

Shawn & Gina Barry  
4 High Lonesome Terr.  
Wallkill, NY 12589

February 23, 2017

Town of Newburgh Zoning Board of Appeals  
Old Town Hall  
309 Gardnertown Rd.  
Newburgh, NY 12550

Dear: Town of Newburgh Zoning Board,

My name is Shawn Barry, I am a lifelong resident of the Town of Newburgh, having grown up in Meadow Hill. My wife Gina and I have been homeowners of a residence in Colden Park and we currently own our home at #4 High Lonesome Terrace for the past fourteen years.

I stand before you today to raise several points in opposition of granting of a variance to an application filed by the Town of Newburgh Code Compliance Department on January 17, 2017 for the property of 2102 Route 300, Tax Map# 3-1-21.61 & 3-1-21.31.

In my preparation in this matter, I filed a FOIL request with the Town on 02/14/17; however, at the time of preparing this document (02/23/2017), I have not received a response pertaining to my request. In reviewing of the documents available on the Town of Newburgh website, I learned that the applicant is actually the Town of Newburgh Building Department and not at the request of the property owner(s). In the request the Building Department is requesting an interpretation of the Town of Newburgh Zoning Laws pertaining to:

- On-site uses and/or activities permitted under the use variance granted in the 1982 Town Zoning Board decision.
- The use of the premises for and in support of the following off-site services;
- Underground/aboveground fuel storage tank reconditioning, including lining;
- Underground/aboveground fuel storage tank testing;
- Underground/aboveground fuel storage tank excavation;
- Underground/aboveground fuel storage tank compliance; and
- Hydro-excavation business,
- Outdoor storage of heavy equipment, including ploughs, land-grading equipment, etc.;
- Deposition of slurry consisting of soil and related materials that have been liquefied... on the premises.

- Operation of a Hydrovac device on the premises for depositing the slurry material, with resultant mechanical operation noise;
- Outdoor parking of pick-up trucks(s) operated by the business;
- Outdoor parking of semi-truck(s) and trailer(s) operated by the business;
- Outdoor parking of a 2004 Freightliner truck(s) on which is mounted a Hydrovac device;
- Outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile/portable enclosures designed for storing items and materials; and
- Outdoor work activities conducted by the employees and agents of the businesses in furtherance of the uses identified in the application.

In my comparison of the Building Departments application, the history of the locations business operations and the Town of Newburgh Zoning laws, I would like to bring the boards attention the following discrepancies along with documents that support the position of denying the application. Furthermore I am requesting an in-depth investigation into the operations being conducted at the aforesaid location.

1. **The Town of Newburgh Building Department in its application identifies that in the 1982 Zoning Board decision, the applicant Mr. William C. Conklin sought “a use variance to permit the operation of a fuel tank lining business” from the premises. The decision directed the building department to issue a permit for the following:**
  - **An in ground fuel storage tank of 6000 gal. capacity for diesel fuel**
  - **An in ground fuel storage tank of 3000 gal. capacity for unleaded gasoline**
  - **An in ground storage tank of 550 gal. capacity for Acetone**
  - **A 50’x60’ pole building**
  - **A 25’x25’ stockade enclosure**
  - **A chain-link fence enclosure (along the Route 300 property line)**
  - **Business use of the accessory building.**

**Subject to the following terms & Conditions:**

- **The fuel storage tanks shall be located according to the site plan,**
- **The acetone tank shall be located...**
- **The pole building shall be located as shown on the site plan**
- **The stockade enclosure shall not be located at any point less than 150’ set back from by property line and not to exceed more than twenty (20) drums.**
- **That along the northerly line of the subject parcel, beginning at a point adjacent to the accessory building and continuing to a point 200 foot along the westerly line, applicant shall provide green belt buffer covering a depth of twenty-five feet from each said line planted with a screen of evergreen having a uniform height of not less than five foot above ground level at the time planting and set in a double staggered row spaced eight foot apart on each row, said screening to be properly and effectively maintained.**

In review of the 1982 testimony and decision, it is evident that the use variance was *only* granted for a “tank lining business” due to the fact that the location would only be used as

a storage location and the work performed was entirely off-site. Additionally the board imposed terms & conditions to the approval. As of this date, the “green belt buffer” required as part of the approval was to be installed and maintained. This “green belt buffer” was never installed properly and the actions on the part of the property owner have cleared away the “green belt buffer” and it has never been restored. If you look at Photo# 2 (2006) in Appendix B, you can clearly see the original wood line on the western side of the parcel has been removed and fill brought in. Subsequently if you look at photo #7 & #8 (2016), you can see that more of the natural wood line/ buffer has been cleared and filled in. Since the original granting of the permit, there has been an addition to the “Accessory Building”, expanding the original size of the structure. I have not been provided any documentation that a “Permit” was granted for this expansion.

**2. In the application the Building Department states “The findings and conditions set forth in the Decision do not define the nature of Mr. Conklin’s fuel tank lining business”.**

The decision to permit a use variance was granted to the Mr. Conklin for the uses outlined in his testimony presented to the Board in his 1982 application. Mr. Conklin testified that he was not in compliance with any building codes at the time. He also stated that he conducts “relining of underground storage tanks”. Nowhere in his testimony does he provide information that his company performs excavation any kind. Nor does he list that he will be depositing material excavated from a job site to the property listed in the application. Mr. Conklin further states in his testimony, “...they are a traveling factories. We drive to a sight to where a tank is leaking, we repair the leaks and put in a fiberglass lining”. Indicating that his work is done off-site and that noise and truck traffic is kept to a minimum. “They (trucks) do not run in and out at night”.

Based upon the information gathered from the original Zoning Board minutes and approval, the use variance was granted for the storage of hazardous materials in underground storage containers, a pole building to store the two (2) tractor-trailers used for the off-site work and the offices for his “tank lining” business. The fact that no description of excavation work, deposition of site-soil and operation of heavy equipment was identified in the original application or approval is that it was not applicable to the application since none of that work was being performed at that time. The approval is quite clear, it was granted for a “tank lining business”.

**3. The Building Departments application states several town residents assert that the use is not in the scope of the Board’s intent and that they are unable to determine which uses and activities are not permitted.**

There have been many complaints from neighboring properties spanning a time period exceeding ten-years. I do not understand the delay in any enforcement action regarding this property since being both the Town Code and the minutes from the original variance are quite clear. A site inspection of the property identifies many violations of the Town Code. Located on the site are several shipping containers, a lean-to between two of the

containers, an above ground storage tank, large areas that have been cleared, large amounts of fill deposited and graded on the property, lack of any soil retention systems, clearing of buffers, no buffers, lighting pollution, the storage of many large commercial vehicles and nonconforming lighting that impacts neighboring residences. These issues are easily visible from both on-site visitation and satellite imagery (as provided).

**4. The Building Department furthermore seeks an interpretation as to the following:**

**a) Underground/aboveground fuel storage tank reconditioning, including lining;**

**b) Underground/aboveground fuel storage tank testing.**

The original approval was specific in that the tank lining process occurred off-site.

**c) Underground/aboveground fuel storage tank excavation,**

The original application and approval was for a "tank lining business" and approval was granted due to the work being performed off-site. At no time did Mr. Conklin identify activities relating to any excavation work or equipment.

**d) Underground/aboveground fuel storage tank compliance; and**

Hydro-excavation business

The original application and approval was for the pre-existing in ground storage tanks. At no time was the identification or approval granted for a secondary excavation or Hydro-excavation business at this property.

**e) Outdoor storage of heavy equipment, including ploughs, land-grading equipment, etc.:**

The original application, testimony and approval was granted for two (2) semi-trucks and trailers as well as pick-up trucks used in the operation. At no time did Mr. Conklin indicate that he would be using and/or storing excavating equipment in his application or testimony to the Board.

**f) Deposition of slurry consisting of soil and related materials that have been liquefied... on the premises.**

At no time in the original application and testimony provided in the review process does Mr. Conklin indicate that he would be depositing any material from a job site at the property listed in the application. Since his business was a tank lining company, there was no need to apply for such a variance and therefore none was granted.

**g) Operation of a Hydrovac device on the premises for depositing the slurry material, with resultant mechanical operation noise;**

At no time in the original application and testimony provided in the review process does Mr. Conklin indicate that he would be depositing any excavated material from a job site on the property in question. Additionally, Mr. Conklin states in his testimony that the trucks used in his tank lining business load-up and leave the property during normal business hours and conduct all the work off-site.



There was never any mention of an excavation company or Hydro-excavation equipment in his application.

**h) Outdoor parking of pick-up truck(s) operated by the business.**

This issue was addressed in the original approval and was granted.

**i) Outdoor parking of semi-truck(s) and trailer(s) operated by the business.**

The original application and testimony provides that the business operates two (2) semi-trucks and the pole building for which the applicant had included in the original application was constructed to house the two trucks. Any additional trucks or the storage of said truck(s) would not be included in original variance and therefore unauthorized.

**j) Outdoor parking of a 2004 Freightliner truck(s) on which is mounted Hydrovac device.**

This is outside of the two (2) trucks originally listed in the application and does not fall within the criteria of the original application and approval.

**k) Outdoor presence on the surface of the Premises of storage containers, shipping containers and like mobile/portable enclosures designed for storing items and materials.**

This request is governed by current Town Code §185-15.1, which states that cargo containers are permitted in B, IBN, I, and LHI zones and are not permitted in the AR zone which the property in question is located. Additionally the property has multiple cargo containers on site and a lean-to between two of the units, all violations of the aforementioned Town Code.

**l) Outdoor work activities conducted by employees and agents of the businesses in furtherance of the uses identified above.**

The original application and approval is quite clear. It was granted for a "tank lining business" to be operated out of an accessory building which was located adjacent to Mr. Conklin's residence. At no time did Mr. Conklin list, identify or make reference to any work other than the loading of equipment and supplies, storage of hazardous materials and office operations for his tank lining business in the original application and Board approval. Therefore, any business, activities and/or operations outside of the scope of the "tank lining business" have not been granted variance by the Board and therefore would not be permitted.

**5. The Building Departments application states that they are requesting an interpretation and it does not intend to encompass any alleged violations.**

As of the time in filing this notice, I have not received any indication from the Building Department of any violations being documented for the property in question. Additionally I have not received any notice as to any building, clearing, grading or fill permits being granted. It is quite evident that the owners of the property have cleared away large sections of trees on the property and installed and graded fill along the western property line. A simple calculation indicates

that the amount of fill exceeds the amount permissible under Town Code §83-6, §83-7 and §83-8 without a permit.

We oppose the granting of the applicants appeal in that:

- a) **The variance will produce an unreasonable change in the character of the neighborhood and be a detriment to nearby properties** in that the proposed changes in the use variance would negatively impact the social well being of the neighborhood as has been supported by the complaints filed by the neighboring properties over several years. Additionally the variance and current activities of depositing fill or “slurry” could jeopardize the safety of the water table in the surrounding areas. This could potentially lead to contaminants entering wetland areas and working into the Orange Lake tributaries and eco-system.
- b) **The benefit sought by the applicant can be achieved by the applicant pursuing other feasible methods.** This matter is quite different than most. Here the applicant is actually the Town Building Department and if the variance is granted would benefit the property owner. I will address the matter as it relates to the beneficiary. The original property and business owner, William C. Conklin moved his “tank lining business” from Stewart Ave. in the Town of Newburgh. Stewart Ave. is zoned for commercial establishments and 2102 Route 300 (or 300 Robles Ln.) was adjacent to his residence and is zoned AR. One year after moving his business and installing in-ground storage tanks and a pole building, Mr. Conklin applied for a use-variance. The Zoning Board reviewed the application as well as testimony from Mr. Conklin. In 1982, a “limited” use-variance for his tank-lining business was granted. Since that time, Mr. Conklin has sold the company and the new owners have begun to operate a Hydro-excavating business out of the property in question. This Hydro-excavating business originally operated out of a location on Rt. 9W in the Town of Newburgh which is zoned for commercial operations. Therefore, the benefit sought by the applicant can be achieved by pursuing other feasible and applicable locations to conduct an industrial type business from.
- c) **The requested area variance is substantial** in that the specifics of the Building Departments request for interpretation if granted, would allow an industrial operation to operate in a residential area. Additionally, the clearing of the property and deposit of unregulated (*§185.31 Stripping or filling of land*) fill poses a clear and present danger to the surrounding residences as they secure their drinking water from wells.
- d) **The proposed variance WILL have an adverse effect and impact on the physical and environmental conditions in the neighborhood** in that the business operations are already having a negative impact on the neighborhood as supported by the numerous complaints of excessive noise, bright lights, operating outside of business hours and visible eye sores. Most concerning to me, are the acts of clearing the property and depositing fill (slurry) from job sites on the property (*§185.31 Stripping or filling of land*). The

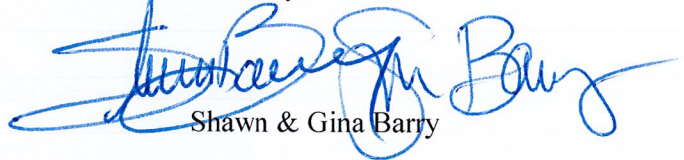
potential for contaminants entering environmentally sensitive areas is quite high and most likely falls within flood plans and is thereby further regulated (*§185.12 Environmentally sensitive areas*). The act of depositing un-regulated fill could negatively impact the environment for which the effects might not be realized for some years to come. We should look at the Washington Lake contamination as a reminder to better protect our watershed's and promote better oversight of instances that may be potential or known risk factors to our drinking water sources.

- e) **The hardship the applicant is seeking relief is self-created.** The beneficiary in this application has created the hardship on his or her own accord. They were originally housed at an appropriately zoned location in the Town of Newburgh and moved their operations into its current location that is zoned AR, and primarily residential. The beneficiary then began conducting business, installing unauthorized storage containers, operating outside of normal business hours, creating excessive noise, lighting pollution as well as clearing and installing fill without ever filing for a permit or variance.

We adamantly oppose the granting of any variance for this property as it has already been provided a limited use-variance for a tank-lining business in 1982. Any uses outside of the tank-lining business would fall outside of the 1982 use-variance and therefore not be permitted. Additionally, under §185-19 Non Conformity Buildings and uses. This section of Town Code identifies that no non-conforming use shall not be enlarged or extended, nor its use changed to another non-conforming use without a special permit. The original application and use Mr. Conklin applied was non-conforming to the zoned area. Any changes in the original granted use must be granted a special permit. The beneficiary in this application has never filed a Zoning Variance Application nor applied for any permits to make changes to the property in question.

We request that the zoning variance be denied, the business of Hydro-excavating no longer be permitted to operate out of the said location and the that the building department along with the New York State Department of Environmental Conservation thoroughly inspect the property in question for zoning and building violations as well Environmental Conservation Law violations.

Sincerely,



Shawn & Gina Barry

Attachments:  
Satellite photos of property in question





100'

7,500 Sq'  
x2'  
1111 Cu Yds

75'

1,620 Sq'  
x4'  
240 Cu Yds

45'

36'





100'  
4'

20,000 Sq'  
x4' deep  
2,962 Cu yds.

Robles Ln



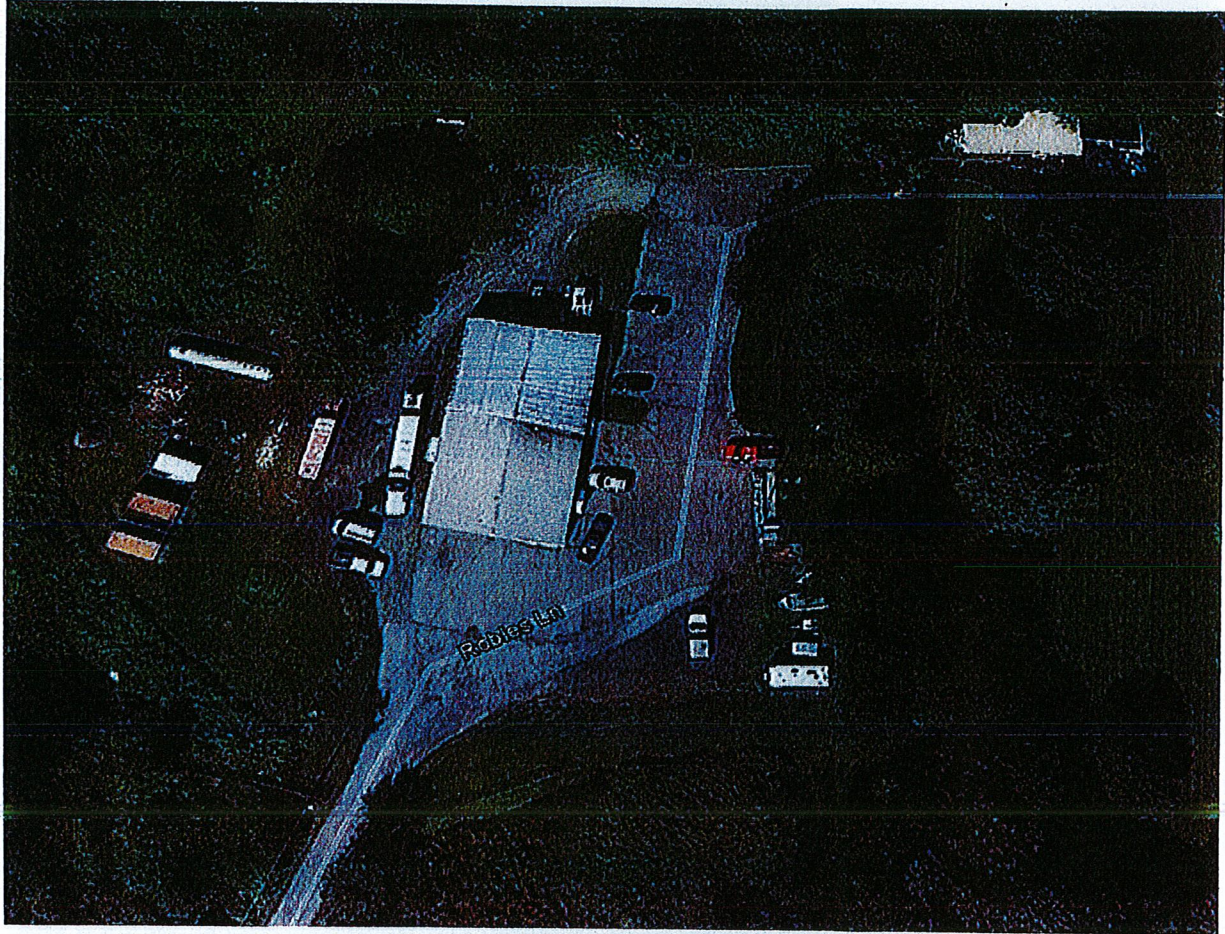
2102 Route 300, Aerial History

SBL: 3-1-21.31



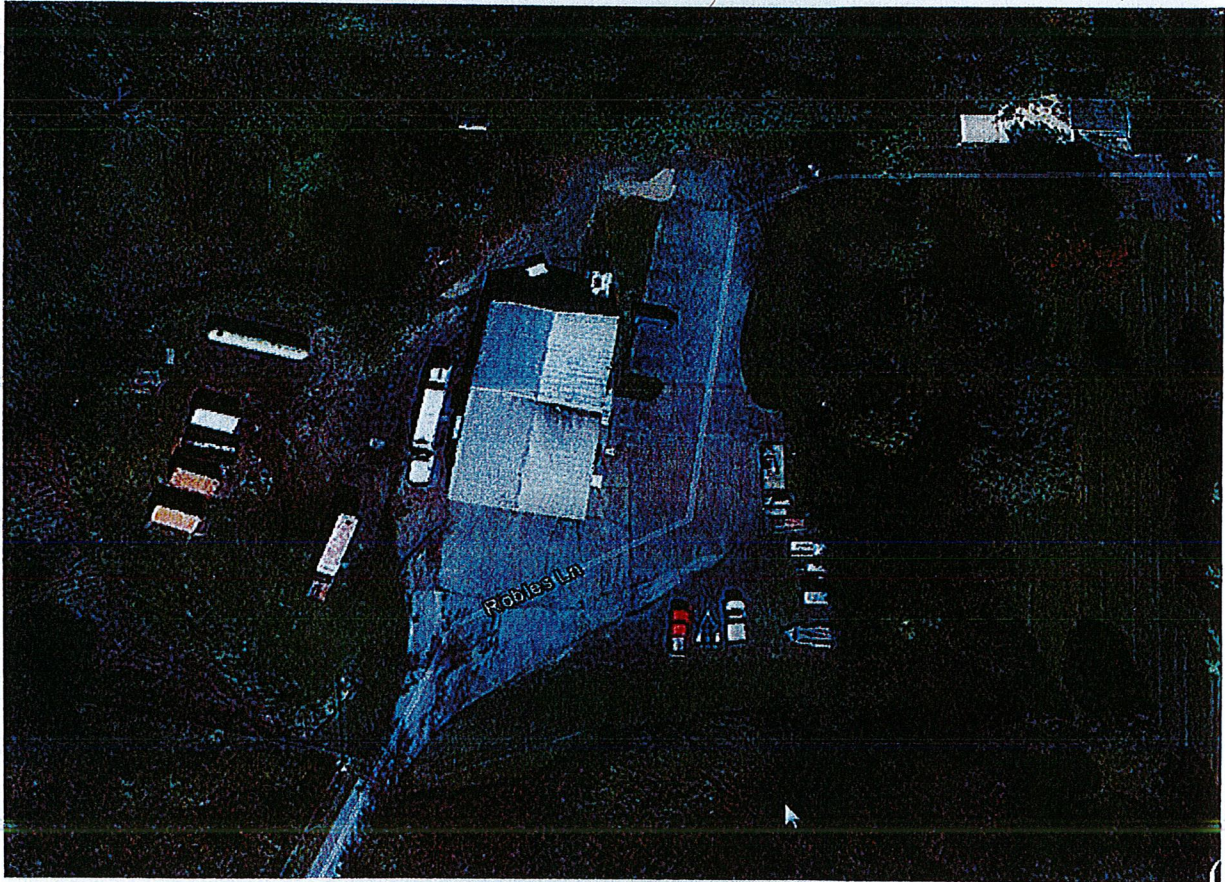
April 16, 2016





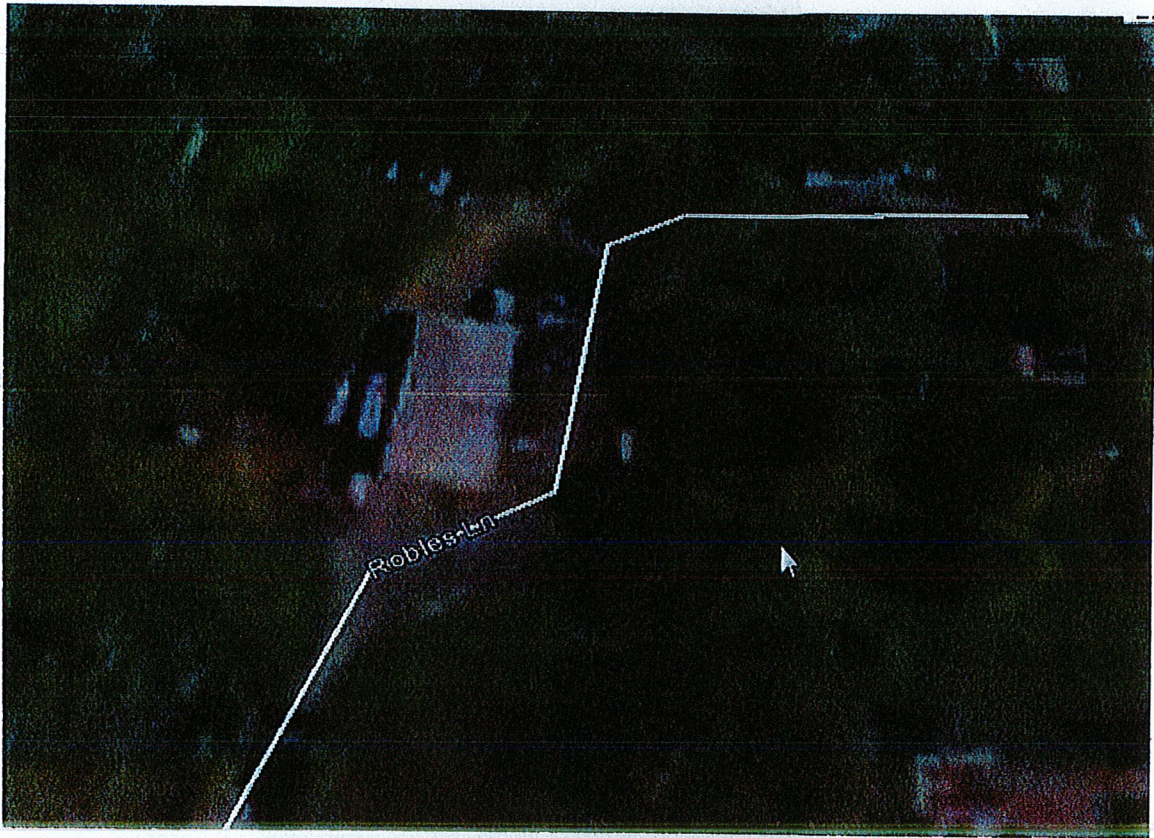
September 19, 2013





October 7, 2011





May 3, 2009





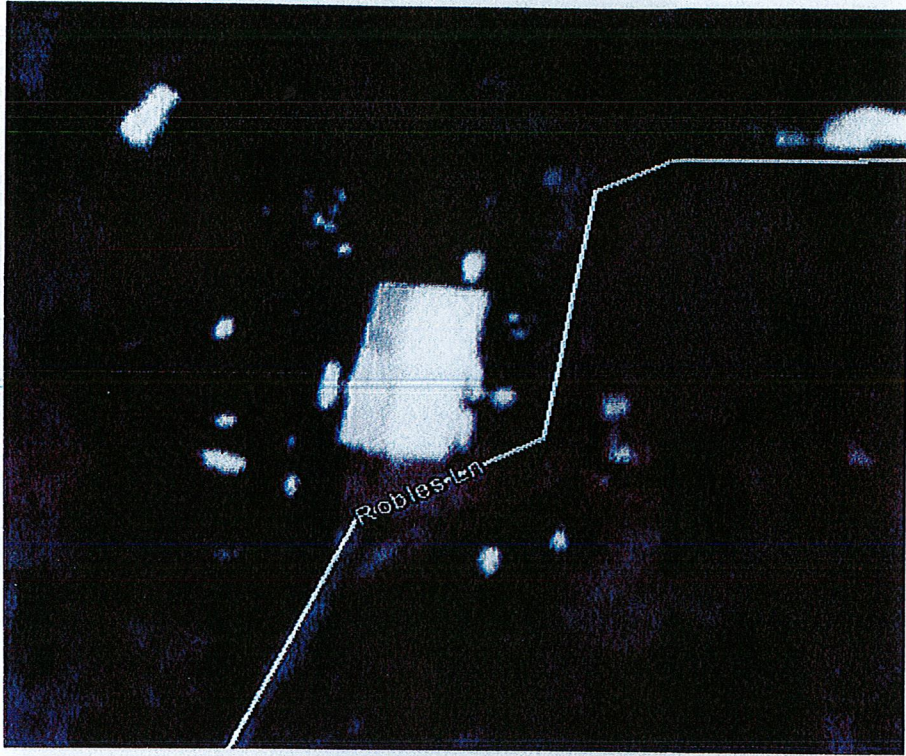
April 30, 2007





September 30, 2006





April 19, 1994