

TOWN OF NEW WINDSOR

ZONING BOARD

August 26, 2013

MEMBERS PRESENT:      MICHAEL KANE, CHAIRMAN  
                             FRANCIS BEDETTI  
                             HENRY SCHEIBLE  
                             RICHARD HAMEL  
                             PATRICK TORPEY

ALSO PRESENT:      GEOFFREY CHANIN, ESQ.  
                             ZONING BOARD ATTORNEY

JENNIFER GALLAGHER  
BUILDING INSPECTOR

CAMMY AMMIRATI  
ZONING BOARD SECRETARY

MEETING AGENDA:

1. Leroy Porter
2. Marsha Bryan
3. Gary VanVoorhis
4. Aryan, Inc.
5. Kelly Shalian

**REGULAR MEETING:**

MR. KANE: I'd like to call to order the August 26, 2013 meeting of the New Windsor Zoning Board to order.

APPROVAL OF MINUTES DATED 6/10, 6/24 & 7/22/13

MR. KANE: Motion to accept the minutes of June 10, June 24, July 22 as written?

MR. BEDETTI: So moved.

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

PRELIMINARY MEETINGS:

LEROY PORTER (13-14)

MR. KANE: First on tonight's agenda is Leroy Porter. Demolition of an existing dwelling and construction of a new single-family dwelling requiring a variance on all sides of the dwelling. A variance of 13 feet for the front yard, 30 feet for the side yard, 13 feet for the rear yard. Property located at 9 Melrose Avenue. For those of you here for a preliminary meeting, what the Town of New Windsor does we hold two hearings, one is a preliminary meeting so we can get a general idea of what you want to do, ask whatever questions, make sure we have the proper information to make a decision. All decisions by the zoning board have to be made at a public hearing. So this way, we have enough information to do it. Other towns do it one shot deal, you walk in, you don't have enough information, you lose, goodbye, that's why we hold a two meeting scenario here. Hi, speak loud enough for the young lady over there to hear you and tell us exactly in your own words what you want to do.

MR. CELLA: Good evening, my name is Jonathan Cella, the engineer and the applicant for Leroy Porter. We're here for 9 Melrose Avenue, section block and lot 13-7-11.2. It's a 6,000 square foot residential lot with an existing building on it built around 1930. The lot is serviced by public water and sewer. And we're proposing to demolish the building, put up a new building approximately 30 foot by 40 feet, 30 foot wide by 40 feet deep. It will be a single family residence, again approximately 2,200 square feet. It's in an R-4 zoning district which requires a 40,000 square foot building lot which we obviously don't have, it's a pre-existing lot. And we need variances for all yards, front, rear, side. We're making the front yard a little bit deeper than it is.

MR. KANE: It's going to be further back from the road than existing?

MR. CELLA: Right, the existing building is in the northeast corner of the lot. Do you see we've got some photos on here. Can I pass out a couple?

MRS. GALLAGHER: We have them all.

MR. CELLA: It's a small building, as you see, it's in

need of repair and at this point, it's more economical for the property owner to replace the building than to repair it.

MR. KANE: So according to the plan that I'm seeing right here, you're going to be further back from the highway from the Melrose Avenue?

MR. CELLA: Correct.

MR. KANE: And the house is going to be more centered on the property than what it is currently?

MR. CELLA: That was our intent.

MR. KANE: You look at this as an improvement?

MR. CELLA: We feel so.

MR. KANE: Is the house size similar in size and nature to other homes in the neighborhood?

MR. CELLA: Yes, the new construction homes looks like there's approximately four or five new bi-levels, I believe it's a block to the west of us that were probably here for the same reason to get side yard.

MR. KANE: Just get some definitive information for the public hearing.

MR. CELLA: Yeah, we can get you a little more information, sure.

MR. KANE: The wood shed in the back is that staying?

MR. CELLA: Yes.

MR. KANE: Is that legal?

MR. PORTER: Yes, I bought the property with it like that.

MR. CELLA: Pre-existing, non-conforming?

MR. KANE: Not unless it was up before 1966. So let's get some information on this shed and the idea is to handle everything in one thing, if the shed wants to exist and it's been there then we need some information, you need to get that to the building department so we can get that in the public notice and

clear it all up in one shot.

MR. CELLA: So we can make that part of this application.

MR. KANE: Absolutely.

MRS. GALLAGHER: We can check tomorrow at the assessor's.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the house?

MR. CELLA: No, the lot is pretty much grass.

MR. KANE: Creating any water hazards or runoffs?

MR. CELLA: No.

MR. KANE: Any easements running through the existing area?

MR. CELLA: No.

MR. KANE: Gentlemen, any further questions?

MR. BEDETTI: You did say that there was water and sewer, municipal water and sewer, is that correct?

MR. CELLA: Yes.

MR. BEDETTI: No septic tanks involved?

MR. CELLA: No.

MR. SCHEIBLE: Proposed house, is that a single story or double story?

MR. CELLA: It will be a two story house. I don't know, it will be a slab on grade we have proposed elevation, actually this would be the proposed elevation.

MR. SCHEIBLE: You were standing in front of it.

MR. CELLA: I'm sorry. Still in planning but--

MR. SCHEIBLE: With a basement?

MR. CELLA: We're figuring slab on grade.

MR. KANE: Any further questions? If not, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Leroy Porter for a proposed building on the property located 9 Melrose Avenue in an R-4 zone.

MR. TORPEY: I'll second that.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. CELLA: Is there anything we need to do?

MRS. GALLAGHER: She's going to give you the paperwork.

MR. KANE: Those are your next steps.

MRS. GALLAGHER: If you need the shed put on there, you have to wait until the building inspector can do that so she'll check for you first thing in the morning.

MARSHA BRYAN (13-15)

MR. KANE: Next is Marsha Bryan. Single-family dwelling with existing shed an existing 12 foot by 20 foot deck. A 3.1 foot side property line variance for the shed and a 1.5 foot variance for the deck. Property is located at 305 Stephenson Lane in an R-4 zone. Good evening, speak loud for the young lady over there to hear you and tell us exactly what you want to do.

MS. BRYAN: We just recently purchased a home and found out that we need a variance for one and a half feet for the deck and 3.1 feet for the existing shed, both are existing.

MR. KANE: To your knowledge, cutting down substantial trees and vegetation in the building of the deck? Certain questions I have to ask, even though the pictures are obvious.

MS. BRYAN: No.

MR. KANE: Create any water hazards or runoffs?

MS. BRYAN: No.

MR. KANE: Any easements going through where either the shed or the deck are?

MS. BRYAN: No.

MR. KANE: To your knowledge, has there been any complaints formally or informally about either?

MS. BRYAN: No.

MR. KANE: Further questions, gentlemen?

MR. BEDETTI: Any reason the shed couldn't be moved?

MR. BRYAN: It's been existing for about 20 years. It's pretty, it shows its age.

MR. BEDETTI: Not a current build or anything?

MS. BRYAN: No.

MR. TORPEY: You just bought this house?

MS. BRYAN: Yes.

MR. TORPEY: How did you get away with it?

MS. BRYAN: That's why I'm here, that's why we're here.

MR. KANE: If there's no further questions, we've got enough, I'll accept a motion.

MR. HAMEL: I'll make a motion that we schedule a public hearing for Marsha Bryan for the variances as requested.

MR. TORPEY: I'll second it.

ROLL CALL

MR. SCHEIBLE            AYE

MR. BEDETTI            AYE

MR. HAMEL              AYE

MR. TORPEY             AYE

MR. KANE                AYE

MR. KANE: These are your next steps.

MS. BRYAN: Okay.

GARY VAN VOORHIS (13-16)

MR. KANE: Next is Gary VanVoorhis. An interpretation is requested for an existing single-family dwelling with two kitchens or is it a two-family dwelling. Located at 54 Steele Road in an R-4 zone. Good evening, please state your name, address, speak loud enough for the young lady over there to hear you.

MR. VAN VOORHIS: Gary VanVoorhis, 71 Steele Road. I'm here tonight because back in 2009 we had the approval and got a C.O. to finish a basement downstairs at the house 54 Steele Road with the full bathroom and bar sink. And I wanted to come here tonight to see if I can get the approval to put in a stove so we can make it a single family with two kitchens I believe is the interpretation. I didn't know that we could possibly go for a two family, I didn't think that was allowed.

MR. KANE: Actually --

MR. VAN VOORHIS: No.

MR. KANE: -- no, so that's what the interpretation is. Now your intent is to use this as a single-family home?

MR. VAN VOORHIS: Yes.

MR. KANE: No intentions to use this as a rental space in the home?

MR. VAN VOORHIS: Right now, the property's occupied by our son and I know that I look young but we're getting near the age of retirement, we're thinking of possibly some day we would downsize our house and move into the basement.

MR. KANE: Single gas and electric meters coming into the home?

MR. VAN VOORHIS: Yes.

MR. KANE: And easy access from the rest of the home to that portion of the building?

MR. VAN VOORHIS: Yes.

MR. KANE: No locked doors, no separate access?

MR. VAN VOORHIS: Yes.

MR. TORPEY: Are you sure your son wants you to come back?

MR. VAN VOORHIS: Yeah, that's a debate, I'm not sure about that. Although they just had a baby and there's one on the way so we would make great baby-sitters. That's the reason.

MR. KANE: That's in the family code, not in the zoning code.

MR. BEDETTI: Single electric meter?

MR. VAN VOORHIS: Yes, all single.

MR. SCHEIBLE: Do you have sewage up there by any chance, Gary, sewage?

MR. VAN VOORHIS: I'm going to say yes we have well, but we have sewage, yes.

MR. KANE: Well and town sewer?

MR. VAN VOORHIS: We have well and sewer.

MR. SCHEIBLE: Just curious.

MR. VAN VOORHIS: I know we have it at my house, pretty sure we have it at 54 too. I know we have it at our house.

MR. SCHEIBLE: You're pretty sure?

MR. VAN VOORHIS: Actually, I'm not a hundred percent sure, maybe I should check on that actually.

MR. CHANIN: Have you been paying for it all these years?

MR. VAN VOORHIS: I don't pay the bills, our son does but I think we do.

MR. KANE: For the public hearing, if you could just bring a picture of the meters outside for us.

MR. VAN VOORHIS: Yes.

MR. KANE: Thank you. Further questions? No further questions, I'll accept a motion.

MR. SCHEIBLE: I'll make a motion to schedule Gary VanVoorhis for an interpretation for an existing single-family dwelling with two kitchens and so forth.

MR. TORPEY: I'll second that.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. VAN VOORHIS: Thank you.

MR. KANE: Your next steps.

ARYAN, INC. (13-17)

MR. KANE: Tonight's last preliminary meeting Aryan, Inc. Gloede Signs, sorry if mispronounced it. Replaced existing sign with a prohibited sign. A variance for a new electronic message, flashing sign, etc. is required. Located at 1035 Little Britain Road in an LC zone

MS. FORREST: I'm Nancy Forrest, I'm here representing Gloede Signs and Preetts.

MR. KANE: Tell us exactly what you want to do.

MS. FORREST: Okay, we had done a sign for them many years ago, they were not looking to actually put up anything new but there was an accident in the middle of the night that took out their original sign that we did for them. So in coming up with the new sign for them, they wanted to go, we're in the same location, the location was not moved, the sign's not higher, actually less square foot. In the place of a hand or manual changeable board, they wanted to use the electronic board of which they were told, I've been working in this town for 34 years I think ago I did my first sign and we had done one for Sportsplex, he was well aware that you're not allowed to do this. When you first install them I will say it takes X amount of hours for them to download the original software because there's so much of it. And we explained that and he was aware of that. And when that stops, you can then program it. And he was told that it can't blink, flash, revolve or stream and apparently, it went up on Friday and on a Monday, someone stopped by and I called him, I was like what are you doing, you can't do that. If you use it as a message board, you know, and you don't blink it and flash it, you can change your message. Now a lot of towns are just coming on board, some of my towns in the counties that I work in, you know, are restricting it by how often the message can change and some of them were restricting it by how much of the overall sign it can be. But they're still relatively new in the sense of people actually doing them, product is not new, they're just extremely expensive. I happen to only use one company that's all a hundred percent made in the United States with terrific tech support, all weatherproof, none of the others are any other companies that are out there selling them they're not weatherproof, you have nobody to work on them. So we're very picky about that. So they happen to be the

top of the line and the most expensive as well. I don't know if you've seen any some of them around, parts come from all over the world so the software especially is dangerous because half the letters will come off the top, it will almost like look Arabic letters and there's no way to fix them.

MR. TORPEY: Can they just be still?

MS. FORREST: Yes, they can be, when the message changes, it's black and then it just comes up.

MR. KANE: Like what's in front of Walgreens?

MS. FORREST: Yes. And these have the ability to tie into on a, I have one town right now that insists if they approve it they have to be tied into Amber Alert and it's an automatic message change and the Amber Alert comes up, a lot of them are using them in conjunction with the town for town events or if, you know, you have total blackout or some kind of a big emergency where to go for ice or where to go for help or whatever.

MR. TORPEY: Whose sign is it?

MS. FORREST: Who made it or who owned it?

MR. TORPEY: Whose sign is it?

MS. FORREST: It belongs to the owner of the building there.

MR. TORPEY: How come everybody else's name is on it?

MS. FORREST: He owns that building, he's got two stores in the building, is that what you mean?

MR. TORPEY: Like everybody is on that sign, all these people are on that sign.

MS. FORREST: I didn't put this on so maybe he had somebody put that on.

MR. CHANIN: Let me interrupt you please. The young lady needs to make a transcript and the people have the right to hear so when you answer a question, please make sure that both she and the audience can hear.

MS. FORREST: Not a problem.

MR. CHANIN: Thank you.

MR. KANE: Basically, Pat, you've got one building with the number of businesses in it so allowing one freestanding sign.

MR. TORPEY: There's a couple buildings there.

MR. SCHEIBLE: Isn't P & P Auto, that's a building behind Preet's.

MS. FORREST: I think there's one down below, he doesn't own that.

MR. SCHEIBLE: Is that underneath P & P?

MR. TORPEY: I was just confused.

MR. SCHEIBLE: Is that underneath that building in the rear?

MS. FORREST: No, there's a building down in back.

MR. SCHEIBLE: There's a building behind.

MR. HAMEL: There's an arrow going up towards the back.

MR. SCHEIBLE: And the smoke shop, isn't that owned also by Preet people?

MS. FORREST: Yes, yes, it is.

MR. SCHEIBLE: Just want to be sure.

MR. KANE: As far as the, I have no problem myself with the electric signs. My concern is with the flashing and the rate of the flashing on the sign. Please be prepared to address that at the public hearing with some details on the delays that we can, what kind of delays we can put in there about, you know, 20 seconds, 30 seconds, whatever it is.

MS. FORREST: It can actually be anything, anything at all.

MR. KANE: If you can bring that information in.

MS. FORREST: Do you have a preference?

MR. KANE: No, not that we--

MR. CHANIN: That's for the building inspector to determine.

MR. KANE: We'll talk about that.

MR. BEDETTI: Are there any residents living, how close are the nearest residents, single, whether they be private residents?

MS. FORREST: Right on Little Britain Road. As far as I know, there's another shopping center across the street, there's a gas station--

MR. BEDETTI: Not for businesses, for residents.

MS. FORREST: I'm thinking, I don't know of any residences that are within--

MR. BEDETTI: Where a flashing sign would be annoying to somebody who lives, you know, whose home was in sight, line of sight with that.

MR. KANE: If you drive by, I don't think there is any.

MR. SCHEIBLE: One house.

MR. BEDETTI: Physical dimensions?

MR. KANE: It's actually smaller than the existing one, this is all about the electric. Further questions? I'll accept, let's set him up for a public hearing.

MR. CHANIN: Need a motion.

MS. FORREST: Can I make one more comment? Just to let you know also this unit you'll see some out there, it automatically powers down 70 percent at night for lighting, you need maximum lighting during the day and it automatically shuts down to 30 percent at night, otherwise, it would just be way too glaring. You can program it with whatever you decide to tell us and I'll make sure he understands that.

MR. KANE: We'll be adamant about that.

MS. FORREST: I just wanted to go on record saying I did tell him that you can't do that but--

MR. CHANIN: Miss Forrest, you are a representative of Gloede Signs?

MS. FORREST: Gloede Signs, yes.

MR. CHANIN: Gloede Signs in turn is providing the sign to the property owner which is Aryan, Inc.?

MS. FORREST: Yes.

MR. CHANIN: And have you provided to the building department and to this board's secretary which is the same office some sort of indication that you have the authority to appear before this board on behalf of the owner?

MS. FORREST: Yes.

MR. KANE: We have it.

MR. CHANIN: Okay, thank you.

MR. KANE: So we need a motion.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Aryan, Inc. regarding an existing sign located at 1035 Little Britain Road in an LC Zone.

MR. SCHEIBLE: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

PUBLIC HEARINGS:

KELLY SHALIAN (13-11)

MR. KANE: Tonight's only public hearing Kelly Shalian. Interpretation is requested for an existing single-family dwelling with two kitchens or is it a two-family dwelling located at 6 Ridge View Road in an R-4 zone. Anybody here for this particular hearing? Okay, we're going to give a piece of paper and just for you to put your name and address on, make it easier for this young lady, if you have something to say at the public portion come on up and sign your name then you may ask any questions that you have at that time, okay?

MS. SHALIAN: Hi.

MR. KANE: Tell us exactly what you want to do in your own words.

MS. SHALIAN: The second kitchen variance.

MR. KANE: So you have a single-family home?

MS. SHALIAN: Yes.

MR. KANE: And your intent is to use this strictly as a single-family home?

MS. SHALIAN: Yes.

MR. KANE: And no rental?

MS. SHALIAN: Yes.

MR. KANE: Yes as in no rental?

MS. SHALIAN: Right.

MR. KANE: Okay, single meter coming into the home, gas and electric?

MS. SHALIAN: Yes.

MR. KANE: Easy access from the rest of the home for this portion of the building?

MS. SHALIAN: Yes.

MR. KANE: Any further questions, gentlemen?

MR. SCHEIBLE: Just trying to get the exact location there, just researching here.

MR. KANE: Currently, you live in the home, ma'am?

MS. SHALIAN: Yes.

MR. KANE: And that's just your family members living there?

MS. SHALIAN: Yes.

MR. KANE: And your purpose for the second kitchen?

MS. SHALIAN: Cooking.

MR. SCHEIBLE: Presently, there's only one family in this home?

MS. SHALIAN: Correct.

MR. SCHEIBLE: And that's your intention to keep it that way?

MS. SHALIAN: Correct.

MR. SCHEIBLE: As a one family home, just only with an extra kitchen?

MS. SHALIAN: Correct.

MR. KANE: Further questions, gentlemen on this side? Nothing? Okay, so at this point, what we'll do is open it up to the public, ask the audience if they have any questions they'd like to ask. Just come on up, state your name and address.

MR. MEEHAN: My name is Jim Meehan, I live at 9 Ridge View Road and this property has been rented out for years on and off with numerous amount of tenants coming and going to the point where we had a problem 2008 with a drug bust involving a lot of weight heroin, weapons, cocaine, ounces we're talking. And here's the article I'd like to submit this from the newspaper.

MR. KANE: Sure.

MR. MEEHAN: And I'm here to represent my neighborhood and these other families behind me that this house

stays as one family. Despite what we hear from Kelly, it has been rented out, they gain entrance through their garage. You can find it on Zillow any information about this home, how it was renovated. And it's advertised as a two family. And I hope that Kelly maintains that it stays a single family and that's all I have to say.

MR. KANE: Okay. And as you noted, we have already asked to maintain and it's on record that this home is going to be used as a single-family home without any rental, not that the house can't be rented out itself to a family but that part of it can't be rented to somebody else.

MR. MEEHAN: I do understand that.

MR. KANE: What we're doing here is that the reason the building department sends it here is so that we can get it on record with everybody and there's the enforcement procedures from there.

MR. MEEHAN: Oh, okay, thank you.

MR. KANE: Next?

MS. MEEHAN: My name is Suzanne Meehan. How do you check that she's not renting that?

MR. KANE: We don't.

MS. MEEHAN: Who tells you that?

MR. KANE: The neighbors, if you complain, the building department will go out and inspect it.

MS. MEEHAN: Cause on the internet, the official county public records as of September 2012 lists this as a duplex, two units and it's not two units in our neighborhood, that's what's in the internet on Trulia is listed as a multi-family and on Zillow it's an apartment rental and 775 they're asking, I mean, you can't prove that she isn't doing it but--

MR. KANE: You know, it's on the internet, I can't say anything about that. All I can say is that, you know, if you see something, if you're in the neighborhood and a problem exists, you call the building department right away and we'll send somebody out to check it out. And if that's the case, then again they're under oath

in here stating how they're going to use that particular home and we have something to go after them with.

MS. MEEHAN: Did you not ask when she, was there a private entrance, did you ask that question or was there an entrance?

MR. KANE: Easy access from the rest of the building.

MS. MEEHAN: What does that mean?

MR. KANE: That means there's no locked doors. I can go from upstairs to downstairs, one kitchen to the other without having to have a key to gain access.

MS. MEEHAN: Going through the garage is okay?

MR. KANE: Why not?

MS. MEEHAN: Okay, thank you.

MR. KANE: You're welcome. Further questions? Anything else?

MR. FALLON: My name is Kevin Fallon, I live at 122 Windsor Terrace. And I just was wondering about the water, whether or not, I know everybody has sewer and well water, just is that going to be the same?

MR. KANE: All they're doing is putting a stove and refrigerator making it a second kitchen. They're not making an apartment. There shouldn't, if the same amount of people are living there, shouldn't be more of a tax on the well or sewer.

MR. FALLON: Just wanted to make sure.

MR. KANE: No changes that way, just to get it on record as to what's going on with that and again from the homeowner that it will not be rented out and used as a single-family home exclusively, okay?

MR. FALLON: Alright, thanks.

MR. KANE: Anybody else? Okay, sir?

MR. HOWE: Jeff Howe, I live at 118 Windsor Terrace, Salisbury Mills, New York. I'm hooked up to town sewer, I don't know if she's hooked up to town sewer or

not, you add an extra kitchen which is more cooking stuff like that, I don't know what she's cooking to have two kitchens.

MR. KANE: People have always had two kitchens for my age, people had a summer kitchen downstairs in the summer.

MR. HOWE: I work in a lot of houses, I understand that. I live downhill from her, I have a well now.

MR. KANE: We're not talking about more people going in, sir.

MR. HOWE: I know you're not talking about it but in the past they have--

MR. KANE: We can't cure the past.

MR. HOWE: If it happens again I just want to know we have to complain to you.

MR. KANE: No, absolutely not, you call the building department as I've said previously.

MR. HOWE: Okay, so that's all I wanted to know.

MR. KANE: Anybody else? Seeing as there's not, we'll close the public portion of the meeting and ask how many mailings we had.

MRS. AMMIRATI: On the 30th day of July 2013, I compared 57 addressed envelopes containing the public hearing notice pertinent to this case from the certified list provided by the assessor's office and no responses.

MR. BEDETTI: How long have you owned this house?

MS. SHALIAN: Thirteen years.

MR. KANE: Do you have any knowledge as to information about this being listed as a multi-family house on the internet, that kind of stuff?

MS. SHALIAN: No, actually, I didn't even know if my taxes, if I'm paying more than I should be, I don't understand why it's listed that way.

MR. KANE: That's easy to check, you can go down to the

tax assessor and ask.

MS. SHALIAN: But, I mean, I always pay my taxes so I don't really look to see what I'm being charged for.

MR. TORPEY: Why is it listed that way anyway?

MS. SHALIAN: That's what I don't understand, yeah.

MR. KANE: Okay, further questions from the board?

MS. SHALIAN: Wait, let me just, isn't it this office that would have changed it?

MR. KANE: No.

MS. SHALIAN: What office decides whether--

MR. KANE: Well, if it's a single-family home and you're not allowed to have two-family homes in that particular area there, you would actually have to come in front of us and prove to, put it concisely, prove that you can't sell that home as a single-family home.

MS. SHALIAN: That's not what I mean, how is it that it's been listed?

MR. KANE: We don't know, ma'am, I'm asking you.

MS. SHALIAN: I thought it was this office.

MR. KANE: No, they're saying it's listed on the internet. Who listed it, I can't tell you.

MS. SHALIAN: I thought she said it was the town website, the county.

MR. KANE: Excuse me, it's done with, the audience, you're talking to us, thank you.

MR. TORPEY: Was it listed for sale?

MS. SHALIAN: No, she said the county.

MR. KANE: That's something you should look into.

MS. SHALIAN: So I should call the county?

MR. KANE: Well, I would find out, get that information from Zillow or call the county, yeah, I would go down

to the tax assessor, see what you're paying as a single family, straighten it out with the county, if the county's put any information like that then I'd go after online and find out how the information got up when it's not true. Okay?

MS. SHALIAN: I thought that the county got their information from this town.

MR. CHANIN: You have to ask them.

MR. KANE: We're not the end all of everything that goes on in the town.

MR. TORPEY: Did she buy the house that way? Was it listed that way when you bought that house? Always, down as a two-family house when you bought it?

MS. SHALIAN: You know, I don't think so but maybe it was, I'll look tonight.

MR. KANE: Further questions? If not, I'll accept a motion.

MR. BEDETTI: I'll make a motion that this board make an interpretation that the owner, Kelly Shalian, of a single-family dwelling located at 6 Ridge View Road in an R-4 zone be designated as a single-family dwelling with two kitchens that cannot be rented nor can it be sold as a two-family house.

MR. SCHEIBLE: I'll second that.

ROLL CALL

MR. SCHEIBLE                    AYE

MR. BEDETTI                    AYE

MR. HAMEL                      AYE

MR. TORPEY                    AYE

MR. KANE                        AYE

MR. KANE: This will tell you your further information.

MS. SHALIAN: That's it?

MR. KANE: That's it.

MS. SHALIAN: Okay, thank you.

FORMAL DECISIONS:

1. Donna Gery
2. CA Custom Homes

MR. KANE: We have two formal decisions that we need to vote on.

MR. BEDETTI: Together. I'll make a motion that we accept the formal decisions for Dona Gery and CA Custom Homes that were distributed by e-mail and accept them as written.

MR. HAMEL: I'll second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

DISCUSSION ITEM:

ATTORNEY'S REPORT ON SPARC REQUEST

MR. KANE: We have a discussion item on the letter that was sent to us.

MR. CHANIN: You want me to make my report?

MR. KANE: Yes.

MR. CHANIN: Members of the board, I am--

MR. KANE: There's no speaking on this, this is a discussion on the board, it's not a public hearing.

MR. CHANIN: I am going to deliver verbally the report that the board asked me to present to you tonight. You made that request of me at our last meeting which was on July 22, our first meeting in August was canceled so this is the next meeting thereafter. And I'm now prepared to verbally deliver the report to you that you requested. Perhaps the best place to start would be with the facts. The facts quite simply are that I received a copy of a letter which is date stamped by the town building department June 28. I didn't get it until early July. The letter does not have a date on it but the letter is addressed to this board, the Zoning Board of Appeals from Sandra Kassam who's present tonight, it's addressed to the zoning board and it concerns the company and the project which is now in operation on town owned property in the vicinity of Stewart Airport. The name of the company is Jointa Lime Company, that's J-O-I-N-T-A Lime, L-I-M-E Company, and they are in contract with the Town of New Windsor, the town is leasing to them property and they are renting the property from the town and operating an asphalt plant on that site. The letter that we received from Miss Kassam on behalf of SPARC addressed the question to the zoning board, actually several issues contained in the question but basically the letter brings to this board's attention the fact that the asphalt plant did not obtain site plan review approval from the town planning board which is true, it did not. And nevertheless, the building inspector issued an approval or a permit or whatever permission that allowed the asphalt plant to go ahead and operate. And the question presented in the letter from SPARC was whether or not that is a violation of the code in that the code provides that the building inspector shall not

issue such a permit unless it first receives planning board approval. And as I said, it did not receive planning board approval. Now, that seems like a straightforward, simple question but thanks to lawyers like me, it's not. And if you will indulge me a few moments, I will explain to you what I think. First of all, I'll give you the facts of the case, the factual history of the case and then I will tell you the results of my legal research and that perhaps will give you further insight and guidance. I am not the board. I have told everybody on earth that I am not the board. You guys are the board. So whatever decision you make is yours, not mine. But you asked me to give you some information that would help you guide yourselves in making whatever determination you may make and that's what I'm here to do. Now, the facts of the case are as I understand them anyway that originally the town and Jointa Lime Company entered into what's called an option agreement which gave the company the right to exercise the option if they so chose to go ahead and operate this plant. The company did exercise their option and said yes, we want to go forward. Thereafter, the town entered into a lease agreement with the company so that they could use the town owned land to operate the plant. Now, it's my understanding and this may not be important in the long run but at least in keeping up with the chronology here it's my understanding that in the original option agreement that provides the company with the right if they so chose to go ahead and operate this plant, that one of the terms that the town and the company agreed on is that the Town Board's approval would suffice, that the company would not have to go further and get the planning board and the zoning board approvals as well. The town is saying this is our property, this is our project, you're operating the plant at our behest and with our approval and we as a town are not letting you, making you go to the planning board and zoning board if you, you know, if we and you agree that you don't have to do that. The reason I mention that is because thereafter when the company exercises its option and says we want to go forward and the town and the company then entered into the lease agreement that allowed the company to actually go ahead and use the town owned land that provision that's in there that said and by the way, you don't have to get planning and zoning board approvals was left out. So the second contract which was the actual lease did not say that. In fact, what it said was that in addition to everything else you have to get all your approvals. Third fact is that

recently, I believe it was approximately two weeks ago, the Town Board of the Town of New Windsor passed another resolution amending the prior lease agreement reinstating in the agreement. The provision that said that in addition to all the other things that we're agreeing about we also are agreeing that you do not need planning and zoning board approvals and you can just go forward on the basis of the lease. There were a couple of other things that were amended in the lease as well but those things are not important as far as the zoning board is concerned. Fact number one is we got this letter which is what motivated and was the catalyst for this issue brought before you. And I have told you what the facts are as best I understand them as far as the chronology goes of the different series of agreements between the town and the Jointa Lime Company that operates this plant. Now, that being said, as part one now we move on to part two, which is more complicated part but I'm very, very pleased and gratified not a little bit conceded because you people in my opinion are the best educated zoning board in Orange County. And one of the reasons why that's my belief is because you've been very diligent and very thorough in our program of continuing legal education. And I know that you are because I've spoken to all of you and you have become expert at reading and interpreting what most people consider to be mumbo-jumbo which are legal decisions from judges written by lawyers which we said before is why things are so messy and confusing. So I want to tell you about the legal issues that at least in my humble opinion had been raised by this whole situation and the question that's presented to you today and tonight and why I think those are important legal questions and we'll try to keep track of them during this discussion because they logically fall in a certain order. So you're going to be asked to answer question number one and then depending on your answer to that you might next need to answer question number two. And depending on your answer to that you may need next to go to question number three. But depending on your answer, you may or may not have to go to those further questions so I'll try to lay those things out in terms of the legal explanation so that we do them in a logical order. Okay, now, what I'd like to do--yes, sir?

MR. TORPEY: How are we going to answer questions when they turn it on, shut it off and turn it back on?

MR. CHANIN: Believe me when I tell you that we're going to get to all of those things. Mr. Hamel, would you pass those out to yourself and your colleague? Now we'll get to the thing that I just handed out to you.

MR. TORPEY: Are we getting credit for this?

MR. CHANIN: Yes, the answer to that question is yes. I thought about it and this counts towards your mandatory four hours of continuing legal education for the year 2013, unless any of you object to that?

MR. TORPEY: What are we going to get, two hours out of the half?

MR. CHANIN: Let's see how long it takes. The answer to that question in my humble opinion is yes.

MR. TORPEY: So this is a perfect example?

MR. CHANIN: Yes. Let's wade into the maras of the law if we can. The first question I think that needs to be asked and I'll use legal terminology here is standing. Now the word standing does not mean not sitting. The word standing means do you have the right to be in the forum that you're in. I'll give you an example. Let's say hypothetically and I'm intentionally using the word hypothetically cause I don't want to make any enemies, let's say that I'm a Yankee fan and I know that the Yankees are having a great deal of legal controversy and so is Major League Baseball with Alex Rodriguez. And the Yankees are claiming that he was injured when he said that he wasn't and the Yankees and Major League Baseball is saying he was using performance enhancing drugs when he said he wasn't and there's all this kind of controversy and big bucks are at stake, hundreds of millions of dollars, not just that but one would assume also that the performance of the Yankees on the field is at stake as well. And I can show you, let's say hypothetically that I have a basement full of Yankee memorabilia and season tickets to the games and my father and grandfather were Yankee fans too. So the question is does that give me the right to intervene as a party in the lawsuit going on in court between the Yankees and Alex Rodriguez or Alex Rodriguez and Major League Baseball. Now there's got to be a line there, there's got to be somebody who says I'm the gatekeeper and if you have an interest then I'm opening the gate and you can come into the room and the judge will listen to you because you're interested in the case.

As I've told you many, many times, the law can be seen very simply as an exercise in line drawing. It is not an argument that where I draw the line or whether state legislature draws the line is the best possible place to draw, nobody argues that, nobody says the speed limit is 55 because that's the best speed to drive. But you have to draw the line somewhere because that way everybody knows that if they go 56 they're speeding, if you go 54, you're okay. You have to draw it somewhere. So in the same way courts and legislatures and cases draw the line that define this term standing, are you allowed in the courtroom to be heard. If my argument is that I should be allowed into the courtroom because I'm a die-hard Yankee fan then can you imagine how many people would be parties in the lawsuit. Millions. So the court will say what's your interest. Now let me just point one other thing out to you. Drawing my lessons from contemporary life that we all live in. If you will remember just a couple weeks ago or a month ago or two the Supreme Court of the United States decided that the Federal Defense of Marriage Act, isn't it amazing you're on the ZBA and we're talking about the Defense of Marriage Act, isn't that a wonderful thing? The Supreme Court of the United States in an opinion written by Chief Justice John Roberts, conservative by the way, allowed to stand a lower court ruling, lower federal court, circuit court of appeals ruling that held that the Federal Defense of Marriage Act was unconstitutional and void. Justice Roberts did not decide that the Defense of Marriage Act was unconstitutional, he decided that the people who were suing did not have standing to be there. And his decision was that it is, you need more than just a passionate interest in order to have standing, you have to have something real, something tangible. Now here's another example of what I'm talking about. Did you ever notice, did you ever ask yourself why is it that in application number six we sent out 27 envelopes and in application number 19 we sent out 53 envelopes? Why, why does that make sense? The reason is because in different parts of the town and in different places where the property lines are drawn people live different distances from the site where the proposed project is going on. And the question boils down to two questions. One, are you physically near enough, can we measure with a tape measure how close you are to whatever it is that's going on so that we can say you have standing, you have the right to be here and we must listen to you because you're close enough that whatever is going on is going

to affect you. If the answer to that question is yes, the courts have said you have standing. But that's not the end of the inquiry.

MR. TORPEY: So how many mailings were there?

MR. CHANIN: Not on this one. But there's a second part of standing as well. It's not just limited to those people who are physically close enough, that's not the only inquiry that defines standing as far as the laws of New York are concerned. The second issue is and now I'm quoting from a case and if you want, I gave you one case, I didn't give you this one, if you want it I'll give it to you. Take my word for it, the second way that somebody qualifies to be in the courtroom and the judge will listen to them, they can submit papers and have lawyers stand up and argue for them because they have standing is if the party who wants to be involved is arguably within the zone of interest, which is intended to be protected by the zoning statute. So we'll send envelopes to somebody. If this town board again hypothetically were to pass a law that said that we do not want three green painted houses in a row and you own a green house, arguably that could affect you. So you're in the zone of interest that the statute is designed to protect. Okay, so those are the two ways you get standing. One, it's affecting me, I'm nearby, I can see it, I can smell it, I can taste it, it's affecting me. The second way is I'm one of those people that the legislature or the town board had in mind when they adopted this law and therefore since I was one of those people, I have the right to be heard by the court. Those are the two ways that someone has standing. Now, as I said before, as we discussed this we're trying to go through it logically. To me, the first question that the board has to ask itself is does SPARC have standing? Is this board properly obligated to entertain this question from them, whether or not the building inspector did or did not act properly when he issued this permit without site plan approval? Now, if you don't know the answer to that question, you may form an opinion but I will tell you about some laws and some case decisions including the one I just handed out which could help you answer that question. So let's go into that.

MR. TORPEY: That whole thing you just said is pretty simple.

MR. CHANIN: Well, I'm not done with that, get your money's worth here. I mean, you know, you're paying top dollar for this, you might as well ring it out of me. Now--

MR. TORPEY: We get overtime tonight?

MR. CHANIN: No. Just think about this, you're earning all these credits towards your education. Alright, now, the case I handed out to you and you can go home and read it and we can talk about it at greater length if you want to squeeze this for even more continuing legal education credits, this is a case decided by the Court of Appeals in 1988, the facts are slightly different and I'll tell you why. They are slightly different, you may or may not decide that the difference in fact pattern is or is not important. This was a case that was decided by the Court of Appeals in 1988 in the mid 1980s. Now I went to college in upstate New York and it was a pain in the neck to drive up there, it was a seven hour drive, eight hour drive. We didn't have this new super highway 86, we had to take these back roads, it was not fun. And often because I was one of the few lucky guys that had a car back then it was not a Model T but I had a car, so I would often drive up to the Rochester Airport to pick up my friends and drop them off and so forth. The county airport just like the Westchester County Airport, just like the Orange County Airport is operated by those counties because the state legislators of the State of New York passed what are called Home Rule Laws that, remember we talked about Home Rule, you have to pass a Home Rule request because they are not allowed to pass a law that only affects part of the state, unless they get a Home Rule request. See how smart you guys are? So the state legislature passed a law saying Monroe County which is outside of Rochester has the right to operate the airport just the same way they did for Orange and Westchester. So Monroe County is operating an airport. Well, one day in the 1980s, Monroe County says we want to expand the airport and part of the airport property including the land we want to expand onto we want to extend our runways, we want to build a new terminal in the City of Rochester. Well, you guys can guess what the next question is going to be. The next question is is Monroe County subject to City of Rochester zoning laws? Well, that answer was batted back and forth and eventually wound up in front of the Court of Appeals in 1988 and the Court of Appeals issued a decision that

some of you who are more conservative politically than others might say is an example of judicial activism, where the court is writing law instead of state legislature. But we'll leave that issue alone for another time. But in deciding this case, the Court of Appeals said that in order to determine whether or not this project is subject to the zoning ordinances and decisions of the regulatory enforcement agents of the City of Rochester, we're going to take nine factors into account. Now I told you that the fact pattern of this case is slightly different from this situation here because in the Monroe case, you have two municipalities fighting, you have the county and the city. Here is slightly different. But what is important I think is for the board to recognize and you have this decision I just gave you, it's only six pages, but what you need to look at I think when you have a chance you can do it in your spare time, it will put you right to sleep if you can't sleep at night. But what is interesting in the decision is the factors that the Court of Appeals used in answering the question. Are they subject to the city zoning or are they not? Now I've told you many times that the favorite image, the favorite metaphorical image that I use whenever a legal case or a controversy or question is presented to me is I think of the scales, I think of the Scales of Justice Libra and I ask myself what's in one side of the scale and what's in the other side of the scale? And that's exactly what the Court of Appeals did in this case. Now, some of the factors that they said are important in making this decision and by the way, the ultimate decision that the Court of Appeals made is that the county airport was not subject to the city zoning ordinance. Why? The reason why is because they said, they asked the following questions, one of the questions they asked is how important, again think of the scales, how important is the project, in that case, it was the expansion of the airport, how important is that compared to the protection of the local neighborhood which the zoning law is intended to protect? That's one question. Another question which I think is one of the most important ones when it comes to this question before us tonight is what process was followed in that case during the airport expansion project that allowed the public to know what was going on to participate in the process, to receive public notice and how closely was that project scrutinized by regulatory agencies? If it was not carefully scrutinized then maybe it's a good thing to subject it to the zoning questions. If it was on the other hand

thoroughly scrutinized then maybe it's just extra bureaucracy and red tape and you don't have to go through their separate zoning analysis. So these are the kinds of things, I'm not going to read the whole case, but these are the kinds of questions that the Court of Appeals asked and answered in deciding that case. And as I said, that case factually is a little bit different than this one, but it's important in terms of what criteria the court used to evaluate whether or not a particular zoning ordinance applied to a project. Okay, that is the kind of legal research and the question that I asked myself in preparing this report back to you. Now the last part of my comments and I will answer any questions, but the last part of my initial comments will be to tell you what I found out about the Jointa Lime project in response or in the context of those questions that I just articulated. Okay, as far as the asphalt plant itself point number one, it's already been up and operating. Point number two, the company and the town too because it's town property both went through a very, very extensive review and permitting process conducted by the DEC. I have here and it's available, it's in the copies you can get, they're public documents, they're available from the town, I have my copy, I didn't pack them in your packet tonight because the packet would be this thick, you and I both know when you're handed something this thick, you don't read any of it. So I rather you read six pages than nothing. Well, I have copies and this is a response to the DEC to Miss Kassam and to SPARC about the comments that the DEC received from them with respect to the questions that they raised regarding this plan, including by the way, the fact and I won't read the whole letter to you, but they answered the following questions and comments. The asphalt plant is already constructed. They asked the question about the impact to the, on the stream that was nearby the project. They answered a question about the temporary nature of the asphalt plant. I can tell you that the agreement between the town and Jointa Lime limits their operations to four years. And then they go into environmental review and here's a word that I know you're familiar with, SEQRA. There's one other point to be made again, hypothetical legally hypothetical and that is that there's something called a hybrid lawsuit. And hybrid lawsuits concern this board and they concern the planning board and they concern the town. A hybrid lawsuit, that word is used in the land use context to mean a legal challenge that concerns two different separate but related areas of

law. The two areas are zoning and SEQRA. Those are the two areas. Now the criteria, the causes of action, the claims the damages, the measure of liability or culpability is slightly different. There are different criteria for zoning cases than there are for SEQRA cases but cases like this if there's a lawsuit would implicate both. And the letter, the original letter that we got back in late June, early July actually addresses both of those things. It questions whether or not the town's procedure did or did not violate SEQRA having to do with whether or not it was a coordinated review. Remember we talked about coordinated reviews and also questions as I said before, the procedures set forth in the town zoning ordinance as far as building permits are concerned. So this could be, are considered not a hybrid lawsuit cause there's no lawsuit, but it does raise this whole idea of a hybrid question. So I want you to understand that. Now, getting back to what I was telling you about my answers to these questions that I've phrased. This is the DEC's response to SPARC about the questions that they asked. This is a letter also from the DEC also dated the same date as their answer to SPARC and this is a response that the DEC gave to the Army Corps of Engineers about their comments and it responds to the Army Corps by telling them what the background of the process is, I'm sorry, of the project is, that the DEC air resources staff use the following software to evaluate impacts on air and such. To answer to point number one contained in the criteria of the Monroe County Airport cases, you have to decide but I can tell you that there has been a thorough, again, let me say something about language. There's a scene in Alice Through The Looking Glass written by Lewis Carroll. Which was a pen name for Reverend Dodgson was his last name and they're at the tea party and Alice says please pass the salt and the Mad Hatter says I don't know what you're talking about, that's the flubber jubber (sic.), she says please pass the salt, he says that's not the salt, that's the flubber jubber. She looks at him, she doesn't understand what he's talking about. His response to her words mean what you want them to mean. The only question is who is the boss? Alright, when you use an adjective, something is beautiful, something is dangerous, something is responsible, something is tall, something is small, it's meaningless, the word has no meaning whatsoever, unless it's compared to something else. Now, compared to a butterfly, I'm pretty dangerous, compared to a Bengal tiger I'm not. So it has to be compared to something else for an

adjective to have any meaning whatsoever. Why do I tell you that silly story? Because you have to decide whether or not among other things whether or not you think, not me, whether or not you think the DEC process in permitting and allowing this operation to go forward was or was not in the words of the Court of Appeals thorough.

MR. TORPEY: But you're my attorney.

MS. KASSAM: Mr. Chanin, if I may?

MR. CHANIN: I'm not finished yet.

MR. KANE: Excuse me, ma'am, there's no conversation from the public.

MS. KASSAM: You're not addressing the--

MR. KANE: Ma'am, I'll get a police officer and have you removed, there's no conversation.

MR. CHANIN: Everybody has to let me finish. So you have to ask whether or not the process was thorough but I will tell you this, there is no question about it cause I have the documents in my hand that SPARC and others did have the opportunity to participate in the DEC decision about whether or not to issue a permit or not. So that's one of the factors in the Monroe County case. Now, moving on, I also asked the town to provide me and they did provide me, now keep one thing in mind this is part of your educational process, the Monroe County case was decided in 1988. In the 1990s after that case was decided, the New York State Legislature was very, very active and very involved, I remember it very well in revising the General Municipal Law Section 239 and all of its sub-categories in encouraging very, very strongly they even provided funding for it for local municipalities to adopt master plans. And master plans are very important because the state has encouraged local municipalities when they adopt master plans everybody that has any dealings with the state, I'm sorry, with the local municipality, by the way, that includes the state and federal government, that to the greatest degree possible they have to comply with the provisions of the town's master plan. Now, in 2009, the Town of New Windsor adopted a comprehensive plan update. And I don't have the entire plan, thank God, but I do have a section of it that specifically refers to Stewart Airport. So you may or may not, it's

up to you, but you may ask the question well, why is the asphalt plant where it is? One of the reasons for that is because some of the asphalt being produced at the plant my understanding is is intended to provide asphalt for the improvement, extension or repaving of the runways and other work around the airport. So if somebody were to ask me and my opinion is not important, your opinion is important, not mine, but if someone were to ask me and by the way, there's other things in the master plan too about how if the airport grows the economy of the town will improve and so forth and so on. So the question is is this project not in compliance with the provisions of the town master plan? Master plan to me it's simply because the expansion of the airport and the improvement and enhancement of the facilities is in keeping with the goals and objectives of the town master plan.

MR. TORPEY: Who do we ask these questions to?

MR. CHANIN: Sure, you had a question?

MR. TORPEY: Yes, who do we ask them to, you?

MR. CHANIN: Depends what your question is.

MR. TORPEY: At the end of all this, who do we ask these questions to, you?

MR. CHANIN: I'm almost done then you can ask whatever you want, you can ask me or anybody else you want.

MR. TORPEY: There's nobody here but you.

MR. CHANIN: That's not true. The decision is not mine. The decision is the board's to make. So now I'm almost done and I'm just going to summarize. In summary, it seems to me and it's up to you guys, not up to me, but it seems to me that having now presented you with the report of the factual chronology and also a very, very brief but hopefully accurate recitation of the important laws that apply, it seems to me that procedurally this board if it wants and you can take your own approach but if you want to, you can answer certain questions and as I said earlier in the following order. The first question you can answer is about the standing issue, remember that one. And that is is this properly before the zoning board or not? Now you can say that it is because the letter on its face is asking for an interpretation of the zoning

code. However, there's one other factor I think I left it out, I'll say it to you very quickly. It's well established law, it's not in any doubt that a town is not subject to its own planning and zoning. If the town wants to do something, it doesn't have to come here and get a variance, it doesn't have to get site plan approval from the planning board. Now, you can ask the question is this the town doing it or is it the asphalt plant doing it? So you can answer that question too. But with that having been said, it seems to me that the first question that you must answer is is this properly a question before the zoning board? If your answer to that question is no, you don't have to answer any of the questions, that's your answer, you're not properly before us, your recourse is either to the courts or to the DEC or to the town or somewhere else. But it's really a question you're asking us our ability to answer questions and to issue opinions, just like with the second kitchen applications is limited to our interpretation of the zoning code. We're not the Supreme Court. So if your question really is a question for a Supreme Court, then perhaps it doesn't belong here. So it seems to me that's the first question you have to answer. If your answer to that question is we want to entertain the question further and we want to say no, you don't have standing, that's the end of it. Then the next several questions you can ask are did we satisfy the criteria in the Town of Monroe case in terms of is it or is it not subject to local zoning and planning issues? Was it thoroughly reviewed by the DEC or preempted by higher state authority? Is it in keeping or is it not in keeping with the town master plan? You can get to all of those other questions before it seems to me and it's up to you, not to me, but it seems to me that the first question you have to answer is is this properly a question for the zoning board? If your answer to that question is yes then we go on. If the answer to the question is no, you're done. I'm done with my presentation. You can ask me or each other any questions you want.

MR. TORPEY: Number one the airport's the airport, alright, so if the airport wanted to blacktop their own airport, you're talking massive blacktop so they're just there for a four year temporary period probably to come in and do it, blacktop the airport. But if you had to watch the Nanuet Mall and other big places getting built because they're so big, the blacktop and cement plants were on site.

MR. CHANIN: Pat, you're correct, stop, let me--

MR. TORPEY: Four year site, they're done, move their equipment and they leave. Why would they even be bothering with us?

MR. CHANIN: I cannot answer your question as to whether or not this project is good or bad for the town. That's for the town to answer. I can answer your first question. Your first question was can this zoning board make a decision that controls what Stewart Airport does? The answer to that question is no, Stewart Airport is the State Department of Transportation. This zoning board has no power over the State DOT but that wasn't the question you were asked. In the letter you received from SPARC, the question you were asked was whether or not the town building inspector improperly issued a permit without getting site plan approval. And I'm telling you that you have to answer the question whether or not this is properly before the zoning board or not.

MR. KANE: That's the first discussion.

MR. TORPEY: They're issuing a permit for what, temporary, they're never going to get a, they're only going to be there for a couple years.

MR. KANE: But the question is do they belong in front of us?

MR. TORPEY: No.

MR. HAMEL: I don't think so.

MR. SCHEIBLE: I don't believe either since the town board and I'm sure they searched their legality of this situation here and along came DEC and they gave their approval on this whole situation being what you just said a four year situation and how many, how far are we into that four years right now? That's a good question.

MR. CHANIN: Hold on, that's a factual question. My understanding is that the plant has already been in operation and it has been permitted by the DEC and it's already been in operation for approximately six months. So that would mean if my estimate is accurate that it has another three and a half years to go and then

unless it's further amended the contract currently calls for that operation to cease after another three and a half years.

MR. SCHEIBLE: Between you me and the fence post, if the DEC gave their approval for this project--

MR. CHANIN: Which they did.

MR. SCHEIBLE: There had been research and research and research done before that approval was given.

MR. KANE: And on top of that, SPARC pleaded their case to DEC and participated in that forum and got direct answers from the DEC back to them. I just don't see where they have any standing to come in front of us.

MR. TORPEY: Do you know how much blacktop it's going to take to patch the airport? It would take three plants.

MR. KANE: I just don't see how they can get in front of us, there's no standing that I see here.

MR. CHANIN: We can discuss it further. Also keep in mind what I told you also which is that the town, part of the current existing agreement between the town and the company is that they're not subject to planning and zoning. You may care about that, you may not care about that. But what I need to know from the board at least on question number one following things in the right logical order is whether or not the board wants to go forward and either make a decision or instruct me to do further work. On the other hand, if the board wants to decide, I'm not telling you what to do, it's up to you, if the board wants to decide that this is not properly before you, then you can tell me that that's your decision, I'll put it in a letter and send it back to SPARC in response to their inquiry and as far as I'm concerned, you're done. But that's up to you. I'm not telling you what to do, it's up to you.

MR. SCHEIBLE: In essence what you're just saying right now is--

MR. TORPEY: Yes or no.

MR. SCHEIBLE: Exactly, thank you, we're going to say yes or no.

MR. CHANIN: Yes or no that this is your concern.

MR. SCHEIBLE: We can take a poll, yes, it's our decision to pass this back to where it belongs.

MR. TORPEY: If they were bringing a blacktop plant in and they were gong to be here forever, yes, we would have to make sure things are done right. If they're coming in here to do the airport or roads in the airport for off-the-record kind of family friend--

MR. CHANIN: Let me tell you you have to be careful. The question is not how long they're going to operate. The question is are they, is this properly a zoning board question?

MR. KANE: That's it. Everything else is moot, has nothing to do with us.

MR. TORPEY: All depends on what they're there for.

MR. KANE: Do they have the right to come in front of us? That's question number one, period.

MR. CHANIN: That's right, in other words--

MR. KANE: I know there's questions about the other stuff.

MR. CHANIN: In other words, to use the legal word that we have to use the legal term that we have discussed during our other legal discussions the question is does this board have jurisdiction over this question? That's the question you have to answer.

MR. TORPEY: Because of the town what they did.

MR. CHANIN: And the DEC.

MR. TORPEY: So they have their reasons.

MR. CHANIN: The town board makes decisions based on what the town board believes is in the best interest of the town.

MR. TORPEY: So really no.

MR. KANE: Do we need a motion?

MR. CHANIN: You don't need a motion, unless you want

to put it in that form, but you can poll the board.

MR. BEDETTI: I have a question. The question is if we have to make a decision as to whether this was done right or wrong or whatever, I would certainly like to hear both sides of the story, both the town's side of the story and the public side of the story as we, let me finish my statement, as we do with every interpretation that we have. We have people come, the people as part of a public forum come and speak and present.

MR. KANE: I understand that. That's not the question that's in front of us. You have to answer question number one. Do they have the right to be here? That's the overall question. After that, if you agree that they do have the right to be here, it's not going to happen. If you do have the right to be here, okay, then we go to questions number two and three.

MR. BEDETTI: Alright, just wanted to make sure that that procedure was going to be followed in this case like we do in every other case.

MR. KANE: You have to decide do they have the right to be here? And depending on how the vote goes then we go on to the next question.

MR. CHANIN: You can take your vote in any form that you want. You can just speak each individually, the chairperson can poll you, you can make a motion, however you want to express it. But I think I need some direction and you guys need to tell me if you want to pursue this further or alternatively if you think that this is beyond your jurisdiction then that's the end of the inquiry.

MR. TORPEY: Let's see how good the runway comes out first.

MR. KANE: What I'm going to do is poll the question. Do you believe that they have standing in front of, to be in front of the zoning board? Yes, a yes answer would indicate that yes, I believe they should be here or a no answer indicates that no, they don't have a standing with the board and we shouldn't be, it's not in front of us. Is that clear enough?

MR. BEDETTI: Now I personally would not question whether SPARC has an interest in when you said

standing.

MR. KANE: It's a legal interest. I have an interest in what happens to Alex Rodriguez, doesn't mean I get to go say anything. It's an example. So that's the question. Yes, they can, you know, we'll take this up or no we will not, they do not have standing with us, okay.

MR. TORPEY: Because the town made the decision.

MR. KANE: We'll poll the board right now. Pat?

MR. TORPEY: No.

MR. HAMEL: No.

MR. SCHEIBLE: No.

MR. BEDETTI: I don't think it should be before this board.

MR. KANE: Neither do I.

MR. CHANIN: Alright then with your permission I'll compose a letter, brief, not as long as I just got finished saying all that stuff and I will respond to SPARC through their attorney that after discussion and deliberation the board has concluded that the question is not properly a question for the zoning board and you're not taking any further action. Is that your wish?

MR. KANE: Yes.

MR. CHANIN: Okay, by the way, it's not on your agenda but I believe your next scheduled meeting is September 9.

MR. KANE: Anything else? If not, meeting is over.

MR. BEDETTI: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE

August 26, 2013

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MR. TORPEY  
MR. KANE

AYE  
AYE

Respectfully Submitted By:

Frances Roth  
Stenographer