

ZBA MEETING – FEBRUARY 23, 2017 (Time Noted – 7:08 PM)

CODE COMPLIANCE DEPT. - 2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,
TOWN OF NEWBURGH (3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals' March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. McKelvey: Okay, Richard.

Mr. Levin: Our first...

Mr. McKelvey: Are you ready Betty?

Mr. Levin: The first case tonight is interpretation...

Ms. Gennarelli: Richard, can you pull your mic close? I gave you two of them.

Mr. Levin: Sorry. Interpretation, Interpretation if a site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals' March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Ms. Gennarelli: And the address on that was 2102 Route 300 and Plank Road North in Wallkill (3-1-21.31 and 21.61) and that would be the Town of Newburgh Code Compliance Department. The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, February 15th and The Sentinel on Friday, February 17th. This applicant sent out thirty letters. The mailings and publications were in order and the posting were in order, I believe also, with much persistence.

Mr. McKelvey: Mr. Scully.

Mr. Scully: Thank you Mr. McKelvey. Board Members, Mr. Donovan my name is Jeffrey Scully I'm with the firm of Rider, Weiner, Frankel and I am here to present the Town's request for an interpretation tonight. The Town requests this interpretation given that the "fuel tank lining business" is not defined within the resolution...the Decision and Resolution of March 11th 1982. There is a...brief citation to testimony that was taken during the original Hearings but with minor exception that testimony is not incorporated within the decision and resolution and certainly without exception none of the testimony is incorporated in the terms and conditions set forth in the Decision and Resolution a...furthermore the Decision and Resolution refers to business use of an accessory building but again provides no guidance, no definition and no parameters as to what is included within that business use of the accessory building. As such, in light of numerous complaints that have been levied with the Town regarding certain uses and activities that are alleged to be occurring on the premises the Town is requesting this interpretation to give definition, direction and established parameters as to what is or is not a fuel

tank lining business that is permitted and what activities or uses are included within the parameters of the permitted use variance. The Town has made no determination as to what activities may or may not be occurring on the premises. We are waiting for interpretation and guidance from the ZBA as to the meaning and content of the use variance that's been granted so that we can then make a determination and then take action if action is necessary based on the interpretation that's requested tonight.

Mr. McKelvey: Do you know if the tank lining business is still there?

Mr. Scully: A...I...and the Town has made no determination it appears that a tank lining business or something that's presenting itself as a tank lining business still operates on the premises.

Mr. McKelvey: Any questions from the Board?

Mr. Donovan: If I can just ask for a background, so one of the things that a...was presented with the application is a copy of the Decision which actually kind of forms the basis for your request for an interpretation as you just stated. The Decision makes reference to an application and a plot plan, I...I don't know if you have those, I don't...do you have a copy of the application from 1982 and the plot plan that was submitted with the...?

Mr. Scully: I would ask...I do not Mr. Donovan, I could...

Mr. Donovan: Well I have two eyes, I was kind of looking at you and...and at...

Mr. Scully: Right.

Mr. Donovan: ...the table so.

Mr. Canfield: No.

Mr. Donovan: So Code Compliance indicating no that you don't have those in your files Jerry? Just...since you don't have a microphone over there Jerry.

Mr. Canfield: I don't have...

Mr. Scully: I'll state that Mr. Canfield indicated we do not have the original 1982 application in the file or the minutes.

Mr. Donovan: Okay. Sorry, Darrin.

Mr. Scalzo: Well no, it also makes mention of a short form EAF a...am I...is it safe to assume that that's not available either?

Mr. Scully: Again, Mr. Scalzo, I'll look to Mr. Canfield to ask...because I'm not familiar with it.

Mr. Canfield: I'm not certain that the short form was a requirement in 1982 but even if it was we do not have it in our file.

Mr. Scully: Again, I'll state for the record for the minutes that we do not have the short for assessment in the file from 1982.

Mr. Levin: There's a question of another business being there Hydro a...excavating for I don't really know what it is. When did that begin do you know?

Mr. Scully: We...we don't know when that began. We do know that there are websites and Facebook postings that refer to a business called Hydro Excavation or Hydro Excavating that gives this address, the premises address as the address of the business. We do have numerous reports and photos have been provided to the Town a...of machinery mounted on trucks that are alleged to be a part of the hydro excavation business.

Mr. Levin: Are there any dates on there?

Mr. Scully: A...I don't...I believe, I don't want to guess Mr. Levin. I believe it is within the last few years a...it's certainly not something that existed on the premises in 1982.

Mr. Levin: Okay.

Mr. McKelvey: Is it legal for them to come in and operate like that?

Mr. Scully: Well, Mr. McKelvey, that's why we're asking for interpretation.

Mr. Donovan: So...

Mr. McKelvey: That's why I was...

Mr. Donovan: So I think the issue...

Mr. McKelvey: ...that's what I wanted to hear.

Mr. Donovan: ...obviously, kind of the issue Code Compliance is kind of in their application set forth a...what I think is nine... number one has a...five sub-categories but nine questions as to whether or not the 1982 variance...use variance encompassed those nine items a...kind of like I assume you are looking a yes or no response, at...at some point in time either the Board is going to indicated yes they were encompassed by that variance or no they were not. Essentially I seek that's what you're looking for based upon whatever the Board decides in that regard will determine what if any future measures are taken by Code Compliance. I don't mean to put words in your mouth but I assume that's the direction we're headed in.

Mr. Scully: Yes, that...that is the...in...a...interpretation we request, an answer to whether those nine with some subheadings uses or activities fall within the parameters of the use variance

that's been permitted. Placed on those answers then we will investigate, make determinations and then either proceed or not proceed with an enforcement action or actions accordingly.

Mr. Levin: You have received numerous complaints? Is there any on the lining business a...the original business that was there?

Mr. Scully: It...it's difficult to...to sort them out I...I...because they...there may...there are...there are numbers of complaints a...both in terms of activities occurring on the premises and machinery, equipment, storage containers that are on the premises, we do not know at this point what machinery, what storage facilities, what operations are attendant to the tank lining business and what are attendant to the hydro excavating business.

Mr. Maher: Are the two businesses owned by the individual?

Mr. Scully: We don't know that for sure. We don't believe they are but we don't know that for sure at this point. They are represented as two separate business entities in there a...statements that they hold out to the public on-line and on Facebook for example.

Mr. Levin: Do you know if there's representatives here from that business?

Mr. Scully: I don't know I have spoken to a representative an attorney representing the business...

Audience Members: We're here. We're here.

Mr. Scully: Okay, (Inaudible). They are present.

Mr. McKelvey: Any further questions?

No response.

Mr. McKelvey: Then we'll open it up to the public.

Mr. Scully: Thank you.

Mr. McKelvey: Did you sign the sheet please?

Mr. Donovan: Yeah, Kevin if you could, I'm sorry to interrupt but there is a sign in sheet maybe you've done it already, just so that Betty can keep a...

Ms. Gennarelli: I've got him, I have his card.

Mr. Donovan: You have his card, okay.

Ms. Gennarelli: Thank you, thank you both.

Mr. Donovan: Just want to make sure you're happy.

Ms. Gennarelli: Thank you.

Mr. McKelvey: Good evening.

Mr. Bloom: Good evening Mr. Vice Chairman and Members of the Board, Counsel for the Board, my name is Kevin Bloom. I represent Susan Carroll, Lawrence VanDeMark and Claudia VanDeMark. In support of my presentation this evening if it's with the Board's permission may I approach? I have some exhibits that I'll reference in my presentation if I may approach.

Mr. Donovan: Kevin just if you are going to speak since this is all recorded just the microphone comes off, if you're going to speak while you approach just take the microphone with you.

Mr. Bloom approached the Board with materials.

Ms. Gennarelli: We'll need one for the record too.

Mr. Bloom: I'd like to begin my presentation with what was the Board asked to do in 1982? And what did the applicant present to the Board in support of his application? I turn to begin on Exhibit 1; this is from the Decision and Resolution of the Board from 1982. Now you turn over to paragraph 3 that I've tabbed for your convenience. In paragraph 3 it states what the applicant sought and I quote "the applicants seeks a use variance to permit the operation of applicant's fuel tank lining business from subject parcel which also contains applicant's residence. Though the actual relining of fuel storage tanks is not done on the premises all equipment and supplies for such a service are kept or stored on the premises". So we know that the applicant sought a use variance for a tank lining business. So what is a tank lining business? Well, the applicant told the Board in 1982 what a tank lining business is. If you turn over to Exhibit 2, which are from the minutes from 1982 presented to the Board, I call the attention to the Board approximately halfway down where member Raskin asked of the applicant "How much equipment do you plan on having?" Mr. Conklin: "There are two tractor trailers, a straight tractor and pick-ups, they're traveling factories. We drive to a site or location to where a tank is leaking; we repair the leaks and put in a fiberglass lining." Mr. Raskin: "The material that lines the tanks, do you plan on keeping that on-site?" Mr. Conklin "Yes." "What does that consist of?" Mr. Conklin: "It's a polyester material." Mr. Raskin: "Is it in a granular form or is it in a liquid form?" Mr. Conklin: "It's like a pudding." Mr. Raskin: "Where do you store that?" Mr. Conklin: "On the property." Mr. Raskin: "Where?" Mr. Conklin: "Outside." Mr. Raskin: "How would you have...how many would you have at one given time?" Mr. Conklin: "Ten, fifty gallon drums." Mr. Raskin: "Is that flammable or toxic?" Mr. Conklin: "No, it's not toxic but you can't eat it. It's not toxic if you breathe it." Mr. Raskin: "What is the chemical used?" Mr. Conklin: "It's polyester TL380, these drums are already prepared and there's no mixing." Why is that significant? It's telling the Board that the operation of the business is done offsite of the premises that's where it's geared to and the materials that are on the premises for the business are then transported by those trucks off the site in order to do the tank lining. That will be important when we go to the next exhibit after this. So the question then becomes is how do we know for sure that the work being performed as part of the tank lining business is off site? Well if you turn over to the next page

and again go down, I've highlighted it, for Mr. Beck where he's asking the applicant "The people that use...that you use in the conduct of your business is not done specifically on the site they go to another location?" Mr. Conklin: "Yes, they load the trucks and they go to the particular area in need of our services." As you have seen or you will see from the video that will be presented and also from the information in your packets from the previous...from the residents that has been submitted this evening what the occupants are doing is actually is once these hydro evac...hydro evacuation...excavation trucks come back to the premises they discharge the dirt onto the premises and they use bobcats. You're familiar with bobcats of the excavations the small ones and push the dirt all over the premises and have turned it into an effective dirt dump. That's what it is a dirt dump. And respectfully a dirt dump is not a tank lining business. It's an excavation business. And that was not permitted under the use variance. If you turn over to Exhibit 3, you know, Member Levin had a question concerning what...what is a hydrovac excavating business. This photograph Member Levin and Members of the Board is a picture of a picture and hydrovac excavating truck and my client Susan Carroll provided this along with her packet previously. And what is significant about the truck is A #1, the truck is not used for tank lining it's used for excavation. The large container that you see on the back is used in order to collect dirt off premises and then is taken to the premises and then discharged. And when you hear from the videos of the discharge you will hear the violent noise that is generated by these hydrovac... hydrovac excavating trucks that are not only disturbing for noise and for sleep purposes but it was also important there was a question is from the Vice Chairman McKelvey is when did this business start? The hydrovac excavating business did not start arrive onto the premises until the summer of 2015. The business itself became or was created in 2006 so we don't even have the question of whether it's the chicken or the egg. In 1982 hydrovac excavating business didn't exist so there was no way for the Board to even have contemplated in 1982 an excavation business. Turnover to Exhibit 4 that is a photograph an aerial photograph of the premises that was actually submitted as part of the Town's application to the Board so I'm using their exhibit. So back in 2009 you can see prior to the hydrovac excavating business arriving there to peer...doesn't appear to be any type of disturbance that you will see in it Exhibit 6 so if you turnover to Exhibit 6 again this was then taken from the Town's application. An aerial photograph from April 16, 2016 you can see the obvious dirt disturbance that now surrounds the premises that did not exist prior to the business of hydrovac excavating business operating. There is no question that that dirt and that fill that's now being pushed along the property has made it into a dirt dump and it is not a tank lining business anymore. I will end my presentation is my client has brought there are four short videos in less than a minute and 20 seconds on each and with the Board's permission that I will play. In order for the Board to hear on the type of violent noise that's generated by these trucks when the discharging the dirt on the premises and after the viewing of the videos I would submit to the Members of the Board that the interpretation should be in the negative that the business that is operating on the property right now was never contemplated by the use variance granted by this Board. With that Susan may I ask you to play those videos? Is that with the permission of the board?

Mr. McKelvey: Yes.

Ms. Carroll approached and set up the videos and speakers for viewing by the Board Members who gathered together to observe them.

Mr. McKelvey: You have to get the mic.

Mr. Bloom: The Board can see that the driver has his ears (hands) above his...on his ears because of the noise of the vehicle is so loud.

Mr. Levin: This is that big machine you were talking about?

Mr. Bloom: That's correct Member Levin.

Mr. McKelvey: This was done after dark?

Mr. Bloom: It was done after dark.

Mr. Scalzo: This is saying 9:59 PM.

Mr. Bloom: Correct.

Mr. Levin: 9:59 PM?

Mr. Bloom: Correct.

The Board finished viewing the four videos.

Mr. Bloom: With that Mr. Vice Chairman I would ask that the video be made part of the record.

Mr. McKelvey: All right. Give it to the Secretary.

Mr. Bloom approached and gave the disc to Ms. Gennarelli

Mr. McKelvey: Now under the original 1982 variance, use variance, what were the hours of operation?

Mr. Bloom: The applicant had described in the testimony, if you bear with me one moment Mr. Vice Chairman, (Mr. Bloom looked for the testimony) If a...Mr. Vice Chairman, if I would direct your attention to Exhibit 2...and I would direct your attention to a page 2 at the bottom, when you're there I'll continue.

Mr. McKelvey: Go ahead.

Mr. Bloom: Indicates Mr. Raskin "when would the trucks go out approximately the same time every day?" Mr. Conklin "usually right now both of the trucks are out on site we don't return until the job is completed. They come back to the site fill up, load up and go to another location, they are a traveling factory. They do not run in and out at night." Well with that if the Board does not have any further questions I a...therefore (Inaudible) floor.

Mr. McKelvey: Anybody else have any questions for Mr. Bloom?

Mr. Levin: I'm okay.

Mr. McKelvey: Anybody else want to speak? Did you sign in?

Ms. Gennarelli: Can you just introduce yourself again?

Mr. VanDeMark: Lawrence VanDeMark, 17 Forest Road, Wallkill, New York I just like to read into the record:

Dear Members: I'm writing to you concerning the application requesting an interpretation of the original use variance granted to William Conklin and WCC Tank located next to my property. I own two parcels that border this business and have lived there in my home 59 years. I truly take exception that the Town of Newburgh is seeking an opinion to determine if this new business is part of the original decision and resolution of the ZBA in 1982. It is clear from reading this original decision that William Conklin only mentioned tank lining and that all work was done off premises. He also testified that it was a small family run business never was any hydrovac operation or excavation mentioned in this decision. This operation is completely different and unrelated and it is a new operation. My neighbors and I have been subject to a live next to a full-blown industrial commercial operation that has and continues to violate many sections of the Town Code. These violations have been brought to the attention of the Town of Newburgh Code Department on multiple occasions. In addition these violations would not have existed if this new business had not moved on to the property. This new business has significantly impacted our neighborhood with dumping all hours of the day and night, noises of commercial industrial activities on site at all hours and the ability to even sit outside in nice weather with the noise, dust and diesel fumes. This unapproved new business has significantly change the character of our neighborhood which is not acceptable to me and my neighbors. The only conclusion that the ZBA can make is that this new business is not part of the original decision of the ZBA in 1982. If the ZBA ruled otherwise it would set a precedent that would allow this business to expand unchecked without any review as was designed by the use variance process set in State Law. It is for this reason that myself and many of my neighbors will be in the February 23rd Hearing to provide support against granting any interpretation that allows this business...this new business to fall under the original use variance. Yours truly Lawrence S. VanDeMark. Thank you.

Mr. McKelvey: Thank you.

Mr. Levin: Can I ask you question sir?

Mr. VanDeMark: Yes.

Mr. Levin: Since you've been there from the original start would you have any complaints with the original business?

Mr. VanDeMark: At times we did, there was work being done that should not have been done. There was some outdoor sandblasting which caused a nuisance. I had a swimming pool...because I'm very close to the property constantly cleaning black beauty sand out of the pool, got rid of the pool. He's just a nuisance.

Mr. Maher: So Mr. Mr. VanDeMark... So a question so obviously the...the videos identified some of the issues there so is the question of the vehicles being stored there or the actual operation of the emptying of the trucks in and out? I mean can you elaborate what the... I guess my issue is the fact that the use was there for the...for the business that was approved in '82 a...identified by Mr. Bloom a...is the operation of vehicles late in the evening and such like that.

Mr. VanDeMark: Correct.

Mr. Maher: So is the dirt dumping the issue, I mean is the noise the issue, are the trucks being stored there the issue? I'm trying to identify the actual issue.

Mr. VanDeMark: The issue is those trucks, the hydro-backing trucks. Where did they appear all of a sudden, who... Can I start a business in my garage that I have next-door? We are zoned agricultural residential in that neighborhood. If I was to start a business, I'm sure somebody very quickly would be knocking on the door saying, Mr. VanDeMark you can't have a business here. Why can they have two businesses? One which we don't even know where these hydro-vacing trucks...where they came from. How could they just show up on premises, running in and out? You know the original thing was in and Mr. Conklin approached neighbors he was... He was a nice neighbor "hey I want to put up a building to store my equipment, there won't be any work done premises". Why would you grant a guy that? What...what's the problem?

Mr. Maher: Did you... Did you live there an '82?

Mr. VanDeMark: Yes I did.

Mr. Maher: Were you in favor of it in 82 or against it in 82?

Mr. VanDeMark: I...I did not a... I did not know vote or say either way. My father did, my father was in favor of Mr. Conklin.

Mr. Maher: Thank you.

Mr. Scalzo: Actually you have witnessed the discharge, the trucks dumping?

Mr. VanDeMark: I've seen it.

Mr. Scalzo: Okay. Is it...is it mostly solid or is it liquids as well?

Mr. VanDeMark: Mostly there's...there's liquids mostly.

Mr. Scalzo: Okay. Thank you.

Mr. McKelvey: Can I ask you... Jerry (Canfield) can I ask you a question? They mention that there was complaints...they mention that there was complaints made was there anything ever done about them?

Mr. Scully: Jeff Scully on behalf of the Town again. The Town Code Compliance did make site in visits...site visits, a...did inspect from off the premises and did accept videotapes and photographs that were provided by the residents who made complaints.

Mr. McKelvey: Okay.

Mr. Maher: How far back does that date?

Mr. Scully: A... I'd have to defer to Jerry in terms of the investigation, in terms of how far back the complaints have gone.

Mr. Canfield: I don't know...the exact dates...

Mr. Scully: For the record...

Mr. Canfield: I don't want to appear being nonfactual I don't know the exact dates.

Mr. Scully: For the record Mr. Canfield stated he was...he doesn't know the exact dates and does not want to guess at the exact dates.

Mr. Maher: A...if the...if the business appeared in 2015 would it be safe to say that prior to that there were no complaints?

Mr. Scully: Mr. Canfield is indicating yes, that would be safe to assume.

Mr. Levin: I'm surprised Mr. Canfield...you couldn't go on the premises? Legally? For...to inspect something?

Mr. Scully: If I could, as it's a...a legal...a legal question, Code Compliance can only go on a private a...private piece of property in either by invitation of the owner of the property or if they make an application to a justice or a judge and get what is called an administrative search warrant after showing probable cause they believe that a violation may be ongoing. So it's out of respect for the private property that we did not go on the property we observed from where we permitted we were permitted to be. Thank you.

Mr. Barry: Good evening, my name is Shawn Barry, I live it High Lonesome Terrace off of Forest Road. I've been a lifelong resident of the Town of Newburgh. I've grown up in Meadow Hill, own a residence in Colden Park and lived at the current address for over 14 years. I stand before you tonight in support of my neighbors. I had an opportunity to review the documents that the Town provided on its website as well as the 1982 decision and reading through the decision and seeing what was actually spoken about, what information was provided to the Zoning Board

and what information the Zoning Board had to make a decision. In that document as which you have provided by Mr. Bloom I'll be referring to certain statements and stuff as I read that. I stand before you and is in reference to the property had 2102 Route 300, tax map 3-1-21.61 and 3-1-21.31 it's actually two lots at that location sometimes also referred to as 300 Robles Lane in the Town of Newburgh. I did provide a FOIL request to the Town of Newburgh on January a... February 14, 2017 I hadn't receive a response but I did have an opportunity today to stop by the Building Department and speak with them and what was kind of ironic in my review of those documents is that there were no Building Permits. There were no site plans. There is mention of a 1989 subdivision that Mr. Conklin had applied for that was denied however if you look back at the original document from the 82 decision he made statements saying that the property that the original owner had and was trying to subdivide couldn't because the water issues there were stream and a lot of water there and so he looked to purchase that property because he lived adjacent to it and he wanted to purchase that because he had already built the building when he came to the Board. He had already built the building and installed tanks in 1981 and in 1982 he came before the Board for the proper Permits. So in going back and looking through that document you could obtain a lot of information of what was going on in the 81, 82 timeframe and when we speak about these documents. When I saw this come across I was kind of puzzled and perplexed at how... why do we need an interpretation on some of these things that were addressed in the 82 decision specifically on site use and activities permitted under the variance from 82 in support of following of above ground, underground fuel storage tank reconditioning including lining, underground, above ground fuel storage tank testing, above and underground fuel storage tank excavation and underground, above ground fuel storage tank appliance and hydro-excavation business. Now that was somehow thrown in there but that was never decided upon in 1982 in that decision that technology didn't even exist in 1982 to have it presented. Outdoor storage of heavy equipment including plows, land grading equipment etc. and deposition of slurry consisting of soil and related materials that have been liquefied on the premise, operation of a hydrovac device on the premise were depositing slurry material with resultant mechanical operational noise, outdoor parking of pickup trucks operated by the business, outdoor parking semi-trucks and trailers operated by the business, outdoor parking of a 2000 Freightliner truck on which a mount a hydrovac device, which I found kind of specific because why would you be asking for one specific vehicle and not in general, vehicles that operate in a hydrovac or operate with hydrovac device? Outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile and portable enclosures designed for storing items and materials; and outdoor work activities conducted by the employees and agents of the businesses in furtherance and uses identified in the application. In my comparison of the Building Department's application the history, the location business operations, the Town of Newburgh Zoning laws I'd like to bring certain aspects to the Board's attention and the following discrepancies in support of denying the application or the permitance of this additional non-conforming business that's being operated there. And one, this is a letter that was provided to the Board I'm not sure if each of you have a copy of it that's presented to you but I'll read through it. 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 which would have run along the Route 300 property line; and business use of the accessory building. It was subject to the following conditions, so the Board granted the Permit subject to the following conditions: that the fuel storage tanks shall be located according to the site plan. In review of the documents there is no site plan available that we can review. Again, the acetone tanks shall be located according to the site plan; the pole building shall be located according to the site plan; the stockade enclosure shall not be located at any point less than 150 feet set back from by property line and not to exceed more than twenty (20) drums; and that along the northerly line of the subject parcel, beginning at a point adjacent to the accessory building and continuing to a point 200 feet 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 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. That's quite specific about how they wanted that buffer and looking back at old files and speaking to some of the neighbors that was never properly installed and since then it's been removed. And so in review of the 1982 testimony and decision, it is evident that the use variance was only granted for a "tank lining business" due in the fact that the location would only be used as just a storage location and as Mr. Bloom stated, the work would be performed was entirely off-site as stated by Mr. Conklin in his testimony.

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 and it was never installed properly and the actions on the part of the property owner have cleared away the green belt buffer and it's never been restored. If you look at the photos that you have that were part of the Building Department's application you can see a time progression and you can see the continuance clearing of that buffer especially in the northern western piece of the property. In 2006 you can see its originally wood line on the western side of the parcel has been removed and fill brought in. Subsequently if you look at photos from 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. However, there's no Permits on file for the...for this addition to that building. The original building having been proposed for the storage of the two tractor trailers that Mr. Conklin said were used for the business.

In the application the Building Department states that the findings are consistent set forth in the Decision do not define the nature of Mr. Conklin's fuel tank lining business. I think it was quite clear in his testimony in 1982 of what he was to be performing and the fact that that job and those specifics of which they do were off-site. Nowhere in his testimony does he provide information that his company performs excavation of any kind. Nor does he list that he will be depositing material excavating from a job site to the property listed in the application. Mr. Conklin further states in his testimony, "...they are traveling factories. We drive to a site to where a tank is leaking; we repair the leaks and put in a fiberglass lining". Indicating that his work is done entirely off-site and that noise and truck traffic is kept to a minimum. "They (the truck) 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 wasn't 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". I happened to call the New York State Environmental Conservation a...they're Bulk Petroleum Storage Unit and inquired as to whether or not this was still in operation. They lost several years ago that Certification for those tanks and my investigation found that those tanks have since been removed. So there's no a...need for those tanks in there because that business doesn't appear to be operating on the tank lining business any further.

The Building Department states that several town residents assert that the use is not in the scope of the Board intent and that they are unable to determine which uses and activities are not permitted. I found...I found complaints over ten years ago on file for this property. So this isn't just something that's current from 2015. This is something that's been an on-going issue and just the fact that it's been ramped up, this additional business coming in it just expounds the number of complaints coming in. The number of complaints (complaints) over a period of time exceeding ten-years, I do not understand the delay in any enforcement action regarding the property since being both the Town Code and the minutes from the original variance are quite clear. The site inspection of a property identifies many violations of the Town Code. Additionally you have, we have GPS imagery. This GPS imagery and that you all have copies of clearly shows the clearing of these...of the property, the fill being brought in and there's no Permits for any of this. These are all violations of the Town Code. You need to have a Permit to clear the property and you need to have a Permit to bring the fill in...

Mr. McKelvey: How much land was cleared?

Mr. Barry: Well in my letter and I actually did some you know it's kind of some rough mapping through GPS and using Google Earth a...and this is a 2016 photo and speaking with the neighbors the property has actually been cleared even more than that. But just on a...a very obscure and underestimate of the amount of fill brought in a...I have one area hundred and eleven cubic yards, two hundred and forty cubic yards on another area and two thousand, nine hundred and sixty-two cubic yards and that was using an estimation of that fill being brought in at a four foot depth. Now and speaking with the neighbors that's a very underestimate for the depth of which that fill has been brought in.

Mr. Levin: How do you estimate the soil that was brought in?

Mr. Barry: Well I can do an overlay with Google Earth, I take a measurement, estimate an measurement and we can do the measurements of the boundaries of those areas coupled by a mathematical, you know, calculating the depth and then converting the square footage to cubic yards.

Mr. Levin: With Google Earth you can calculate the depth?

Mr. Barry: You can calculate the...you can calculate the area and then you can use the area multiplied times the depth of the soil or what you using and then you can come up with your square footage and then converted to cubic yards. The conversion with cubic yards is so that it

conforms with the Statute under the Town Code which lists the cubic yards. Which if you look at it this exceeds the amount of cubic yardage that can be brought in without having a Permit.

Mr. McKelvey: Does it...do they use water on the property for this dirt too?

Mr. Barry: Well in the application said that there is for a slurry and so the process of hydrovac excavation is using water injection and then evac so this soil coming out isn't a dry intact soil. The other thing, you know, I'm kind of jumping ahead was the fact that whose testing this soil? You know, you see on their Facebook page and their website there is excavating soils from job sites in New York City, other areas, ruptured tanks, broken lines. Who's checking to make sure that the soil isn't contaminated? I think that, you know, if we learned anything from past history especially here in Newburgh with Washington Lake and the contaminants that went in is that we need to be more vigilant, we need to be ever more vigilant to protect our water sources and our environment. This area and...and looking in it appears to be within a point two percent floodplain area because of that low lying area that it sits in and it has, you know, and this is being testified to in 1982 by William Conklin the property owner, there springs, there's water. That water runs along the backside and the westerly side of Rock Cut Road which falls down into wetlands area would then directly feeds into Orange Lake. If this is contaminated soil, hypothetically, I don't know I can't say for sure and that's being brought in for other areas, New York City, other areas and deposited in our community what's there to safeguard our drinking water, our ecosystem and our environment? So that that's one of the issues that I...I have that I just don't understand. You know a simple inspection, a site inspection or...or GPS inspection you see so many violations of the Town Code. This is...this is zoned A/R. We are not in an industrial or business zone. There is no use or permittance of a storage containers, you know, above ground storage tank. Large areas have been cleared, large amounts of fill deposited, graded on the property. There is no soil retention systems there. There's nothing to keep anything from the water or washing away soil or contaminants. There's large storage containers, there's vehicles, there is non-conforming lighting, all these issues are easily visible. I'm coming down Forest Road tonight and I'm looking at a building in it looks like there's a vehicle in somebody's backyard, it's the light shining off of this building shining down through the wood line and I can see it on Forest Road.

So the Building Department seeks further interpretation in defining underground/aboveground storage tanks, reconditioning including lining; underground/aboveground storage testing; this original approval was specific to the tank lining business in 1982 and that occurred off-site. Underground/aboveground fuel tank excavation; the original application and approval was for tank lining business and approval was granted to the work being performed off-site. At no time did Mr. Conklin identify activities relating to excavation work or equipment.

The underground/aboveground fuel storage tank compliance and hydro-excavation business; the original application approval was for the pre-existing in ground storage tanks. At no time was the identification for approval granted for a secondary excavation or hydro-excavation business at this property.

Outdoor storage of heavy equipment including plows, land grading equipment, etc.; the original application testimony approval was granted for two semi-truck trailers as well pickup trucks used in the operation. At no time did Mr. Conklin indicated he would be using and/or storing excavating equipment in his application or testimony to the Board.

The deposition of slurry consisting of soil related materials that have been liquefied on the premise; at no time in the original application and testimony provided in the review process does Mr. Conklin indicated 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.

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 this application.

Outdoor parking of pick-up trucks operated by the business; This issue was addressed in the original 1982 granting of the variance.

Outdoor parking of semi-trucks and trailers operated by the business; Original application and testimony provides that the business operates two semi-trucks and the pole building for which the applicant had included in the original application was constructed to house those two trucks. Any additional trucks and storage of said trucks would not be included in original variance and therefore unauthorized.

Outdoor parking of a 2004 Freightliner truck on which is mounted Hydrovac device; This is outside of the two trucks originally listed in the application and does not fall within the criteria of the original application and approval.

Outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile/portable enclosures designed for the storing items and materials; This request is governed by current Town Code §185-15 Sub 1, which states that cargo containers are permitted in B, IBN, I, and LHI zones and are not permitted in 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 Town Code.

Outdoor work activities conducted by employees and agents of the businesses in furtherance and the uses identified above; The original application and approval is quite clear. It's 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. That's a non-conformance use. If you have a change in use you have to go back and apply for that Permit so that you can have that as the business was originally non-conformance. They granted it but now he has an additional non-conformance use business. He would need to come back, present to the Board so that he can get use of that location, that property for that other non-conforming use.

The Building Department's application states they're requesting interpretation does not intend to accompany any alleged violations; At the time of the filing the notice, I didn't receive anything from the Building Department relative to my formal request but in review of it I did not find any violations on file currently at this time although it's clearly visible in the GPS photos as well as any type of site visit is that you can clearly see that there are multiple violations of the Town

Code. As previously stated, a...the simple calculation amount fill exceeds the amount permissible under Town Code §85-6 (§83-6), §83-7 and §83-8 without a Permit.

We oppose the granting of the applicants appeal in that:

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 wellbeing of the neighborhood and has been supported by the many complaints filed by the neighboring properties exceeding ten years. Additionally the variance and current activities of depositing fill or slurry could jeopardize the safety of the water table and surrounding ecosystems. This could potentially lead to contaminants entering wetland areas as well as leading into Orange Lake and the tributaries thereafter.

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 the variance is granted...if the variance is granted would benefit the property owner. And on the...I'll address this as it relates to the property owner as the beneficiary of the original property and business owner, Mr. Conklin moved his tank lining business from Stewart Avenue, in the Town of Newburgh. Stewart Avenue, and this is in '81, Stewart Avenue is zoned for commercial establishment and 2102 Route 300 or 300 Robles Lane was adjacent to his residence and is zoned AR, Agricultural/Residential. 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 '82 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, which has been previously stated by other people offering testimony here tonight. This hydro-excavating business originally operated at a location on 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.

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 fill and that's in line with §185.31 of the Town Code stripping and filling of land poses a clear and present danger to the surrounding residences as they secure drinking water from their wells. The proposed variance will have an adverse effect on the impact of 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 many noise complaints. You had video here tonight to show you the time and the documentation as to the level of noise, bright lights, operating outside of business hours and visible eye sores. Most concerning to me, are the acts of the clearing the property and depositing of this slurry from job sites on the property. The potential for contaminants entering our environment should raise some serious flags with this Board.

The hardship the applicant is seeking relief is self-created; The beneficiary in this application has created the hardship on his or her own record...or I'm sorry 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 which 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

depositing fill without ever filing for a Permit. They did this all without ever coming to the Town and seeking to do it the right way. 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 since 1982. Any uses outside of the tank lining business would fall outside of the '82 use variance and therefore not be permitted. Additionally, under §185-19 Non Conformity Buildings and Uses; This section of Town Code identifies that 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 applicant 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 it 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. Thank you.

Mr. McKelvey: Thank you.

Mr. Scully: A...Jeff Scully on behalf on the Town again just very briefly I want to be completely clear the Town takes no position on how this application should ultimately be decided and the Town is not as been...as stated several times seeking a variance here. We're just seeking interpretation of what the current use variance encompasses. Thank you.

Mr. McKelvey: Thank you.

Mr. Wersebe: Hello everybody, my name is Bob Wersebe and, I live on Forest Road, I built my house there in 1988. I'm going to make this short and sweet. All of my neighbors and I are on well systems and like this gentleman said how do we know it's coming out of these hydrovac trucks? I've seen these hydrovac trucks on construction sites that I've worked on. God only knows what comes out of those trucks and he used that word slurry. How do we know what's in that slurry and how do we know it's not contaminating the groundwater? My well is 185 feet deep. I have no idea if it's leached into the groundwater there. I don't know. I'm concerned with that extremely concerned with that. Thank you.

Mr. Bell: A question for you, excuse me sir.

Mr. Wersebe: Yes sir.

Mr. Bell: Have you ever had your well water tested?

Mr. Wersebe: I haven't tested two years after I had the house built required by the Health...Health Board.

Mr. Bell: Okay.

Mr. Wersebe: And now that I found out what's going on there I'm going to have it tested again.

Mr. Bell: Has any of your neighbors had theirs done or do you know of...?

Mr. Wersebe: I have no idea.

Mr. Bell: ...had theirs tested?

Mr. Wersebe: I have no idea.

Mr. Bell: Okay.

Mr. Wersebe: Thank you.

Mr. Donovan: If I could just clarify again from what Mr. Scully said and I don't mean to to lawyer this up or make it complicated but there is no request to use the property for a hydrovac business. Right? The request is an interpretation from Code Compliance whether or not 1982 variance allowed the use of the property for hydrovac among the other nine questions that were asked. So that that's the technical before that based upon what the Board decides Code Compliance may or may not have to do anything so I don't want to...I don't want to again I don't want to be overly technical...

Mr. Wersebe: Or muddy the waters.

Mr. Donovan: Correct but there's not a request for variance, there's not a request to run the hydrovac business. The request is whether or not hydrovac business was included in the 1982 variance decision.

Mr. Wersebe: Thank you.

Mr. McKelvey: I'd also like to say we received many letters and they will be entered in the records.

Ms. Carroll: My name is Susan Carroll, I reside at hand own 2122 Route 300 which is two lots away from the subject property of 2102. I am also the trustee for the Walter A. Carroll Irrevocable Trust which owns one half interest in 2116 Route 300 which borders 2102 along the entire westerly border. My family has owned 2116 Route 300 which would be 3-1-20 continuously for the last 70 years. This application is extremely important to me because a Board if the Board interprets the use variance to include the hydrovacating business our residential nice area won't be residential and nice anymore. For the reasons to follow the Board should hold that the current hydrovac excavation business that is being operated on the former premise of Conklin does not fall within the use variance that was granted in 1982. In my letter I attached and sent in two printouts that showed WCC Tank Technology and Hydrovac Excavation Inc. have two distinctly separate websites. WCC Tank Technology website shows that and I quote "Ira Conklin is third started Hydrovac Excavating in 2003" and its...it is a company he still owns and runs today. This clearly shows that it...it is a company that separate of WCC Tank and formed well after the granting of the original use variance for WCC Tank. This clearly shows that the

hydrovac excavation business should not have been contemplated by the...could not have been contemplated, I'm sorry, by the ZBA in 1982 when it granted the use variance. I also wish... I also attached copies of information that I obtained that show this company's prior address on Route 9W in Newburgh, New York. Sometime between July and August of 2015 Hydrovac showed up at WCC Tank and began operating its unapproved operation. This new business has nothing to do with tank lining rather it's an excavation business which dumps dirt it collects off-site on the subject premise. To be sure this new business is not small...is not a small family owned business like the original tank lining business that Mr. Conklin lived on the property and operated off of but a heavy commercial industrial business that operates at all hours and days. They also have created a retention pond on the West side of the subject property that borders my family's property. To the best of my knowledge this was made without approval or oversight of the Town of Newburgh Storm-water Management Regulations. They dumped thousands of yards of dirt and clear-cut the entire property along the westerly line. This has significantly changed the grade and rural appearance of the subject property. This grade prevents the natural runoff of water as natural springs run through the subject property as quoted in the original variance application. Water now backs up on my property and the Perry property during heavy rains and creates a flooding condition and on our properties that never previously existed. Complaints about the operation have been made by an in numerous residents about the many issues that are violating the Town Code by this new business with no action by the Town Code Compliance Office. I believe as many of my neighbors that this new business has nothing to do with tank lining and it does not fall under the original use variance. Websites for these businesses certainly show that they do completely different operations. It's for these reasons that I am asking the Zoning Board of Appeals after hearing all the testimony from the residents to find that these two businesses are separate and in 1982 use variance never intended to include anything else but tank lining. Thank you.

Mr. Maher: So let me ask you question...

Ms. Carroll: Sure.

Mr. Maher: ...the...the...the barrier for the... The evergreens screen that was required to be installed and identified in the...in the '82 resolution was that ever installed to your memory or...?

Ms. Carroll: Not on the west side. We...we allowed the trees to grow up on our properties to screen it.

Mr. Maher: So to the best of your memory on the northerly line...well it runs 200 feet along the westerly line...

Ms. Carroll: The northerly line would be Perry's property.

Mr. Maher: So was that buffer ever installed?

Ms. Carroll: There are pine trees. There never was a double row and at this point 35 years later very few of them still exist.

Mr. Maher: Oh I understand that I was just curious if there was an attempt in the beginning.

Ms. Carroll: In the beginning they...they attempted but it was never a double row 8 feet apart.

Mr. Maher: Okay, thank you.

Mr. McKelvey: This this pond was developed?

Ms. Carroll: I'm sorry?

Mr. McKelvey: The pond on the property was developed by them? Did they put the pond in?

Ms. Carroll: The retention pond is that...?

Mr. McKelvey: Yeah.

Ms. Carroll: ...that I mentioned?

Mr. McKelvey: Yeah.

Ms. Carroll: They dug it so that the water would flow out of the slurry trucks in the direction they wanted it to go. Yes.

Mr. McKelvey: Okay.

Mr. Maher: So, no wait, a little further so the pond that you referring to from looking at...

Ms. Carroll: The holding pond that I that I referred to in my letter.

Mr. Maher: If you're looking at the building from 300 it would be to the left of the building you're referring to?

Mr. Scalzo: Left and rear?

Ms. Carroll: Left, rear a...just about even with the side of the building.

Mr. Maher: Close or approximately...

Ms. Carroll: Halfway between my property line in the building.

Mr. Maher: So it...it'll be behind the...the storage containers?

Ms. Carroll: Correct.

Mr. VanDeMark: Good evening, my name is Lawrence VanDeMark, Jr. and I am entering into the record a letter by my neighbor Joan Perry who is unable to attend tonight.

Joan L. Perry being duly sworn deposes and says the following to be true:

That I reside at and owned 25 Forest Road, Wallkill, NY 12589, which is located in the Town of Newburgh, County of Orange, State of New York. I have received a notice that a hearing will occur on February 23, 2017 that involves the interpretation of the use variance granted to William C Conklin in March 1982. I am currently in the state of Florida until April 2017 and this application is extremely important to me because of the Board interprets the use variance so as to permit the new hydro-excavation business to continue at 2102 Route 300, Wallkill New York it would affect my property adversely inasmuch as my property borders this new business. I am providing a sworn affidavit to the Board to be entered into the record as my testimony before the Zoning Board of Appeals. For the reasons to follow the Board should hold that the current hydro-excavation business that is being operated on the former premises of Conklin does not fall within the use variance. By way of background my property has been in my family since October 1951. This area has always been the most rural part of the Town of Newburgh. The character of the area has been and still is indicative of small farms and 1 acre parcels of properties in fact my property for many years was an active farm. In 1982 Conklin my then neighbor was operating a tank lining business from his property that was not allowed. The Town of Newburgh cited him for the operation of the running the business out of his house. Conklin was then forced to find a suitable location to operate his business. Conklin then approached the owners of a vacant parcel of land that was directly behind his home. He entered into a contract for the property and filed the use variance with the Town of Newburgh Zoning Board of Appeals. In support of his use variance application Mr. Conklin testified before the Town of Newburgh Zoning Board of Appeals. Specifically Mr. Conklin testified that one he operated a tank lining business from the subject premises, two it was a small operation with nine employees, three the subject premises would be used for parking of the vehicles and equipment only inasmuch as those vehicles would be taken off site to perform their work, four no work would be done on the subject premises and only an office would be located on the subject premises along with a building to park the equipment inside. A number of residents voiced concerns at that with the Board granting Conklin a use variance because it was self-created by Conklin. My neighbors and I attended every meeting before the Board until the final meeting when a vote was taken. To our dismay and surprise the Zoning Board in 1982 granted Conklin a use variance but it included conditions as a way to appease the neighbors. Subsequently Conklin sold his business and Robert Dietz became the principal in the business. Mr. Dietz operated WCC Tank Technology, the successor company to Conklin until sometime last year when suddenly another business showed up on the subject premises. This new business has nothing to do with tank lining rather it is an excavation business which dumps dirt on the premises taken from off-site. To be sure this new business is not a small business like the original tank lining business that Conklin operated but a heavy commercial industrial business that operates at all hours and days. Indeed I have heard and seen trucks on the premises as late as 10:30 PM and is earlier 6:30 AM discharging dirt which comes from off-site Monday through Friday and even some on Saturday and

Sundays. Furthermore, large containers and excavation equipment have shown up on subject premises. Furthermore the occupants have clear-cut a huge area of trees and filled in a large area on the subject premises with at least 8 to 10 feet of fill. They have also created a retention pond on the west side of the property that drains to a non-known location. From my reading of the application submitted by the Town of Newburgh it is asking the Zoning Board to interpret whether the ZBA's original use variance included in this type of business. Respectfully the answer to that question is no. In support of that conclusion I direct the Board to Conklin's original testimony that he gave in support of the use variance wherein he summarized for his tank lining business involved. He stated that we drive to a site location, site or location to where a tank is leaking; we repair the leaks and then put in a fiberglass lining in the tanks. In other words Conklin's premises were...Conklin's premises would be where to be used to park his trucks and operate an office. On the other hand the Hydro excavating business does not perform tank lining rather it excavates dirt from off-site customers by using its hydro-excavating trucks which thereafter returned to the subject premises and discharge the excavated dirt onto the subject premises, the business than grades the dirt over the subject premises. In other words the business has turned the subject premises into a dirt dump. Also when the trucks discharge dirt onto the premises it is extremely loud because of the water that is used under force within the trucks to discharge the dirt from them. I know that none of the Members of the Zoning Board of Appeals were here in 1982. I was there and I listened carefully to exactly what was proposed. Never was this new business presented or talked about as being part of the original request. The addition of this new business has truly changed our quiet residential area. I would ask that Zoning Board to keep the residents in mind when deliberating. In short the hydro excavating business and that's being operated at the premises is not a tank lining business and the Board should hold that the use variance does not cover this new business. Thank you for allowing me to provide this affidavit in lieu of my appearance.

And there has been a notarized public.

Mr. McKelvey: You did send this letter to the Board right?

Mr. VanDeMark: Yes.

Mr. McKelvey: We do...we all have copies of it. We all have copies of the letters that were sent in.

Mr. Masten: Yes, Yes

Mr. McKelvey: And was starting to repeat yourself.

Mr. VanDeMark: Good evening gentlemen, ladies, my name is Charles VanDeMark, I reside at 26 Forest Road and I'm 54 years old and for my entire life I've lived either at 17 Forest Road which is directly between this business and Forest Road or directly across the street at 26 Forest Road. And I would like to stand in support of the neighbors in asking that you deny this application and without repeating what has been said before I would like to offer and request that

you consider doing a slightly larger Google Earth observation and you will note that not more than 700 to 1000 feet to the east of this property is a large Federally protected wetland which goes from Forest Road on the West side to Quaker Street on the on the East side, from Route 32 on the North side and exceeds all the way down past 52 into Orange Lake and that's on the East side of the business. On the same side of the road to the north of the business there is also wetlands and springs which flow through the subject property and down the West side of Rock Cut Road into a pond on Kings Hill Road and down into the Federally protected wetlands along 52 and into the Stewart Field I would say. Now I'm not a geologist or hydrologist or anything like that however, in observing a topography graph I noticed that the elevation of this property and the elevation of the Federally protected wetlands which are separated by a mound of...are relatively the same they're very close. Now I would like to offer you direct knowledge of a practice that I observed and the reason that it's direct knowledge is because I've witnessed it. I've actually worked for Conklin Tank back in the '80s between college over the summer just for a couple weeks. But I observed they would go and cut into the top of 20,000 gallons tanks at gas stations and we would go in there with a full apparatus suit with oxygen and so forth and they would sandblast the inside of the tank and they would first of all going in it would be sludge and residual fuel oil or or gasoline and so they would sandblast the inside of the tank and then remove maybe a yard of sandblast sand which sopped up that material. They would also excavate the site digging down to the tank and remove yards of contaminated material at that time. They would put it on a truck bring it back and they would use it is fill right over the springs, right over the wetlands. I know when I was a child I would go down there hunt, fish, trap and if you went down there you would come back your pants would be went up to your knees. My grandfather owned that property prior to Conklin and so I have direct knowledge of the situation with the initial application and I also had gone over there and observed firsthand at night, I was visiting Joan Perry was testimony was just recently read because I drove her to Florida for the winter excursion. And while I was at her house I heard the noise and we actually went, I walked out to the back of the property there's two rows of stonewall fences and I visually observed this truck unloading. Unlike what the...? What's going on here? It was loud and their unloading in the cover of darkness, it must have been between eight and nine o'clock at night. So my question is, to you, did they...do they catalog where all this material comes from? Do we know where each yard of this material comes from? Did it come from a contam...are they moving it from one contaminated site creating another one in our backyard? We all have...I have the best drinking water of...of the Hudson Valley...great, great drinking water. If it were to become contaminated that would...I can't tell you how...how bad that would be. And regarding your question a...sir, regarding testing wells before...we did a...there was five...five properties around the property we did get with the EnviroTech people on Gidney Avenue and they allowed us to a (Inaudible) to combine five well samples. They were each collected individually, I collected them and I brought them to EnviroTech in chain of custody compliance as best I could which was accepted by them the time, temperature and so forth. The results were everything was in...in range so, thank God. However, we have a reference point to start from...from what I'm concerned about is everything that has been put in there in the past and everything that's being put in their presently is this affects our wells. I'll leave it at that. Telepathically it would be an act of terrorism. Thank you so I asked that you deny this application. Thank you.

Mr. Maher: One...one question...

Mr. VanDeMark: Yes?

Mr. Maher: So your...the...the tests...the tests for well was done recently or...or...?

Mr. VanDeMark: Yes it was...it was done several months ago and what I did was I went down to EnviroTech and I said, hey listen I'm wondering what kind of test you can do and I explained the situation that we have a business in a...in a petroleum you know, lining tanks and bringing...what tests would you recommend? They recommended two tests a...one was...would cover basically a lot of the...the things regarding...that would come out of gas tanks, okay? (Inaudible)...

Mr. Maher: (Inaudible)

Mr. VanDeMark: So...

Mr. Maher: I guess my question was...this was done recently?

Mr. VanDeMark: Yes.

Mr. Maher: You say you have direct knowledge of what was done back in maybe the '80s?

Mr. VanDeMark: Yes.

Mr. Maher: So, wouldn't that have been a concern to you prior to this?

Mr. VanDeMark: It most certainly would. At the time I was in my early twenties. I was going to college a...as far as the...I was aware they...they collected it, brought it back to site. I wasn't part of the dumping it. I went home after that but I am aware that they used as fill.

Mr. Maher: No, I understand that.

Mr. VanDeMark: It bothered me yeah it bothered me and yes, and so I'm here today to...to ask that we can stop this from continuing. It's a concern.

Mr. Maher: Okay, thank you.

Mr. VanDeMark: Alright. I already signed in.

Ms. Gennarelli: Yes, thank you.

Mr. McKelvey: Does anyone else want to speak? I will say if Mr. Conklin is here if he wants to speak he can. He doesn't have to.

Mr. Presutti: Sir, my name is Vince Presutti, I live not a far distance from where this is and I appreciate your time, you know, today. I'm going to be extraordinarily brief. The predecessors were obviously able to enunciate, articulate all the concerns we have. My concern also is that

a...the liquids that are being dumped, the a...maybe the contaminated water in cleaning out those things would affect our wells and our a...aquifer. My other concern is a...the noise and the a...the odor that emanate from there will affect not only our quality of life but the wildlife that is there. We moved out there because it was rural, because it was quiet and peaceful, we sure would like it to remain that way. One thing that wasn't mentioned was the increase in commercial and employee traffic barely a quarter of a mile from a...a very busy intersection. And it would certainly detract from the rural quality by the people in close proximity there. And finally a...I hope that a...that it will not be granted and that we won't set a precedent for other commercial variances in that area. We enjoy being there. Thank you, sir.

Mr. McKelvey: Thank you.

Ms. Gennarelli: Vincent...Vincent, excuse me, did you sign in?

Mr. Presutti: Yes.

Ms. Gennarelli: Thank you.

Mr. McKelvey: Anyone else?

Mr. Larkin: Good evening, my name is Bill Larkin; I'm here on behalf of 2102. So there's been a lot of comments here today about what we're here for, what the purpose is of this...this is not an application for a variance as Mr. Donovan indicated. It's not an application to amend a variance or a use variance and with all due respect I don't think that this Board has jurisdiction to even hear this issue. The application is for an interpretation a...it's pretty clear that the Zoning Board of Appeals is an Appellate Review Board and that Board is to review applications initiated by the Enforcement Officer. The Board cannot give out an advisory opinion so this...this issue has been addressed a number of times. The...the chief in...the first in charge with enforcement of any Ordinance or local order pursuant to the Town law is Mr. Canfield. Mr. Canfield has not filed alleging that there's a violation of any use variance. The a...the appellate powers of this Board cannot be exercised unless an appeal is taken from an enforcement decision. So if Mr. Canfield or anyone else from that Board...from the Enforcement Office were to file a violation and there is...a determination is made then this Board can hear that. This...this has been addressed numerous times and so Mr. Donovan it's a case called Kaufman v. City of Glen Cove, 266 AD 870, a 2nd Department case and again there is no decision by Code Enforcement, Code Compliance by Mr. Canfield, anyone on his behalf as to a violation on the premises. Mr. Canfield's application plainly states that the request is "not intended to encompass any alleged violations of New York State Law or the Town Code". Since there is no determination that a violation exists the ZBA lacks jurisdiction to hear and decide any appeal. I refer Mr. Donovan to (Inaudible case citation) in addition to the...and according to Mr. Canfield's application he's seeking the advice and direction of the ZBA to determine "whether an enforcement action is appropriate, necessary, required". The foregoing is outside of the scope of the ZBA's powers and authority to give an opinion. The ZBA has no authority to render advisory opinions to a Building Inspector or to any other entity. And this such the court lacks all the respect the jurisdictional ability to do that. The a...the case really right on point is a case called Gaylord v. Zoning Board of Appeals of Town of Kinderhook, 175 AD2d, 543 you...you can't give an advisory opinion

that's interesting for you can enforce a violation. If Mr. Canfield felt there was a violation he'd be filing a violation. There is no violation here that's been filed to be challenged and be asking the court for an advisory opinion. This is a...this is a variance was use variance that was granted 35 years ago next week so there's been a lot of statements about the Zoning Law applies, the Town Law applies, the bottom line is there's a variance that was granted and there's been no violation filed whatsoever with regard to those matters. Thank you.

Mr. Scully: Jeff Scully on behalf of the Town of Newburgh, with respect I'd have to disagree with Mr. Larkin Town Law does provide is he stated that the ZBA's jurisdiction is appellate only from decisions of the Building Department or Code Compliance and I quote unless otherwise provided by local law or Ordinance in Town of Newburgh Code Section 185-54 (A) entitled Interpretation-authorizes the ZBA quote to determine on a request by any Official Board or Agency of the Town meaning of any condition or requirement specified or made under the provisions of this chapter, that being the Zoning Code. Because the decision and resolution here imposes conditions for a use variance under the Zoning chapter of the Town of Newburgh Code it's our position that you may hear this request for an interpretation and reach a decision. I would also like to correct that we are not asking for direction or an advisory opinion as to whether enforcement proceeding should begin. A quote from our application is "the Department requires the requested interpretation in order to decide whether the alleged use and/or activities are permitted and if not, whether enforcement action appropriate, necessary, required". We seek simply an interpretation as to what use variance means, what the parameters are, the Town will then make a decision independently in exercise of its discretion what if any enforcement action should commence. Thank you.

Mr. Donovan: And again I said before I don't want to lawyer this up too much but I...I do want to just address the issue that have been raised by Mr. Larkin and Mr. Scully in response the Law is clear as stated by Mr. Larkin that the ZBA is not authorized to issue advisory opinions. That's clear. The Town of Newburgh Code is however kind of unique, I do this in other places there is a provision in the Code that allows and Code Compliance to request an interpretation, request by any Official Board or Agency of the Town on the following matters and I again, as Mr. Scully quoted, 185-54 (A)-1 the meaning of any portion of the text of this Chapter or any condition or requirement specified or made under the provisions of this Chapter which I read to include a use variance. So the issue was obviously a threshold issue when the application was submitted. My analysis of it is that the Board can act; the law cited by Mr. Larkin is...is good law. I mean there is just so you know a...there's a lot of cases out there that say the ZBA can't give an advisory opinion. I think that in my view...the language, the specific language of the Town Code overrides that. Well I'm not looking for anyone to applaud I mean you should be grateful you have three lawyers and only two opinions. Right?

Mr. McKelvey: Go ahead.

Mr. Conklin: The name is Ira Conklin, III; I own WCC Tank Technology and also own Hydrovac Excavating. The two companies are very much entwined together. WCC Tank Technology does the same thing it does...did...does the same thing today that it did 35 years ago. We line tanks, there's no work done on our property. We line tanks, we test tanks, we do site assessments and as folks would say here that there's, you know look at the website. Yes look at

the website cause Hydrovac does the same thing. We just did a job and Branchville, New Jersey where we vacuumed out the sand from the inside of the tank into our vacuum trucks and it gets put in drums on site and left on-site. Hydrovac was developed in the early 90s, I was the fifth Hydrovac truck in the United States. WCC Tank Technology is a family business, it's always been in the Conklin family business. My dad who's here and his brother Bill started the business. I worked there and for them for two years and '76 and '77 and some of the guys that work for me here tonight and have been doing that for 30 years. We don't do any work on site. All the workers off-site, Hydrovac does have other customers, the utility companies. Some of that material goes to their own facility that they have and some of the material goes to Taylor Recycling. I've cleaned up thousands...done this since I'm... '77 full-time but I've cleaned up thousands of homes and I would not bring contaminated soil onto my own property. It's been intimated here I wouldn't do that bring it on to myself or anybody else. I've help more people in this community cleanup residences let alone bring anything in. Any of the dirt that dumped on our property will be leveled out in 3 or 4 inch areas. We're going to have grass growing a...there. We're going to have a...pumps in the ponds to get that...to the ponds back to life again. And a...we, you know, we cut brush and trees, there's more chance of contamination from neighbors that removed the tanks that were full of holes and never got a permit in the town, never call the DEC, with the holes in the tanks, and this of the neighbors that had over 30 cars with gasoline tanks, oil leaking out of them and in all of this come here to a Public Hearing not one neighbor came to me and said the noise is too much, there's a little light too much, there's this, there's that. Nothing. You got a problem you know, in our other business on Stewart Avenue, my grandfather started the business in '38 and we had a...probably around 25 neighbors and we got along great. Some of those houses were within 30 feet of our building and if anybody had an issue somebody was working too early or too late or doing something we would take care of it and we were great neighbors. And then to come to...and listen to this stuff I mean, it's...it's absolutely disgraceful. But the...we don't do we don't do any work on our own property, we do it all off-site, the imported material just like you put topsoil on your lawn and you spread it out. Anything that we brought in will be spread out and will have grass on it. Jerry Canfield was on our property twice and he...he looked around on our properties when I was doing some work there and he said everything looked okay to him. So I ask you to take into consideration we're doing the same thing today that we did 35 years ago. We test tanks, we line tanks, we uncover em, the hydrovac trucks which were developed recently is another...it's just a shovel of a different color. You don't damage double walled piping, you don't damage fiberglass pipe and any time we work on a on a service station for tank work the material stays on site. We don't have DEC Permits to move it. It stays on site. We do some...we of the other work the material that we imported in there on the site is going to be leveled out and will have grass growing there. Thank you.

Mr. Maher: I have a couple questions if I could? So prior to...from 2006 to 2015 the business was located somewhere else?

Mr. Conklin: Yes.

Mr. Maher: And that as according to the testimony tonight 9W somewhere?

Mr. Conklin: No it wasn't on 9W; it was in a...Marlboro.

Mr. Maher: Okay. So prior to 2015 was the fill or the slurry as...as it's been called tonight, was that dumped somewhere else or was it always dumped on...?

Mr. Conklin: No it's dumped on, you know, wherever you need fill or at the...at the utility company's dump sites.

Mr. Maher: Okay so it's only recently that the fill started appearing at the...at the...

Mr. Conklin: Yeah because I wanted to...I want to grow grass. I want to be able to use my entire property and grow grass on it and I'm gonna...it's going to be spread out and it's gonna be grass there.

Mr. Scalzo: Sir, this additional slurry that that comes back to your site that you distribute there...you're...it is not regulated by the DEC? There's no manifests required for any of that?

Mr. Conklin: No and I had a...a conversation with Ed Moore of the New York State DEC and a...there is no issue with any of that.

Mr. Scalzo: Thank you.

Mr. McKelvey: Are there any other questions for him?

(No response)

Mr. Quiles: My name is John Quiles; I live near Forest Road or off of Forest Road. Mr. Conklin, a question everyone here is concerned about contaminated soil because you said dirt and I don't know if it's regulated or not, would he object to anyone...his soil being tested on that property? Because I think that's a biggest concern here, right? Is that our soil and our drinking water being contaminated?

Mr. McKelvey: Speak into the mic, please.

Mr. Quiles: (Inaudible) Mr. Conklin wants to do the right thing...

Ms. Gennarelli: John, John you have to speak into the microphone.

Mr. McKelvey: Speak into the mic so...because that's being recorded.

Mr. Quiles: Oh, I'm sorry. You know, listening to Mr. Conklin it seems like he wants to do the right thing, grow nice grass on his property a...and...and I don't object businesses, I really don't because I...I am a local business owner. Okay? A...I do object my drinking water being contaminated am not saying that that's the case because no one here has, you know, Mr. VanDeMark said he did some testing of his water, his water a...I was just telling my girlfriend, Denise before I thought you had the best drinking water in Town. Apparently he does. But I...I want that to continue. Would Mr. a...Conklin you know, show us testing of his soil on his

property that he's spreading out nicely to grow grass is my question? Mr. Conklin are you still here?

Mr. Conklin: Yes.

Mr. Quiles: Would you...would you test your soil you know, object to your soil on that property being tested? You know so that we can all have peace of mind.

Mr. Conklin: It's gonna grow grass (Inaudible)...

Mr. Quiles: I...I know.

Mr. Conklin: (Inaudible)

Mr. Quiles: I can grow grass on a brick, on a Chia pet. But can we...you know can your property be tested so that we have peace of mind? And support your business...

Mr. McKelvey: You are here...don't...don't go back and forth in the audience. You would direct...

Mr. Quiles: No, no I'm sorry, I'm not...(Inaudible)

Mr. McKelvey: You have to direct all your questions to us.

Mr. Quiles: Can we ask Mr. Conklin to have his soil tested?

Mr. Donovan: Well I think the answer to that is you can ask Mr. Conklin whatever you think is appropriate...

Mr. Quiles: (Inaudible)

Mr. Donovan: ...but in the context of this meeting, the authority of the Board we don't have any jurisdiction or authority in any regard with respect to that issue.

Mr. Quiles: Would you be able to direct me in the right direction so I can ask the right people to do that?

Mr. Donovan: Well I, you know, there's...no, I don't mean to be...but I'm the attorney for the ZBA.

Mr. Quiles: Exactly.

Mr. Donovan: Understand I can't give you advice so...I can just say what the...what the role is in what's transpiring this evening.

Mr. Quiles: Okay. And no disrespect to Mr. Conklin is trying to do the right thing like I said I'm a business owner here, I'm pro-business, but at the same time I'm pro my a...you know, my neighborhood and my drinking water. Thank you.

Ms. Gennarelli: Can you come to the microphone? Thank you.

Mr. Conklin: I wouldn't object to that if he wants to come over and together we'll go and take a sample of the soil together and then I'll...and then I'll pay for that soil sample for...for that.

Mr. Quiles: Thank you.

Mr. McKelvey: Anyone else?

No response.

Mr. McKelvey: Any further questions from the Board?

No response.

Mr. Studtmann: Good evening everyone my name is Philip Studtmann, I live at 16 Forest Rd. right across the street from a lot of the people here who was spoken and I drive by the property every single day and I understand that the question is if this falls within the variance, the original variance that was permitted and I do as a neighbor a...I do personally feel that it does a...because they do go hand-in-hand a...as far as the truck that's being parked there it's not much different than the trucks that were parked originally. It's not a...there's not a 20 extra trucks. It kind of seems like that's what's being presented here a...and is a neighbor I don't see that a...but what I will say I've seen the land cleared, I've seen a...within it here a relatively small operation it does look a lot bigger right now. So I just want to know in terms of you know what this gentleman just said a he said that they're just spreading the dirt. Would that mean it's going to stop? Because if...if that's all it is that's a whole...another topic. A...but just that one truck being there the extra excavation truck being there...a it...it does go hand-in-hand. I...I do have to say that in good conscious as much as I don't like seeing the land cleared as much as I'm concerned about the wa...the drinking water all of that stuff they do go hand-in-hand and...and whether it's, you know, an extra truck that's another topic as well. In my opinion I don't know you gentlemen can handle that so I just wanted to voice that so...that's all.

Mr. Conklin: As soon as the grass gets planted there will be no dumping on the property but I'm not going to stop dumping until I get and I'm a...and I'm a importing material I'm not dumpin' it. When I get the grass growin we're not going to be dumping on to the property but I'm not gonna buy topsoil when I can get myself and put it there and use my own property and use 100% on my property instead of letting it get grown up and have buildings that are...should be condemned. It'll...it'll be done with.

Mr. McKelvey: You don't estimate how long that would take, do you?

Mr. Conklin: At four yards a truck come in maybe another year...something like that?

Mr. McKelvey: Thank you. Anyone else?

No response.

Mr. McKelvey: Any questions, more questions from the Board?

Mr. VanDeMark: Another bite at the apple but I'm must wondering if there ever any issues in Marlboro where the business had prior been situated? Whether they had any zoning issues or non-compliance issues and maybe that's why they moved to our backyard?

Mr. Scalzo: I'm not sure if we could answer that.

Mr. McKelvey: No we couldn't answer it.

Ms. Gennarelli: Was that Charles?

Mr. VanDeMark: Yes. (Inaudible)

Mr. McKelvey: Do you want to close the Hearing?

Mr. Scalzo: I'll make a motion we close the Public Hearing.

Mr. Masten: I'll second it.

Mr. McKelvey: Roll call.

Ms. Gennarelli: One second, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. McKelvey: We may not be able to make a decision tonight because we got other stuff on the item and it's getting late. Do you want...do you want to wait till next month to make the decision?

Mr. Levin: We will see what how long it takes to get there.

Mr. Scalzo: Can we do that?

Mr. McKelvey: Can we do that?

Ms. Gennarelli: John, you closed the Hearing.

Mr. Donovan: Well you have sixty-two days...

Mr. McKelvey: Yeah, we have sixty-two days.

Mr. Scalzo: Can we release these folks letting them know we won't make a determination tonight? I know I've got a ton of legal questions for you Dave.

Mr. Donovan: All I said is in fairness if the Board is not going to decide then maybe you want to let people know but if you think you might decide then...

Mr. McKelvey: Yeah...that's up to the Board whether you want to or...

Ms. Gennarelli: You have time.

Mr. McKelvey: ...to make a decision tonight or carry right on.

Ms. Gennarelli: John do you have to decide right now?

Mr. Donovan: No, no it's just for the benefit of the people the typical practice of the Board is to conduct the Public Hearings either continue to close the Public Hearings then when all the Hearings are over for this evening there is an attorney-client privilege session which generally lasts ten minutes or so and then the Board makes a determination if they are going to decide. Someone would make a motion to approve, deny as indicated at the beginning of the meeting has sixty-two days to decide. The conversation that was going on up here since there so many folks interested if...if the Board was like they wanted some extra time to decide we would indicate to you that we're not going make a decision that the Board is not going to make a decision tonight. I don't know I don't know that there's that any decision to that regard so my point of my story is you may, if you want to know tonight, you may have to sit around for a while and then the Board may or may not decide because they are not legally required to decide tonight.

Mr. McKelvey: Because we have other items on the agenda.

Ms. Gennarelli: Okay, Darrell left for minute.

Mr. Levin: Next on the Agenda...

Ms. Gennarelli: Darrell left for minute.

Mr. McKelvey: Pardon?

Ms. Gennarelli: Darrell left for minute.

Mr. McKelvey: Okay, hold on.

Mr. Scalzo: Mike won't be here next month.

Mr. McKelvey: Okay, we're going to continue on with the meeting. We'll try and make the decision tonight.

(Time Noted - 8:55 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Resumption for decision: 10:35 PM)

CODE COMPLIANCE DEPT. - 2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,
TOWN OF NEWBURGH (3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals' March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. McKelvey: We're going to resume the Hearing.

Ms. Gennarelli: Okay John I'm ready.

Mr. Levin: The interpretation...interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals' March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. McKelvey: Do we have any comments from the Board?

Mr. Scalzo: I think we have an awful lot of information to digest here and...

Mr. Maher: And basically nine different questions.

Mr. Masten: Yes.

Mr. Scalzo: ...yes, and although we have had them in our possession for a little bit I would...I would like Dave to perhaps prepare a summary with some guidance for us.

Mr. Donovan: Okay.

Mr. McKelvey: Anyone have a motion?

Mr. Levin: (Inaudible)...open for thirty days.

Mr. Donovan: So...so, the Hearing is closed. Right? You have sixty-two days to decide so if you want to...or the practice has been, you make a motion to just put it on the agenda for March...what day is that?

Ms. Gennarelli: 23rd.

Mr. Donovan: March 23rd if that's what you'd like to do.

Mr. Scalzo: I would, I make a motion we defer decision to the March 23rd meeting.

Mr. Levin: I'll second that.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: March 23rd.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
MICHAEL MAHER
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE
JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 10:38 PM)