully we've raised the curtain on the confusion tonight.

Mr. Dan Pagano stated because, it also refers to the Decision of **2008** too that they're asking that Decision has an Interpretation. The only thing

Mr. John Klarl stated the one thing that I'm curious about, Mr. Pagano, is we're looking at the application as advertised for tonight, and as we said, it has three parts and I don't know if your applicant is relying on one, two or all three parts to seek relief. Can you tell us?

Mr. Dan Pagano responded at the end of the day he just wants to be able to what he wants to do.

Mr. John Klarl stated but if we look at, so the Board understands. Can we look at the first part of the application? It says "an Interpretation as to whether the **Local Law 12 of 2010** prevents the Green Materials application of the Planning Board **PB 28-08**, filed **08-22-08** from proceeding" so I assume that's a major point that he's offering here.

Mr. Dan Pagano responded right.

Mr. John Klarl stated the second part is "whether **Local Law 12** negates Zoning Board of Appeals D&O in case **#33-08**." Does he request relief under that?

Mr. Dan Pagano responded yes.

Mr. John Klarl stated and the third one, which was added after the last meeting, is "whether the applicant can retain a use Variance from **Local Law 12**." Does he subscribe to that part of the application?

Mr. Dan Pagano responded yes.

Mr. David Douglas asked could you speak to that part?

Mr. Dan Pagano responded I would argue that really there's no impact here. I won't speak to you about the law of granting a use Variance, I think we all know that. I think what we have here is we have an application where he's looking to do something that's in a commercial area, that's in an area where he won't be disturbing anybody, that there's no impact whatsoever to any of the adjoining properties, that we're talking about crushing some materials in a very limited duration of time. The maximum would be **10** hours a week but really, I think they're looking at probably at a few hours is the real operation. They don't crush continually. They crush one time maybe once a week, maybe twice a week, that's it. The noise is not that loud nor is anyone nearby to disturb. There's really no reason not to do it. They've been crushing rock there for – I don't know, you know better than I, when they started taking the mountain down and they've been doing this all this time. They're not really going to be doing anything any worse than what they've been doing for all this time under the DEC, under the state guidance. The DEC will say that the operation was extremely clean, extremely well run operation and had no impact. It doesn't really make sense that – what's the reason for the -- first off, in a sense, there's been two attempts in changing the Zoning of this property, first it was to make it a waterfront...

Mr. David Douglas asked with regard to a use Variance am I wrong that he has to show us something about the economics of whether he can make a return from using the property in another manner?

Mr. John Mattis responded yes.

Mr. Dan Pagano responded well yes...

Mr. David Douglas stated that was somewhat a rhetorical question. I assume that if you want to pursue the use Variance part of the application, you're going to have to show us some economic facts about other possible uses and why there is no other reasonable use that you can make some money on.

Mr. Dan Pagano stated that's what my client would have to argue upon.

Mr. John Klarl stated and I don't have to educate Mr. Pagano, but he knows the history of use Variances over the last **15** years in New York where you could obtain at one time, then they made the economic proof that you could have no return from the other uses so essentially it cut out use Variances then it got a little looser but it's still very tough to get a use Variance in the state of New York or any given Town. A couple of years ago it was virtually impossible. You had to show no return from the alternate uses.

Mr. Dan Pagano stated I was hoping that we could look at this in a practical sense. He's not here to talk about the meat of it but I don't see why, in a sense, not on this property. This is not in a neighborhood, it's not anywhere near residential, it's across the street from a bar, from a veterinarian, from some kind of truck dealership -- I'm not sure what they exactly are. There's no residential properties around. All the adjoining properties are owned by the same, not by the applicant, but by the applicant's landlord.

Mr. David Douglas stated but that's one of the reasons I asked you about the economic aspect. I understand those other parts of it but you're going to have to show some proof on the economic aspect if you're going to have any chance whatsoever of getting use Variance.

Mr. Dan Pagano responded sure, I'll make sure we emphasize that when he's here.

Mr. James Seirmarco stated I'm probably **20** years here, I don't think this Town has ever granted a use Variance.

Mr. Dan Pagano stated I guess I'm reaching for the stars.

Mr. James Seirmarco asked Charlie, you've been on here **30** years, any use Variances?

Mr. John Klarl responded years ago.

Mr. Dan Pagano stated honestly, sometimes too, we ask for a use Variance because it might required as a predicate for a report, you have to exhaust your remedies. I understand it may not be – I don't know what the Board's position but that's one reason for the...

Mr. John Klarl stated I thought more than a use Variance I thought what you were saying a couple of meetings ago is, you sought relief in front of the first portion of the advertisement and then you wanted to say "well, if I am precluded from **Local Law 12**, can you give me an exemption, essentially?" I thought more than a use Variance you wanted to be exempt.

Mr. Dan Pagano stated whichever works. We're dealing with semantics here.

Mr. John Klarl stated semantics are a little important to the Zoning Board of Appeals.

Mr. Dan Pagano stated yes, if it could be exempt.

Mr. John Klarl stated but I think that was more the essence of your third portion of your application.

Mr. Dan Pagano responded in the alternative.

Mr. John Klarl stated yes, I think your alternative more was that you were seeking some kind of exception, exemption or general Variance as opposed to a use Variance.

Mr. David Douglas asked what sort of exemption? If you want an exemption, what do you mean by an exemption other than a use Variance? You're saying "let us use the property in a certain way – if the Law applies, let us use the property in a different way." That sounds to me like a use Variance.

Mr. Dan Pagano responded it is a use.

Mr. David Douglas stated so it's just a use Variance then on that prong.

Mr. John Klarl stated and that's the way it's advertised.

Mr. Dan Pagano stated I don't know, unless you can inform me, is there any other way that this could be – not necessarily an exemption, another term in the Town Code, I've seen it...

Mr. John Klarl stated actually more than an exemption people talk about exceptions like a **280-A**, you ask for an exception.

Mr. Dan Pagano responded **280-A**, it's in the Code of Cortlandt?

Mr. John Klarl responded it's in the Town Law of the State of New York.

Mr. Dan Pagano stated if that's also an alternative.

Mr. John Klarl stated I'm not saying it is but I'm trying to get the essence of the third portion of your application.

Mr. Dan Pagano stated I'll look at that, thank you very much, **280-A** of the Town Law.

Mr. John Klarl stated that's a separate notion about whether you have frontage to build a house and it talks about if you have presumption of a frontage of **15** foot wide, so people are allowed to apply for an exception from **280-A** in terms of building on other than a Town road, that's called an exception.

Mr. Dan Pagano stated I don't know if that would apply to a use.

Mr. John Klarl stated no, that doesn't but the theme and the thought is that when someone is subject to a certain rule and say "in my case, could you give me an exception?" But, it sounds like from your colloquia from Chairman Douglas, that you'd like to stick by as your third form of relief...

Mr. Dan Pagano responded let me research that because that's a new thing to me. I've never had anyone try that nor have I ever tried it so I have to look into **280-A**.

Mr. John Klarl stated I'll let you cogitate then.

Mr. Dan Pagano stated if that's a possible route, sure. We're just trying to get so we can do this. Whatever road works, we're willing to try.

Mr. John Klarl stated but I really think the essence of your application is the first two portions of the advertisement tonight and I think the third portion is your catch-all.

Mr. Dan Pagano responded yes, that's true. That's what I thought it was honestly.

Mr. John Mattis stated let's look at the first part. Can he go before the Planning Board? I guess the sequence of events is: **August 20th of 2008** we granted an Interpretation that the business of demolition/distribution of concrete aggregate was a Special Trade Contractor use. Two days later, Mr. Meaney applied for a site plan approval to the Planning Board. While that was in progress, and it usually takes several months before they really get rolling on this, in **April of 2009** the Town imposed a Moratorium. That Moratorium prohibited the processing of any cases on the Planning or Zoning Board that were in progress. That put a halt to the Planning Board process. The Moratorium expired **July 31st 2010** and on **July 12th**, **Local Law 12 of 2010** was adopted and that said that "Specialty Trade Contractors shall be limited to the following: undertakes activities of a type that are specialized to the building industry and that do not require the processing of raw materials." The aggregate being a raw material, the **Local Law 12** said that what we interpreted at the time under the current Code could go to the Planning Board was no longer allowed and what you're saying is, because the application was there, can they proceed as if **Local Law 12** was not there since they were in the process of the application. Is that what you're asking for?

Mr. Dan Pagano responded yes, and basically, under state Law the courts have held that on a Moratorium – if an applicant had been allowed to proceed an application would have been completed by the end of the Moratorium then they are in fact grandfathered in. I think it's a very tall burden for the Town to say that for two years, we could have had the site plan approved.

Mr. David Douglas asked before the next meeting, do you think you could submit something to us that has those cases just to make it easier? Maybe you and Mr. Klarl have it off the top of your head.

Mr. John Klarl stated and actually, this case is the other way.

Mr. David Douglas stated I think this case is – I don't think it's so clear-cut one way or the other but it would be helpful if you could submit something.

Mr. Dan Pagano responded sure.

Mr. John Mattis stated I think that's the first thing that we have to analyze and rule on.

Mr. Dan Pagano stated and also at the mention of the Moratorium it actually was supposed to be for one year, and they gave a six-month extension. I was at a couple of the work sessions – really the Town had not done, for the first of the year, had not done anything working on the Decision or the Moratorium and they even admitted that. I really think it's going to be a tough – and I urge John to take a look at that unless they can show you the diligent efforts during that

first year working on the Moratorium, working towards it. I don't think they can. That's one issue to raise but -- I don't know if we can resolve it here in the confines of the Zoning Board of Appeal. It may have it may have to be somewhere else but ...

Mr. David Douglas stated but you have to do it here first.

Mr. John Mattis stated yes, you have to exhaust your remedies here first.

Mr. Dan Pagano stated so anytime you feel I'm testing you, I don't mean to and I'm just trying to...

Mr. David Douglas stated and if you ever feel I'm testing you, I am.

Mr. Dan Pagano stated so we feel that the fact that we were before the Planning Board and we went to them that we could have worked on and have the site plan done before the Moratorium expired and even before it was initially enacted. If you remember too there were some twists and turns too that they put in there in **September of 2008** the Town I believe was **2008**...

Mr. John Klarl stated if you recall, Mr. Pagano, another real central point to the application is the applicant came in for his Interpretation about being a Special Trade Contractor, received a favorable application and after receiving that favorable Interpretation he proposed doing something else and DOTS said "hold it, you can't do that." He said "I think I can." They said "if you think you can apply to the Zoning Board of Appeals." He didn't apply to the Zoning Board of Appeals. They applied for an Interpretation and they said he could do what we told him he could do the first time around but he can't do what he wants to do that he's announced since receiving the favorable Interpretation.

Mr. Dan Pagano stated I don't know who that was. It wasn't me.

Mr. John Klarl stated and it wasn't me.

Mr. Dan Pagano stated but I can tell you that we disagree with that and we say that's not the case. We came in **February of '09** and said that in the record and said "hey, you know..."

Mr. John Klarl stated I can tell you it wasn't me that made that old cloth, the DOTS to the application because the applicant didn't want to pursue the application.

Mr. Dan Pagano stated I'm sorry, I didn't understand.

Mr. John Klarl stated DOTS did the application because the applicant didn't want to pursue the application. They said "you've received a favorable application, now you want to do something different. We don't think you can do that under your favorable Interpretation so make an application." He said "I don't want to make an application." DOTS then...

Mr. Dan Pagano stated because we were happy with what we were given. I've never gotten that.

Mr. John Klarl stated and he was. He enjoyed his first bite of the apple but didn't want to take a second bite.

Mr. Dan Pagano stated no, we're still trying to figure this out because knowing what I know, John Lentini, my client, no one knows where this came from, you understand. No one knows who said this. It's not in writing anywhere. We don't know who said we wanted to do something different. That was never on our agenda.

Mr. John Klarl stated if I recall, I don't have it in front of me, the second Decision and Order even memorializes performance –

Mr. Dan Pagano asked was that the **August 28th** ?

Mr. John Klarl responded I'd have to see it in front of me but I called the D&O, talked about the fact that the applicant wanted to do something different than what he had received and they said "well, we don't think he can do that, make an application." He said "I don't want to make an application." They said "then we..."

Mr. Dan Pagano responded I'm trying to understand, are you referring to, was that John Lentini's thing?

Mr. John Klarl stated the John Lentini thing.

Mr. Dan Pagano stated I don't know. I'm trying to get my hand around this, where's that from.

Mr. John Klarl stated I can pull the old application and there's – I'm fairly certain that John Mattis has a good institutional knowledge...

Mr. David Douglas stated I think it's true – I'm looking here, you've got a document here that says the applicant that "in late **January 2009** DOTS was devised by Mr. Meaney and his professionals that the applicant intended to truck to the site large rocks and boulders and crush them into small stones that could be used as aggregate for concrete, therefore DOTS requested the Zoning Board of Appeals's Interpretation as to whether this type of rock crushing operations came ambit of the prior one." It seems pretty clear that the applicant was seeking to do something different than what he wanted to do originally.

Mr. John Klarl stated Mr. Douglas, you're reciting exactly what I talked about and it's the D&O in **case #33-08**...

Mr. Dan Pagano asked where is that that we said that?

Mr. John Klarl responded no I'm sorry, it's **case #6-09** and page **2** and it was adopted on **September 15th, 2010**. It's the **September 15th, 2010** D&O that recites that history.

Mr. Dan Pagano stated we weren't there. That wasn't about us. That was apparently about some general questions about – you know what I'm saying? So, I don't know how....

Mr. John Klarl stated as long as you know what I'm saying.

Mr. Dan Pagano stated and we weren't aware of that and I never communicated that and made it clear in **February of 2009** that whatever that was that's not correct.

Mr. David Douglas asked so you're saying that the applicant wasn't intending to do those things at that time?

Mr. Dan Pagano responded absolutely not and that's what we told the Town and then we said fine if we had to live without that we had to live without that. I made it clear in February before this Board in **2009** that we weren't going to do that. I said "fine, we will accept what we have."

Mr. John Klarl stated as a matter of fact, Mr. Mattis, before was giving us his nice timeline concerning the application and I see the Decision and Order in **case #6-09** dated **September 15th, 2010** contains a really good recitation of that timeline as to the applications that were made and decided and how the process proceeded at that point.

Mr. Dan Pagano stated let me see if I have that. That's dated **September 15th?**

Mr. John Klarl responded it's **September 15th, 2010**. It's a D&O in **case #6-09** and if you read starting from where Mr. Douglas read "however..."

Mr. Dan Pagano stated I don't have that actually.

Mr. John Mattis stated there was never any Decision and Order on that it was subsequently withdrawn by the Town.

Mr. John Klarl stated what happened was the last line said "therefore in light of the enactment of **Local Law 12 of 2010** and these provisions, the Department of Technical Services has concluded the Zoning Board of Appeals application by withdrawing this Interpretation application in Zoning Board Appeals **case 6-09**." But, it gives the history building up to the withdrawal.

Mr. Dan Pagano stated I'm confused though because you just said that before the **6-09** was not about my client's application it was about similarly situated properties.

Mr. John Klarl stated including...

Mr. David Douglas stated including.

Mr. Dan Pagano stated the history of one particular property is not about ...

Mr. James Seirmarco stated it was in general properties including Mr. Meaney's property.

Mr. Dan Pagano stated and this is the whole process that we weren't even involved in. I don't know how that impacts us, why it should impact us, it's a D&O I'm not aware of.

Mr. David Douglas stated no, this is a D&O that was actually withdrawn. The D&O wasn't withdrawn. DOTS's application is withdrawn because of **Local Law 12**. Well, maybe between now and next month you can get up to speed on some of the procedural aspects.

Mr. John Klarl stated I think that's a nice recital of the timeline here.

Mr. Dan Pagano stated if you could forward it to me I would appreciate it John.

Mr. John Klarl asked do we have an extra one Ken?

Mr. John Mattis asked any further discussion on this at this point?

Mr. John Klarl stated here's one.

Mr. Dan Pagano asked may I approach?

Mr. John Mattis responded you may approach the bench.

Mr. Dan Pagano stated the Decision, okay.

Mr. John Klarl stated it was a Decision but page 2 contains the timeline building up to the Board withdrawing its application.

Mr. Dan Pagano stated if they withdrew it then I don't understand what force and effect this could possibly have. John explain it.

Mr. John Klarl stated it's part of -- it shows what occurred.

Mr. David Douglas stated I think it spells out the sequence of events pretty clearly. Anyway, anything else you want to add tonight?

Mr. Dan Pagano responded no, I guess we'll do it when Mr. Meaney's here.

Mr. John Klarl stated yes, because you indicated in an e-mail that Mr. Meaney couldn't make it tonight. I think the Board would like to have an appearance by him at the December meeting so they can have a dialogue.

Mr. Dan Pagano stated he couldn't get out of work. He's a fireman in Peekskill.

Mr. John Mattis stated there being nobody in the audience I don't have to ask if there's any further comments. I move that we adjourn **case #15-11** to the December meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #15-11** is adjourned to December.

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ADJOURNMENT

Mr. John Mattis stated I move that we adjourn tonight's meeting. Is there any further business?

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

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**NEXT MEETING DATE:
WEDNESDAY DEC. 21, 2011**