

TOWN OF CHESTER ZONING BOARD OF APPEALS

WARREN COUNTY ~ CHESTERTOWN, NY, 12817

MINUTES OF MEETING ~ JANUARY 22, 2008

ATTENDANCE: Ken Marcheselli, Elwood Findholt, Mary Jane Dower, Ken (Sam) Sewall, Secretary Pat Smith. Also in attendance, Zoning Administrator Walt Tennyson. Absent was Liz Morris. Attorney's in attendance: Mike Hill of Miller, Mannix, Schachner & Hafner, Town Counsel; John D. Svare & Mark E. Cerasano of Bartlett, Pontiff, Stewart & Rhodes, Counsel for Broderick.

Chairman Marcheselli called the meeting to order at 7:00 p.m. Having been duly advertised, public hearing was opened for Appeal #A-16 for Jill & William Broderick, appealing determination of the Zoning Local Law by the Zoning Administrator with regard to properties located at 830 Atateka Drive, tax map parcel #120.11-1-3, (Broderick property), and adjoining 826 Atateka Drive, tax map parcel #120.11-1-4 (Taverni property).

Atty. Svare presented opening statements for the Broderick's, explaining that they were year round residents at 830 Atateka Drive. Adjacent property, 826 Atateka Drive owned by Anthony and Linda Taverni. He explained: "A garage/shed is located at the rear of both properties, and are, and always have been, attached to each other with the garage located on the Broderick property, and the shed located on the Taverni property. Members of the Board, we are here to challenge the decision of Walter Tennyson, that allowed the Taverni's to repair and restore the existing shed...based on the following. First, in 2005 the Taverni's applied for a permit from Warren County, and from the Town, to construct a 24'x 26' garage, detached garage. That application, in no uncertain terms...that application clearly stated that the shed that we're talking about this evening, would be demolished. That shed has not been demolished, the 24'x 26' detached garage is in place, and accordingly, we're simply saying that they have not met the bargain that they reached with the town to demolish that shed."

Chair asked for the date of the application, to which counsel replied: "on or about August of 2005."

Svare continues: "Point #2: The basis for the Taverni's repair and restoration of the existing shed is that it was damaged by a tree that fell on the shed. Mr. Chairman, this tree fell back in 2003, almost 5 years ago now. In reviewing the code, if you look at Section 9.05, you'll find, again, that for a non-conforming structure, that this clearly is, any repair caused by natural causes, must be completed within 3 years. Accordingly, this is well beyond that period of time."

Point # 3: "The application says that the use, uh, proposed use, is going to be for a shed/garage. Now this structure has always been traditionally used for a shed. Always been, and, as a non-conforming use, any change or deviation from the traditional use, shed, cannot be permitted. Additionally, the shed is 8 feet currently. The application of the Taverni's says that it's going to be constructed for 10 feet. Again, a deviation from the structure and

accordingly, they would have to apply for a variance. Now, I do have, Mr. Chairman, the 2005

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application copies for the board that I'd like to pass up at this time, if that's acceptable." (Done).

"Now, what you're looking at, on the first page, is an application that was subsequently amended. This was for the construction of an attached garage. If you look at page #3, amended application for a building permit, this is for a detached garage that I was referencing earlier. If you look at the second page, under #2, 'dimensions of existing structures, if any', to be demolished. To be demolished. (Please note: Atty. Is referencing the Warren County permit which is obtained *after* the Town Zoning Certificate. Town Zoning Certificate application *does not* mention demolition of the shed. pms) The second page, at the top right hand corner, also checks, under nature of proposed work, demolition to a building." (Also on the County application). Now, other than the obligation of the Taverni's, under this permit, to demolish this shed, we have concerns that a shed and an attached garage, may be in violation of the code for having, perhaps, too many accessory structures on the property. Now, why we're here this evening, by way of background, um...on August 6th, our clients filed a complaint, challenging the issuance of a Zoning Compliance Certificate for the Taverni's proposed project. The Broderick's requested that Walt Tennyson personally visit the site, showing the survey markers, reveal that the wall, the partition wall, is actually on the Broderick's property. This complaint, again, also noted that the tree fell in 2003, 5 years ago. On August 8th, 2007, Mr. Tennyson recognized the complaint. On August 14th, he described the damage as caused by nature and accordingly that it can be repaired or restored. The August 14th letter says nothing about when the tree fell. You look at Section 9.05: 'Any damage caused by nature must be repaired within 3 years.' No determination was made when that tree fell. There's been nothing in the application that refers to a time period. We don't know what basis the Taverni's are alleging to get out of, so to say, 9.05. On August 29th, Mr. Tennyson submitted a letter to the Broderick's. He alleged that the existing shed is grandfathered, and therefore can be replaced on the existing footprint. Importantly, however, he noted that it's his recommendation that the entire structure be demolished. Now, again, no reference to when the tree fell, no reference to the prior permit of 2005. And, I do have copies of all of our complaints, and Mr. Tennyson's correspondence that I'd like to pass up front." (So noted).

Svare, continuing: "So, I guess in summary, at the end of the day, the Taverni's, in 2005, made a promise with the town, they made a promise with the county, that that shed was going to be demolished. They're now coming back to you to repair that shed that was supposed to be demolished in 2005. Well, respectfully, if they're not going to hold up to their bargain in 2005, we have concerns about this application. Second, the Taverni's applied for the permit 5 years after the tree fell in 2003, which is in violation of Sect. 9.05. (Original application of the Taverni's dated 2005. pms) Third, this is a non-conforming structure, it does not comply to the setback requirements. Any change to it, any change of the deviated use, any change to the height, must go through the variance process. Lastly, the partition wall is located entirely on the Broderick property. It's not a jointly owned wall, so, our client's position is that they might have to be a party to this permit, to this application. So, we would respectfully request that the application be denied, that this work not be allowed to go forward, that the shed be demolished, in accordance with the 2005 agreement, and, at this time, I would like to turn the table over to our client, Jill Broderick, if she has any further comments, but I'd be happy to take

any questions from the board.”

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Jill Broderick (hereinafter referred to as Broderick), “The 2005 permit was actually rescinded, and a new permit was applied for after that. Originally the garage was going to be attached to the existing shed, and because they didn’t have a fire wall, which was a violation of the Warren County building code, they then reapplied and built a different structure, an entirely different structure and just left the shed. Now the shed is definitely in need of demo. I brought pictures that show where the tree had fallen, in late ’03. It clearly should be taken down, it’s almost fallen down and it’s further decaying my subject property which is attached...(garbled...) I’ve had Bolster, the appraiser and surveyor come up, and actually spotted the line on the barn, showing that the entire structure is on my property. Their property is actually starts 4 inches over, so there is no joint piece of property involved here, and I’m definitely not a party to this permit.”

Svare: “If I could just add one more thing...in 2005, when the Taverni’s made that application, when it clearly said that the shed would be demolished, perhaps if it didn’t say that, Broderick’s would have made it an appeal at that point, would have voiced their objections at that point, you know. But they took the Taverni’s at their word, that that shed was gonna be demolished, and so that’s why we’re in the position we’re in here tonight.”

Broderick: “ I also have pictures, of when I hired Bolster, to come up and mark the property lines. There’s an Invoice there for his services on that particular date.”

Chair: “That’s the line going through the building, I assume.” Broderick answered affirmatively. Chair continues: “Before we move on, can you take us...let’s start from the beginning. When was this shed constructed?”

Broderick: “Prior to 1964. Probably in the ’50’s.”

Chair: “Did you construct it?”

Broderick: “My husband’s grandfather, owned both properties.”

Chair: “Both pieces of land?...Okay.”

Broderick: “And then he conveyed the property and he put the line through the shed in 1964. And nothing’s changed since then. The structure’s exactly as it was for the last 30 years, 40 years.”

Chair: ... “ I’ll probably have some more questions later. Are the Taverni’s here? I expect you’ll want to speak next.”

Chair: “Before you start, let me ask you one question, because I’m gonna forget. You gave us a copy of a permit dated August 8th of 2005, and an amendment. Now did you say this permit was rescinded and it was subsequently re-applied.”

Svare: "The application that you have on top is for an attached garage..."

Chair: "Attached to that building?..."

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Svare: "They took that back and applied for a detached garage, which currently exists..."

Chair: "Okay...different permit...so this permit has no value."

Svare: "Well the first piece of paper there is the one for the attached garage. If you look at the second page..."(Multi voices...indistinguishable...).

Chair: "This is an application for a Zoning Certificate...is there an application for a building permit, as well? You mentioned the County, in fact, that's what I'm looking at, right? Application for a building permit."

Svare: " I don't want to confuse the matter. The relevant portion of that packet is the application for the detached garage, page #3. "

Discussion on which paper...Chair satisfied. Looking for a date...Svare: " It is signed and sworn Sept. 28, 2005. Signed by Linda Taverni."

Linda Taverni, (hereinafter Taverni): "Before I start, I apologize, I only have one copy, but what I did was, I have a copy of the deed and a copy of the survey of the property, done in 1963, at the time the property was conveyed from the White's, to our predecessor in title, that clearly shows the boundary line, and the fact that the line goes through the garage/shed, and also refers to the metes and bounds description in that deed, which also refers to the line being on the party wall between the two, the garage and the shed portions."

Chair: "Okay, there's no question that the structure straddles the line."

Taverni: "Well, there is a question because the Broderick's have filed a subsequent deed on their own initiative, which has changed the metes and bounds description, and on the basis of that, hired a surveyor, who has now moved this line, and they're claiming that the line is not along the party wall. That's part of the basis for the objection to this."

Chair: "Well the one that I have, their packet, was filed on the same day. So I assume we're all in agreement that this is the survey."

Svare: "That page right there was incorporated in that packet because it was the Taverni's plans. That's what it's intended to represent. It's the plans for the detached garage."
(Acknowledged by Chair that it was part of the application).

Taverni: "First of all, we'd like to move that this appeal be dismissed as untimely. As they have acknowledged, the Certificate was issued on October 21st in 2005, and under the rules of the Town, Sect. 10.5, an appeal must be filed within 60 days. This appeal was filed in Sept. of 2007, which is more than 2 years after the Certificate was issued. Going forward, the merits of

their appeal, the fact that there were prior building permits issued, with regard to these garages, I think is basically irrelevant. ...We acknowledge there were a number of different proposals made. We had different things we were going to do...we had problems, and ended up...at one point we were going to demolish the garage/shed ...but then decided we would

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repair and restore it. This is arguably a non-conforming use, but under Section 9.01 of the zoning law, a lawful building or structure which was in effect before the zoning law took effect, can be repaired, can remain on the property, as long as it's not enlarged or increased or extended. As acknowledged by the appellant, this structure has been in existence at least since 1963, sometime prior to that time. It appears on the survey map that was prepared and filed with the County Clerk in 1963, and it's indicated the Broderick's direct predecessor's in title were the ones that built this structure, determined where the property line was, and arranged for that survey. During that time, that structure...the shed structure is continuously, and to this day continues to be used as a storage shed for boats, lawn equipment, lawn mowers, canoe's, patio furniture, building supplies. That's what it's been used for, and the Broderick's stored their own boat in that structure for at least 10 years during the winter period. That use continues to this date. The main contention the Broderick's seem to be raising is the fact that the tree fell on this property in 2003. ...It's not disputed, however, under Section 9.05, it requires that damage that natural disaster or wind damage has to create damage to more than 50% of the property. This tree fell on a back section of the roof on the property, it is far less than 50% of the property. The application is to repair the entire roof, is to repair the walls, is to replace the door on the property so that it can be secured. As such, we do not believe that Section 9.05 has any applicability, it's not more than 50% damaged. Furthermore, as I just stated, although there was damage, it has not prevented us from continuing to use the structure for the stated purposes of storage of various items. Even if it was, we did apply and obtain this building permit to allow us to repair the structure in August of 2005, which was within the 3 year period. However, in attempting to arrange for contractors to do the work, they were confronted by and threatened by the Broderick's with lawsuits and various other problems if they did the work for us. And that is part of the reason the work was not done in the time period. We can provide the court with a deposition..."

Chair: "Is there any litigation on this.."

Taverni: "There is litigation...there's pending lawsuit between us over the boundary line on the property and the use of the driveway to access this structure, which is pending in the Supreme Court, Warren County."

Chair: " This same structure..."

Taverni: "Because, if you'll see on the survey, there's a common driveway that straddles the property line for access to the..."

Questioned which driveway by a board member...

Taverni: "That's the common driveway that goes up to access both the garage on the Broderick's property and the shed on my property. There's reciprocal easements in both deeds, and that's the subject of litigation..."

Chair: "Okay. Now, is the outcome of this gonna affect this property line or just the use of the driveway?"

Taverni: "Yes, it will affect the property..."

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Svare: "Can I interject? Since you're bringing up...there is litigation currently. Mark Cerasano (hereinafter "Cerasano"), an Attorney in our office, is here tonight, who handles the court permits, if you'd like to talk about that..."

Chair: "Okay, here's the distinction...if litigation is over the use of the driveway or access or things like that, and regardless of the outcome, it's not gonna affect this property line...I don't see any need to hear it. On the other hand, if the outcome is gonna change the property line, and conceivably change the...you know...who owns this shed?...who's land is it on..."

Taverni: "The only alternate would be to our favor, cause our position is..."

Chair: "Well, I don't even want to get into that...what I'm saying is if this is a possibility, that's what I want to hear about."

Broderick: "There is not a property line dispute..."

Taverni: "I believe I have the floor here..."

Broderick: "Okay, go ahead..."

Taverni: "There is a (unclear) here, your Honor, I was getting to that. As I said, they have filed a deed that changes those metes and bounds description, and so that they're claiming the line is 4 inches farther south than what appears on the map.. That survey in a violation of the terms of the deed. In addition, there's another issue, which I don't know if the Court..er..the board really needs to get into, but there's an additional 10 feet discrepancy between the two properties. So that there's a possibility that there could be 10 feet where our property moves to the north."

Chair: "Where this line moves..."

Taverni: "Yes...would be the north...that wall would be..."

Chair: "This whole line would move, or just that point...?"

Taverni: "That whole line.."

Sewall: "The whole line, or just that tangent?"

Taverni: "No, the whole line...but if we're successful on that, that would mean we would just own the entire wall."

Chair: "Okay, I don't want to cut you off, but go ahead...we'll be back to you..."

Taverni: "It's the contention that we're seeking to enlarge or increase the structure, is also incorrect. We put in the application, we're simply intending to repair it, replace it, maintain the existing footprint, maintain the existing size of the property, um, they are saying it's gonna be 10 feet, and that's the approximate measurement along the back of the highest point of the

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roof where it meets the party wall of the back of the structure. The property lines would be continued, as I said, we're simply repairing and replacing what is right there so that we can continue to use it for the same use that we've used it for the last 25 years. And again, they're contending that we're making a change of use, because at one point in the application, it's referred to as a garage/shed, which I believe was intended to refer to the entire structure, which they, themselves, have referred to as a garage/shed. Our portion of it is a shed, it's a storage shed, it's been used for storage for boats and other appliances and things, and that's what we intend to continue to use it for. As I said, I would again refer you to the deed, which refers to it as a storage shed. That comes from the deed from 1963, prepared by Broderick's predecessors, and, it's been recorded in the Warren County Clerk's office on May 22nd, 1985. Again, I just want to reiterate that we have no...there's no, absolutely no change in the character or use of the structure. Finally, again, this contention that this wall is on their property...it just totally flies in the face of the survey and the deed that we've provided. Again, the deed was prepared by their predecessor (unclear)...and title, so I believe that they should be bound by it. It's well settled law that a party wall is considered to be jointly owned by each of the adjoining property owners and it is to be used for the common advantage of each party. And as such, either party is entitled to make reasonable and necessary repairs to that wall. In this case, we're not intending to change the wall, however it is supporting the roof on our side of the property, so we are clearly entitled to make necessary repairs if necessary, going into the wall to place the repair, or replace the new roof. Even if they're correct, that this wall is on their property, because of the nature of the property, and the use over the course of the last 40 years, we would still have found to be having easement on their property, because, as I said, our roof is supported by this wall, and, under the law, I can provide case laws if you need them or are so inclined, um, again, we're clearly entitled to make whatever necessary repairs are required. What we're seeking to do is repair a shed that has had some damage by a tree, is also almost 50 years old, and has suffered some ravages of time. We want to provide a safe and accessible storage space for our property, and we're seeking to improve the appearance of our property, increase the value of our property, and, I think, that would also (unclear) to the town's benefit. Finally, there's just simply no basis whatsoever for the Broderick's request that the shed be demolished. Mr. Tennyson did make that suggestion that the entire garage/shed be demolished, basically to resolve the issue of the non-conforming use, and, we would have no objection to that, having the entire garage and shed demolished, so that we would no longer have to deal with the property line issue. However, to require us to only demolish our side I think would be an unfair undertaking, and not justified by any basis before the board at this point."

Chair: "There was ...You said there was a certificate ... I don't know who to ask this of, to be honest with you, anybody can answer me. Was there a zoning certificate for the repair of this structure issued in 2005? (Response: "yes".) Chair continues: "Just for the benefit of everybody, because I want to give this lady back this original, this is a zoning certificate issued

by the Town of Chester, signed by Walter Tennyson, October 21, 2005, and the only comments on it 'Is an Adirondack Park Permit required?', and the answer is no. This is issued to Anthony and Linda Taverni, 826 Atateka Drive; 'Restore existing shed 13ft x 19ft, no change in footprint.' That's what it says." (Shuffling and returning of papers).

Chair: "Is there, are you claiming the building's more than 50% damaged?"

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Svare: "They are, but, beyond that..."

Chair: "Are you telling me the shed is more than 50% damaged, or the entire structure?"

Svare: "The shed."

Chair: "Is there really a separation between this and the garage?" Response was "yes", then unclear. Chair continues: "Well, I mean we're talking about the shed, and we're talking about the garage. My impression here is there's one partition between the two parts. And the way I was brought up, this is one building."

Broderick: "It's an original barn, with an attached shed."

Sewall: "The shed was added later?"

Too many people speaking at once, then:

Broderick: "The partition wall that we're speaking about has a window in it. It was the exterior wall of a garage/barn, and there's a window."

Unknown: "And there's an unpainted wall, so it was never supposed to be..."

Taverni: "Part of our wall is made of old shutters..."

Broderick: "Who's speaking? Am I speaking?"

Chair: "Okay. That's what I get for asking everybody the same question."

Mike Hill, Counsel for the Town,(hereinafter referred to as "Hill"): "Mr. Chairman, I think with regard to this question, it may be helpful for the board to hear from the zoning officer. The zoning officer is the individual who is responsible for an initial determination on the town's behalf as to whether this is a single structure, or multiple structures."

Chair: "Okay, Mr. Tennyson..."

Tennyson: "I consider it one structure."

Chair: "Okay. This certificate was issued, there's no question about that?"

(My note: response from Tennyson could not be heard, nod of assent was noted. pms.)

Chair: "How about the 50% question?"

Tennyson: "Well, if you do your math, you'll find out that 50% of the building wasn't damaged, it's one structure."

Chair: "Okay. Based on the consideration that it's all one structure."

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Tennyson: "One structure."

Chair: "Okay. I think I understood you to say, ma'am, that it would be your intention, and it was at the time of that permit, to basically keep the same dimensions."

Taverni: "Yes sir."

Chair: "I mean, there is a difference between some of this, 8 feet, 10 feet, but what you're telling me is, you're not looking to intentionally increase the size..."

Taverni: "We're replacing what's there, basically..."

Chair: "Okay. Is there any survey on this property since 1963?"

Survey presented by Broderick. Chair inquires: "Is it the same one?" (as Taverni's).

Broderick: "No, this is a survey I just had done last winter."

Chair: "Okay." Maps reviewed. Taverni at the desk..."mine shows the same lines with the metes and bounds description."

Chair: addressed to Broderick/Svare: "Does yours differ?"

Svare: "I haven't seen that..."

Chair: "Okay." Board discussion, inquiry by Sewall regarding date on Broderick's map, to which Chair replied: "July 13th, 2005."

Chair: "Is this showing the two lines, is that what this is?"

Broderick: "May I see this?" Looking at Taverni map, inquires: "Where is the stamp? The survey stamp? This is a plot plan." Pointing to her map, "This is a certified survey from James Nestor. I don't see a stamp saying that this is a survey, whatsoever..."(pointing to Taverni map).

Taverni: "I can provide that for you, Mr. Chairman, if it becomes an issue ..."

Chair: "Okay...but my question is, there's two lines on yours..."

Broderick: "That's the disputed 10 feet."

Chair: "Is that showing the before and after, or, what does that signify?"

Taverni: "That's the disputed 10 feet..."

Broderick, adamantly: "There's no dispute. Our line is not changed..."

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Taverni and Broderick speaking at once, indistinguishable...

Taverni: "Your own survey show's it."

Broderick: "No it doesn't. There was a gore (?) in the title from when different properties were conveyed. There was a deed that got left behind, it was just brought up through the title."

Pointing to map: "this is the line right here."

Chair: "Okay, which is essentially this one. They both go through the..."

Broderick: "Right. I just want everybody to know there's a difference between a survey and a plot plan. And then I had Bolster come up because Jim Nestor was out of town. And he came up with his instruments and he marked that corner on the back line, and I've given you a picture of it, and the invoice from when he was there, because the instruments today are much more sensitive than the instruments of 1964. So they clearly show that my line is 4 inches over and away from this 'alleged' party wall."

Chair: "Okay. Thank you."

Taverni: "Could I just point out something? If you'll notice the metes and bounds description, this is the metes and bounds south 48, 59 minutes, 30 east, which was taken from the deed and the original survey, and since they've had a survey done, I mean it's not by much, but it changes the metes and bounds description which is how they came up with that 4 inches, and where they got that from is just something that apparently..."

Chair: "Okay. We're not here to decide 4 inches. (Passed maps around, asked board if everyone had seen them, and whether anyone on the board had any questions).

Sewall replied: "I've got lots of questions."

Chair: "Is there anyone else wants to speak on this? I'm sorry...I don't mean to...go ahead Sam (Sewall)."

Sewall: "Just so I understand, Ken, where we're at here, we're here to decide whether Walt acted correctly in issuing a zoning certificate, is that correct?"

Chair: "Umhummm."

Hill: "Mr. Chairman, if I may? I believe that we're here appealing a determination by Walt in his capacity as the zoning administrator for the town, and, it's my understanding, and, certainly Mr. Svare can correct me if I've misperceived what the applicant is doing here on this appeal. But, I believe that Mr. Tennyson set forth his determination about whether this structure could be repaired or replaced in letter's from August of 2007. There's a letter dated August 14th of 2007 to Mr. & Mrs. Taverni, and I believe there's a letter dated August 29th of 2007 to Mr. & Mrs. Broderick. And in those letters, I believe that Mr. Tennyson states his determination that the structure, meaning the shed in question can be repaired or replaced. I think that's essentially what Mr. Tennyson is saying. My understanding, at this point, is that the applicant

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is appealing the determination as set forth in those letters. Is that correct?"

Svare: "That's correct."

Hill: "So, I think that's the board's point of focus at this point, is those letters, and the determination that the structure can be repaired or replaced. I think the appellant here, is urging that Mr. Tennyson made an error in that determination, and that Section 9.05 of the code applies, for various reasons, as stated by the appellant, and that, for those reasons, and the application of 9.05, that the repair should not be allowed. I think, in summary fashion, I think that's where the board finds itself."

Sewall: "We just got down a whole bunch of rabbit trails, and I was just trying to pull it all together."

Hill: "Well there's certainly a variety of information that's been submitted by the various parties here to try to support, lend support for their respective positions, but..."

Sewall: "Is this still the public hearing?" Chair: "Yes."

Sewall: "You folks are of the opinion that you're going to repair this shed, I'm using your word 'shed', and, continue to use it in the consistent manner that you have been?"

Taverni: "Correct. We want to be able to put our boat and our lawn mowers and our patio furniture in there."

Broderick: "Mr. Chairman, can I ask a question? Is Walt Tennyson of the...can we ask Walt, is this a non-conforming structure? If it's one structure, are we in agreement that it's a non-conforming structure?"

Chair: "Sure, I'll ask Walt. Is this a non-conforming structure?"

Tennyson: "Yeah..."

Chair: "Based upon the ordinance?"

Broderick: "I'm sorry, I didn't hear him."

Chair: "He said yes. (pause) Do you feel differently about that?"

Mary Jane Dower (hereinafter referred to as "Dower") : "Why is it non-conforming?"

Taverni: "What is the basis for the non-conforming?"

Hill: "Walt, I guess from a legal perspective, I can try to field this question initially, and then you can amplify on this, but, if this structure were proposed to be constructed today, it would not meet the required sideline setbacks. It's in fact... apparently this structure straddles the property line, as has been indicated by the survey materials that have been submitted. So, and

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according to the information submitted about the date when it was constructed, it was apparently constructed some time prior to 1964, presumably pre-dating the town's zoning regulations, and thus, it would be considered a pre-existing, non-conforming structure. Walt, is that essentially a summary of ..."

Tape relayed to second side, answer was "yes."

Chair: "Any other comment?"

Svare: "Well, according to the zoning officer, this non-conforming 9.05 is pretty clear. Repair or restoration must...providing such rebuilding or repair be accomplished within 3 years after such damage occurs. So, irrespective of the 50% threshold, the repair has to be accomplished within 3 years. And it simply was not. And moreover, as a non-conforming structure, you look over to 9.01-b, 'no non-conforming structure shall be enlarged, expanded, extended, increased in bulk, or moved to a different portion of the lot it occupies, unless such modification is in conformance with this local law or an area variance is obtained.' Now, we've articulated many reasons why this is a change. It's being enlarged, the use is potentially being changed. It says 'garage' on the application. The application itself doesn't set forth the specifics of this project, and, so at the very least, we request that the Taverni's come back with a very detailed description of this project. All our clients are left with is 'restore and repair the roof.' Period. Well, what are the details? Obviously this has a huge impact on them. But, I think that 9.05 is pretty clear...three years. You know, it's gotta be accomplished within three years."

Chair: "Well, I agree with you on the three years, I mean that's what it says. However, I think you have to take that as a whole, that paragraph, rather than two parts, and, I mean, tell me if I'm wrong, but this says 'any structure, so on and so forth, damaged by flood, fire or so forth, to the extent of more than 50% of its assessed valuation, may be repaired or rebuilt according to its original use, bulk and area, provided such rebuilding or repair be accomplished within 3 years after such damage occurs.' My problem with that paragraph is, what happens if it's 49%? Would you agree?"

Svare: "Well, you can say that, but..."

Chair: "So that's why we wind up with this whole discussion about one structure, two structures, so on, because it seems pretty clear to me that if it's two structures, one of them is

more than 50% damaged, and if it's one structure, it's not."

Svare: "Well what's the assessed value? And, the last portion of that is provided..."

Chair: "I don't even want to know who pays the taxes on this building." (Laughter).

Svare: "...I mean, you know, the Taverni's are coming before the town, you know, proclaiming that this is a compliant project. The burden should be on them to meet these requirements." (Too many people talking at once, excitedly. Indistinguishable.

Hill: "Mr. Chairman, if I may...you're the appellant here, (indicating Broderick). You have the burden. You're asserting that Section 9.05 applies, and, it's up to you to demonstrate how 9.05

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applies in the face of a determination otherwise made by the zoning officer. So, to the extent that there's a need to demonstrate how 9.05 applies, it's up to you as the appellant to carry that burden here. So, with respect to demonstrating that there's been damage to a certain degree, or to a certain percentage of assessed value, and so on and so forth, those would be questions that you, as the appellant would carry the burden..."

Svare: "Well, the first portion of that is, it's beyond three years. There is no doubt about that. And our interpretation of 9.05 is that, the last sentence literally says, 'provided that the repair occurs within three years.' So, let's toss out the 50% threshold. That last portion literally says: 'provided it occurs within three years.' "

Hill: "I think at this point, Mr. Chairman, it may be useful...the appellants have a certain interpretation with respect to 9.05, and you, a few moments ago asked a rhetorical question 'what happens if a structure's been damaged to 49%.' Mr. Tennyson made a determination based on the letter's written back in August, it may be helpful at this point for the board to hear from Mr. Tennyson with regard to, not this particular situation, but with regard to pre-existing, non-conforming structures in general, what property owners can and cannot do, and how, in his view, Section 9.05 works. It may be useful for the board to hear that from Mr. Tennyson."

Chair: "Well, since there's no one else that necessarily wants to speak, I think we'll ask Mr. Tennyson..."

Tennyson: "Well, the structure would be..."

Hill: "Wait, before you begin, if I could just suggest, let's not talk about, in terms of your answer, let's not even address this particular property, this particular structure. If you could just simply talk about a hypothetical, pre-existing, non-conforming structure."

Tennyson: "A hypothetical, pre-existing, non-conforming structure, I would issue a zoning certificate, as long as it was being constructed within the dimensions of the structure that was previously there."

Hill: "So could an owner of a pre-existing, non-conforming structure repair it..."

Tennyson: "Yes..."

Hill: "They could?" Tennyson replied "yes". Hill: "And, could they replace it or rebuild it?" Tennyson replied "yes." Hill: "I think you're indicating 'on it's existing footprint?' Would that be the..."

Tennyson: "On it's existing footprint, yes..."

Hill: "And if someone wanted to enlarge a pre-existing, non-conforming structure..."

Tennyson: "Then they'd need a variance."

Hill: "They'd need a variance in that circumstance..."

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Tennyson: "Yes." Hill: "Okay."

Sewall: "There is no allowance for a percentage of increase in there?"

Tennyson: "No."

Hill: "And perhaps you could speak to the Chairman's question, what if a structure's damaged 10%, 20%, 30%, up to 49%?"

Tennyson: "I would issue a permit."

Hill: "In your view does Section 9.05 apply to structures damaged to a lesser percent?"

Tennyson: "Say that again."

Hill: "Would Section 9.05 apply to a structure which has been damaged by fire, flood, hurricane, whatever act of nature, to some percentage less than 50%?"

Tennyson: "No."

Chair: "So therefore the 3 years would not apply?"

Tennyson: "In this case, I don't know. I've seen nothing that says... that can prove that it was over the 3 year period. What've they got to substantiate that?"

Hill: "And would you also consider the question, in addition to the length of time between the damage and a persons' application to repair or rebuild, do you also consider the percentage of the assessed value damaged by whatever the event was?"

Tennyson: "Have I ever?"

Hill: "Well, I guess we're saying the appellants here are saying that Section 9.05 should apply. You've issued a decision which says that the Taverni's can repair or rebuild the shed."

Tennyson: "Right."

Hill: "The appellants are taking issue with that, and say that 9.05 should apply, and that the Taverni's should be foreclosed from being able to, or be stopped from being able to rebuild. They should not be able to rebuild because more than 3 years has elapsed. How do you... when you look at 9.05, do you see the 3 year time limit applying separately and independently from the other criteria in that paragraph that talk about the extent of damage being 50% or more. I think you said a minute ago that you don't see the 3 year period applying. How do you...we want to understand what your view as the code enforcement officer is."

Tennyson: "Well."

Hill: "So you don't read the 3 year period independently, you read the 3 year period as part of
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that paragraph. Is that what you're saying?"

Tennyson: "That's right."

Chair, to Hill: "If we want to ask for some more information..."

Hill: "By all means..."

Chair: "...and discuss this next month..."

Hill: "Continue the public hearing, and request the information."

Mr. Taverni: "I have an issue here. The fact that you postponed this in October for (illegible) season, you asked, Walt asked that we postpone (illegible)...you postpone it a second time, and now you're postponing it a third time. I have borne a financial burden, I've had to cover my boat for like \$250.00 and you continue to extend this, and there's nothing there...counsel's indicated they've not proven anything, but raised assertions about a building which they know nothing about, how people can build it, etc., etc. They're using innuendo and, I think, falsehoods, to try to prove their point. They've been foreclosed on a statute, both your meeting and the building inspector's meeting...and your asking us to extend it again. I think that's a bit unfair."

Hill: "Excuse me. I don't want to be, for your comment regarding my characterization to stand in the record. I don't make any determinations, and I wasn't indicating that they were foreclosed. The question is still before the board, and it's the board's determination to make."

Taverni (Mrs.): "I would just like to reiterate, again, that the building application was applied for in 2005, within the 3 year period, so even if, somehow you think that applies, we were prevented from pursuing that building by the Broderick's actions."

Hill, Chair and Taverni all talking at once...illegible.

Chair: "Okay. That does bring up one more question. The zoning certificate was issued for you folks October 21st, 2005. Why was the appeal not filed sooner?"

Broderick: "There was no building permit at that time. We didn't have any notice that a building was being...no zoning compliance form was posted for us to see."

Chair: " Okay, so you're saying...."

Taverni: " If I may, it's still not posted, because we were prevented from starting construction because we couldn't get a contractor."

Broderick: "That's not true..."

Chair: "Now wait a minute...wait a minute...what you're saying is, you were not aware that this zoning certificate was issued in October of 2005."

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Broderick: "No, I was not."

Chair: "Okay. And you became aware when?"

Broderick: "I became aware of it through the contractor's that were working on the property, said that they were gonna start work on the shed, and that was 2005. What is the date of my letter?" Discussion ensued regarding what letter, and to whom, and when written....finally ascertained that it was her letter to Walt.

Chair: "I don't know if I have that letter...I have this response. August 2007, I don't have the exact date, because he said, uh...Walter's letter in response says, 'on August 13th, 2007, I investigated a complaint filed by an adjoining landowner and wrote to the Taverni's on August 14th.'" "

Broderick: "There was absolutely no notice posted with no idea that that was going to be undertaken. And may I interject also that this spirit of the non-conforming use of the property is so most of these properties that are unlawful by the new zoning code, would be, through attrition, they would be torn down or demolished, when people had the wherewithal to build another structure. That's the whole spirit behind getting rid of some of these structures that don't comply with fire and building codes and are unsafe, and too close to property lines. So they had the perfect opportunity, when they built their new garage, when they thought that they were gonna demolish it, if it was in such good shape, why did they write 'to be demolished?' They built a new garage without thinking and planning for more storage. That's the whole zest behind non-conforming structures. The whole spirit of the law is to get rid of structures such as this. This is not a dwelling unit. It's not like somebody's living there, and they need to live there, and they need to have a roof over their head. This is non-conforming. The building permit states they want to build it in 10 feet in height. There's nothing there that's 10 feet in height. They have taken liberties on our property, so when I see 10 feet, and there's nothing of 10 feet, I'm here, to challenge this law. And when it says garage and change, I want to make sure that it's not going to be a garage with a 10 foot door. And that's exactly what they want to do."

Chair: "Okay."

Taverni: "For the record, we have stated that we would be willing to have the entire structure demolished, to get rid of the... if they want to have their side torn down."

Chair: "Okay, but that's not within our..."

Taverni: "But that's what Mr. Tennyson recommended."

Chair: Returned maps to both Taverni and Broderick, then stated: "I'm going to make a motion in a minute not to postpone this, but to continue the public hearing until next month so we can have an opportunity to think this over...if there's any more questions from the board members, we can ask them. If not, we get an opportunity next month, and at that time we'll make our decision. Just for the record, the law gives us 62 days. We're gonna try real hard not to use 62 days, but, we want to do this right. I'd like you both to submit a copy of those

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surveys, plot plans, whatever you want to call them, but, just so we have those for the file. Is there any other information, or any other questions you want to ask?" (Directed to the board).

Mrs. Dower asked when the lawsuit was going to be heard. Ascertained that it would be held in May.

Mark Cerasano, (hereby referred to as Cerasano): "Yes, if I could just address that. I think that's an important consideration. I realize that this board is certainly not bound by what the Supreme Court in Warren County does, but I think it would be naïve to not understand that, in that lawsuit, all of these issues are going to be presented to the court, and they're going to be resolved by the court. And it's going to address the issue of the common line, it's going to address the issue of the location of the shed and the garage, it's going to address what rights and interests each of these parties have to a property line, and to the property on each side of it. Both sides have asked for declaratory judgments. They've asked for clarification of their rights as adjoining property owners. They've asked for a declaration regarding the location of their line, the uses to which their property can be put, the uses to which the driveway and access can be put, these are all issues that are going to be addressed in this lawsuit. And that lawsuit is going to be tried. It's a date certain, and the court will make a decision at the conclusion of the trial that will likely have an impact on whatever issues are being presented here tonight. And I think, in the interest of preserving resources, and not duplicating efforts, at least in my end of the practice, I just think it should all be done in one place, and that forum was selected, not by us, but by the Taverni's. They're the plaintiff's, they're the ones that are going to go try to convince this court of all the arguments they're making. We have our own arguments to make. At the end of the day, the court's going to make a decision, and resolve all those issues. So, while I can certainly appreciate the fact that Mr. Taverni does not wish to wait any longer, and I don't wish to diminish that concern of his. Nevertheless, we've all waited a long time for justice to be done, and now we have a date when it is going to be done, when it will all be resolved. So I would respectfully request that, at least on behalf of the Broderick's, that this panel, this board, defer proceeding any further until these issues have been presented to the court and decided by the court, and whatever decisions made there, appealed or

upheld.”

Mr. Taverni: “If I may. The most telling word in counsel’s, was his last. Appealed. So what he is saying, in essence, I’m going to wait ‘til May or subsequently June or July, but then subsequent appeals may be back before you in 2012, or 2020. Appeals take a long time.”

Cerasano: “Well, appeals of this board, and decisions, also take a long time.”

Mr. Taverni: “So what you’re suggesting is that, perhaps, we wait another year or so after, and we will present you deposition where they have threatened our handymen in the past, and in obstructing this...it was well before 2005.”

Broderick: “That’s not true.”

Sewall: “When is this scheduled to be heard, in May?” (Confirmed, May).

Mrs. Taverni: “And, also, I take exception to the issues that there’s nothing regarding the use

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or the property line where that shed is, is clearly on our property, and the lawsuit is going to have no bearing on the ownership of that shed, and, consequently our right to make repairs to it and be able to use it.”

Hill: “Mr. Cerasano, with regard to your recent statement, and, Mrs. Taverni, with regard to your statement, if I understood correctly, the location of the property line, is, or is not a matter that the court will be addressing in litigation. Will it, or will it not address the location of the property line?”

Taverni: “That is correct. But the southern most boundary line is along the wall of the shed. It’s our contention that it should be north, and so, if we are correct, then there’s no question...(garbled), ...and they are not making any contention that it’s farther south.”

Cerasano: “But that is an issue that is squarely before the court. That’s an issue that’s already been addressed, in the numerous motions that have been submitted to the court. So, I take exception to that statement. Those issues are before the court. They’ve asked for a judicial declaration, and a judicial declaration means that both sides will present their arguments, their surveys, you can see that there are conflicting surveys, people have different ideas as to where this line is. It’s up to the court to determine where that is. And that decision may very well have an impact, certainly on the legal rights that exist with respect to the owners of those buildings on either side. As counsel well knows, there are very specific laws with regard to common walls, and to adjoining property owners. We haven’t even begun to touch on it here.”

Hill: “And the question of this wall that’s been characterized as a partition wall, or a party wall, is the court also going to be addressing that in it’s decision?”

Cerasano: “Yes, yes. That’s part of the declaratory judgment.”

Chair: “Okay. I’m gonna make a motion that we table this and continue the public hearing to

next month.”

Sewall: “I’ll second...”

Hill: “Before you take a vote on that...you said, Mr. Chairman, if I understood you previously, you anticipated a determination being rendered next month. Did you want us, as counsel to the board, to draft possible decisions for the board’s consideration in review in making a determination, or how did you want to approach this? I would, in view of the relative complexity of the...”

Chair: “Uh, yeah, I would ask you to do that.”

Hill: “Okay. Then we’ll be happy to assist the board in that regard and draft decisions for the board’s consideration. We’d recommend that under the circumstances.”

Chair: “Okay.”

Cerasano: “Will you provide me with an opportunity to brief the panel with respect to any
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relevant law, or would you like to see any of the documents that are currently before the court for clarification of the issues presented? Would it be of any benefit to you?”

Hill: “Thank you, I appreciate your suggestion and your offer, and let me ask the Taverni’s, are you represented by counsel in your suit? I assume that you are.”

Taverni: “Yes, we are, yes.”

Hill: “Then, with the board’s permission, I think what I would suggest is that if the Taverni’s are willing to provide us with the contact information for your counsel, and Mr. Cerasano...”

Taverni: “I am an attorney, also.”

Hill: “I’m sorry, I didn’t recognize that. Do you have separate counsel?”

Taverni: “I have separate counsel for the...”

Hill: “Well, then if you are willing to provide us with the contact information for your counsel, and, obviously, Mr. Cerasano, you’re with the Bartlett firm, and Mr. Svare, we know you’re with the Bartlett firm. If the board doesn’t have any objections, if, during the course of our review of what’s been submitted already, if it seems as though there’s a need to refer to any of the documents that are part of the present lawsuit, I would request those of the respective counsel, and, of course, when we receive copies, we would then provide them to the board to include as part of the record, here for your decision. Would that be agreeable to the parties involved, is that acceptable? I’m not saying that I necessarily will need information from you, but in the event it seems like it will be helpful, may I request that?”

Broderick: “Sure...”

Cerasano: "Certainly..."

Taverni: "You can always request it from me, rather than contacting...I can provide, I have full copies of all documents..."(garbled...).

Hill: "I would rather go through your counsel, if that's permissible."

Taverni: "Well, I don't really see why it's necessary for us to incur any further expense..."(garbled).

Hill: "Because I would rather not have contact with either of the parties in the matter, I'd rather work through their counsel."

Taverni: "Well, I'm appearing as counsel in this proceeding, pro se."

Hill: "Uh...with the board's agreement that I contact Mrs. Taverni in the event that I need access to any of the documentation that may be involved in the lawsuit on her side."

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Chair: "I, personally, don't see any problem with that."

Sewall: "I don't see any conflict either."

Chair: "Okay."

Hill: "So you have a motion..."

Chair: "Motion and a second..."

Hill: "...Have a second, too, and I guess I would ask, would you be willing to modify your motion to include, I don't think it included a request for draft decisions by counsel..."

Chair: "Well...yes, we'll include that, and we'll include our agreement that you contact Mrs. Taverni, or counsel, or whatever's needed...All in favor?"

All ayes. No opposed. Carried 4/0.

Chair: "I don't have the date for the next meeting..."

Secretary: "It's February 26th."

Chair: "Because it's continued, it will not be advertised, since we're announcing it at the meeting. So, we'll see you then, I assume. Thank you very much." (8:20 p. m.)

Chair called a brief intermission....

8:26 p.m.

Chair: "Okay we'll call the meeting back to order, and we'll open the public hearing on application #A-17...June Maxam, Box 408, Chestertown, uh...this is regarding, it's an appeal to a decision by the zoning administrator, and it refers to a letter that was attached to the application...it's an undated letter, but, that pretty much covers the basis of the appeal. Before we open up the meeting, there's a lot of issues in this letter that we just don't have any control over, we don't have any jurisdiction, for sure. I took the liberty of going through this letter, and for the sake of the board, and for everybody else, I realize, on the last page, there are 3 points indicated, where she says 'I am herewith appealing: 1. Mr. Tennyson's determination to allow withdrawal of variance application #379-V, and it continues; 2. The determination to allow placement of Mt. Storage sign in it's present location without a sign permit and without a variance for required front setback, and 3. Determination to allow an increase in physical size of 104.14-1-44.31 and corresponding decrease of adjacent lot.'

We are going to limit this public hearing to comments on the first two, since we don't have any control or jurisdiction over the third. I also, for my own benefit, went through this correspondence..., just let me finish, please."

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June Maxam (hereinafter referred to as Maxam): "No, excuse me. I believe you recused yourself from this, and I believe Mrs. Dower should be chairing this section of the meeting pertaining to the Charles Redmond property. And for you to sit there, and continue to go through is, is a conflict of interest, which I challenge, on the record."

Chair: "Okay. And when I'm completed, you can make your comments regarding that. Now, there's several paragraphs here, I've numbered these paragraphs, 15 for the first two pages, and on page 2, it's actually the 3rd paragraph down, starting with 'according to representations...' , this I think is something that needs to be addressed. The 5th paragraph, starting with: 'however this current sign setback'...this is pretty much related to the second point, I believe. And the last paragraph, which ends with: 'I appeal this decision to allow the sign with no permit, with only a 5 foot frontline setback,' and it continues onto the next page. So, we're going to limit our public hearing to these items, and I'm going to ask everybody to pretty much try to stick to the topics. Now..."

(Clarification asked for by the board for aforementioned items).

Chair, continues: "Now, as far as the recusal is concerned, I recused myself in the application for variance that was made by Mr. Redmond, and, I think my reasons were pretty much covered at the time. This, on the other hand, is a matter of an appeal to a determination by the zoning administrator. This doesn't directly have any relation, as far as I'm concerned to the 2 parties in the variance. It's not filed by either one of them, and it's concerning the actions of the zoning administrator, so, I see no reason why I need to recuse myself from this matter."

Maxam: "I challenge that, and ask the town Attorney to make a determination."

Hill: "Mr. Chairman, I guess the key question is, do you believe that you can be unbiased in your review and any vote that you make with respect to this matter?"

Chair: "I see no reason why not."

Maxam: "He has a pecuniary interest in this matter. He has a financial interest in this matter, in that he rents at least 4 units on the property that is currently being discussed."

Chair: "We're not discussing property. We're discussing the zoning administrator's..."

Maxam: "We are. I certainly think we are. We're discussing property on which you lease 4 units. We're discussing property #104.14-1-44.31. Do you or do you not rent units on that property from Mr. Redmond?"

Chair: "We are discussing the determination by the zoning administrator which you have filed an appeal."

Maxam: "On that particular piece of property, which is relating to the variance application, from which you recused yourself."

Hill: "If anything, the Chairman has lease payment obligations that he makes to Mr. Redmond,

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which, if, all of your appeals are ultimately successful, presumably, you would like Mr. Redmond's operation to simply go away, and in that case, the Chairman would be relieved of those lease payment obligations, so I don't..."

Maxam: "For the record, I state, if he remains on this matter, I object, and it will be addressed at a later date."

Hill: "Your objection is so noted. Thank you."

Chair: "Now, does anyone care to speak on this appeal?"

Maxam: "Yes, I do. As you know, this is a long and complicated, convoluted issue, which has an expensive history, and it's been before this board several times, as well as the Planning Board on several occasions. I have presented Mrs. Smith, the zoning Secretary, a copy of what I propose to speak on, because it contains numerous exhibits. And the exhibits are contained in that, and are all numbered."

She continues from her writings: 'This is the latest chapter in the continuing saga of the Redmond Chronicles. Once again, I would request, as I have before, that any testimony given at this hearing be done under oath. There has been a tendency to stretch the truth, on several occasions. I have no problem giving my testimony under oath. I believe the testimony of Mr. Redmond, if he speaks, and Mr. Tennyson, should also be under oath. When we left off last September with variance application 379-Vof Charles Redmond for what's known as the Mt. Storage property at 6229 State Route 9, the public hearing was left open and the matter was adjourned for Oct. 25 when it was expected a determination would be rendered.

But we never got that far. On or about Oct. 23rd, there were, by admissions of the zoning administrator, Mr. Tennyson, and an Oct. 24th letter of Charles Redmond, at least two private discussions about this matter between Mr. Redmond and Mr. Tennyson. Since that time, there has been at least one more such private meeting on or about Jan. 10, although, presumably, the town is being represented in this matter by town attorney. As of today, when I checked with the Town Clerks office, the town taxpayers have paid over \$10,000.00 for legal fees due to Mr. Redmond's antics for this property, and this particular application for a variance that is currently still before this board. However, apparently the town attorney wasn't present at any of the private meetings between Mr. Tennyson and Redmond. I always found that once a party became represented by counsel, and I think we just heard it in the previous public hearing, they could no longer could meet with or discuss settlement, etc. with the other party. That's supposedly why the town has legal counsel. I believe Mr. Tennyson's private discussions with Mr. Redmond were improper, and they were not memorialized.

The ZBA meeting of Oct. 25th was canceled and to the best of my knowledge, there has been no determination on the Redmond variance application. There has been some indication that Redmond's application was withdrawn. However, there appears to be nothing in writing from Mr. Redmond stating the same in the file, there is no procedure in the town zoning law allowing for same and Mr. Tennyson has no jurisdiction to close a public hearing and withdraw an application. There is no written determination on file by Mr. Tennyson regarding this variance application and his apparent determination to allow Mr. Redmond to relocate the Mountain

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Storage sign on or about Oct. 24th, the day preceding the scheduled ZBA meeting.

As of this date, there is no zoning certificate for this sign, or the additional signs that he has placed on this particular structure. There is no sign permit, no variance approval as is required, nor is there any zoning certificate or sign permit for the second sign which was located on the bottom of the storage sign earlier this month. (January, 2008).

At the time of the public hearing on Sept. 25, the square footage of the proposed sign was supposedly 32 sq. feet and it was Mr. Hill's determination that a frontline setback of 15 feet would be required. Since that time, and as it now exists, the square footage of the relocated sign display, which is setback only 5 feet from the front line, has increased with the addition of the second non-permitted sign to about 37 1/2 sq. feet, which, according to page 60, Section 2, paragraph of the zoning law, which became effective on June 20, 2005, requires a frontline setback of at least 17.5 feet.

Mr. Tennyson has not placed the sign in violation as required by the town zoning law, nor has he issued any zoning certificates or permit allowing the signs, or issued any written determination in the matter, nor had any variance approval been granted.

Any changes, modifications, alteration, etc. done on the Redmond property or any other property within the town, after June 20, 2005, must be done in compliance with the current zoning law. Mr. Redmond is not changing the sign fascia, he has changed the location, design, setbacks and area of the sign, and now, added a new one, all without the requisite permits.

The purported ownership of the business has changed since the issuance of the original sign permit issued for Mt. Storage on June 28, 2002 to Charles Redmond and E. Wendell Ross.

That permit and all other permits issued for that property in the name of Wendell Ross are void ab initio, based on a fraud and misrepresentation by Charles Redmond. There is no record on file at the Warren County Clerk's office or the Secretary of State's office of Wendell Ross ever conducting that business, owning that business, or leasing that business. Charles Redmond engaged in a fairy tale, a shell game, in order to circumvent a restrictive covenant. Pursuant to Pg. 98, Sect. 13.04, any permit or approval granted which is based on or is granted in reliance upon any material misrepresentation or failure to make a material fact or circumstances known by or on behalf of an applicant shall be void. I believe such is applicable in this case.

Although the public hearing on 379V has never been closed and there is no written determination by the zoning officer in this matter, in order to force resolution and a determination, presumably that Mr. Redmond is in violation and a variance is required for the sign as it currently exists, as well as other issues, I am appealing Mr. Tennyson's obvious decision to allow the signs on the Redmond property without the requisite permits, certificates, and variance.

On Dec. 3rd, 2007, in response to my Freedom of Information Law request, Mr. Tennyson states that he wasn't required to make any determination regarding the withdrawal of Mr. Redmond's variance application. I disagree. He states that he verbally advised (without witness to the conversation and apparently without legal counsel), that 'placement of the existing sign in its

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present location would be permissible.' But he hasn't issued any permits. Hasn't issued any zoning certificates. And I challenge that determination as it is contrary to the provisions of the town zoning law, as a variance for the frontline setback is required.

Mr. Tennyson acknowledged in writing on Dec. 3rd that there was no permit issued for any of the signs now existing on that property. I also challenge that determination, as it is contrary to the provisions of the town law, and, in essence, selective enforcement of the town law. In his same letter, Mr. Tennyson untruthfully states 'the town code does not have any provisions regarding boundary line adjustments, so no copy can be provided.' Such statement by Mr. Tennyson is patently untrue. He, himself, suggested a boundary line adjustment to Mr. Redmond at the Sept. 25th hearing (which, see your own Minutes in front of you), and the planning board routinely handles applications and issues permits for boundary line adjustments.

If you recall, at the public hearing on June 26, 2007, (which Mr. Redmond failed to attend), and the continuation on Sept. 25th, town attorney Mike Hill stated that the Mt. Storage sign, as proposed at that time under 379V (the same one then relocated on Oct 24th), required a minimum frontline setback of 15 ft. The sign, in its current location has a 5 ft. frontline setback. It needs a variance of 12.5 ft.

At the time Mr. Tennyson allowed the relocation of the Mt. Storage sign, without the real estate sign, the matter was still legally pending before the ZBA, and still is. There had been no approval for a second business on that property as of Oct. 24th, nor was there even an application for same at the time Tennyson allowed the relocation of that sign without permit or

variance. In fact, Mr. Redmond initially claimed there was NO second business on the property, that the office was because his real estate business was the 'rental agent' for the storage business and the state required him to display his real estate sign, notwithstanding that the state showed the address for his real estate office to be in Schroon River Forest. He then changed his story, as he has repeatedly since 2001, depending on the circumstances, and on Dec. 17th, he finally admitted at a public hearing before the Planning Board, that he was conducting his real estate business at the property and was seeking the required permit to do so---after months of denying the very same thing.

As of Oct. 23rd, at the time of the unwritten determination of Tennyson for the sign relocation to its current site, the Mt. Storage sign was, as stated in his July 2007 application, 32 sq. ft. Again, pursuant to pg. 60 (2) (b), the maximum size of any sign at the 5 ft. minimum setback from the frontline is 12 sq. ft. Not 32. Not 37 and 1/2....12. Redmond's, prior to the addition of the Red Mt. Real Estate sign, which he displayed in violation, and I have just found out today, which I had not been provided previously, there were letters written by Mrs. Dower to Mr. Redmond, informing him of same, that he needed a variance, that he could not display his Red Mt. Real Estate sign until he received a permit for his Mt. Storage sign. By law, the sign area can increase by two square feet for every one additional foot of setback up to a maximum area of 40 sq. ft. Therefore, as of Oct. 24th, when he moved that sign, a setback of 15 ft. was required as the town attorney had already determined at the Sept. 25th hearing. Thereafter, Redmond placed an additional sign on the non permitted Mt. Storage display, increasing the area, and further necessitating a variance. It should be noted that his application for the second business, the Red Mt. Real Estate business, was not filed until Nov. 2007, AFTER he had relocated the primary sign.

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There are no provisions in the town zoning law authorizing the actions that Mr. Tennyson undertook for and with Mr. Redmond, nor did he comply with the provisions of town law that do exist. He and Mr. Redmond seem to be making up the law as they go along.

Mr. Redmond has engaged in a series of intentional false statements and misrepresentations in order to try and gain approval for his changing operations. He falsely stated on his application of July 11, 2006 that an addition of the office 'was as proposed in site plan review for the second building.' I've enclosed a copy of that. It was not. The map submitted with the application for the second building did not propose any office on that property.

It is important to note that at all times, and on all occasions, the maps submitted by Charles Redmond with his various applications, which contain innovative measurements, diagrams and statements, represents the physical area of the lot in question, #104.14-1-44.31, to be 7/10 of an acre in size, which is another misrepresentation. He has actually enlarged the physical size of that lot by nearly a tenth of an acre without approval, without a boundary line adjustment, after he gained planning board approval using the 7/10 figure, and after the argument was made by adjoining property owners that he had exceeded the allowable lot occupancy and did not have adequate room for ingress, egress and parking. He can draw whatever he wants on the maps he submits, such as his 'parking' on his office proposal map, but in reality, it's just not true. He has admitted to the Planning Board on Dec. 17th, 2007, that he has, in fact, increased the lot size by moving, without application, review or approval, a fence, 15 feet south onto another lot, as, without the additional area on the south side of the second building, there

simply was not sufficient room. Approval should not have been granted for the second building.”

Chair: “This is not within our jurisdiction, you realize that.”

Maxam: “Excuse me.”

Chair: “Excuse me, you realize...”

Maxam: “No, excuse me. This is my time, it’s a public hearing. If you don’t want to consider that, that’s your determination. I have a right to present this to the board, and I am doing so.”

Chair: “You don’t have a right to give us every problem in the world that’s wrong with this situation. You have a right to discuss the matters that we will be considering. And we have a right to limit you to those matters.”

Maxam: “Ever hear of the first amendment, Sonny?”

Chair: “Don’t Sonny me...step back.”

Maxam: “I’m going to finish my presentation whether you like it or not. ”

Chair: “As long as it contains matters that we’re involved in, we’ll be glad to listen.”

Maxam: “It contains matters pertaining to Lot #104.14-1-44.31, which is the subject of this
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appeal.”

Chair: “We can do nothing about a lot line adjustment, ma’am.”

Maxam: “Well then Mr. Tennyson should not have discussed it at the last meeting. Once you raise it in your meeting, it’s fair game. You raised it, I’m addressing it.”

Maxam continues her presentation: “In essence, Mr. Redmond has increased both the frontage and the rear lotthis is why you shouldn’t be sitting there! In essence, Mr. Redmond has increased both the frontage and the rear lot line to 150 feet without approval and he STILL doesn’t have adequate room for operations and STILL has no room for snow. In gaining his approval in 2001 for the self storage business which Wendell Ross was going to operate, he flashed a sham \$100,000 sales contract with a \$100 down payment and Redmond was going to hold the \$99,900 mortgage. Neither the sale nor the mortgage agreement were ever recorded at the county. This is another reason why this entire permit and any permits that this board has issued for this property should be voided under Section 13.04 of the zoning ordinance, and Mr. Tennyson has chosen not to do his job. Mr. Redmond agreed to plow from the rear to the front with the snow piling located on the Route 9 side. After Redmond denied moving snow from within the lot to outside the lot and piling it along Foster Flats Road and was caught in his lies with photographs at the last zoning hearing, did he start plowing snow towards the front. Now he either plows it out the front gate and piles it along Route 9 or onto the rear of the

structures lot which creates an ever larger problem with drainage and runoff.

I am appealing the zoning administrator's determination to allow Mr. Redmond to violate the town zoning law, for the placement and display of two signs without zoning certificates, without the requisite sign permits, without even the requisite sign application, as I have learned this afternoon, that Mr. Tennyson sent him a letter on Oct. 29th and asked him to submit a sign application, and to the best of my knowledge, I cannot find one in the file. So therefore, the sign that currently exists there now, is even there without a sign application. So I guess that's why there's no sign permit. There's no zoning certificates, there's no sign permits, the requisite setback hasn't been met, and Mr. Tennyson has allowed Mr. Redmond to increase the physical size of the lot. Thank you."

Chair: "Anybody else?" Pause... "Okay. I've got a couple of questions for Mr. Tennyson. Is there a sign permit for this sign?"

Tennyson: "I have not issued a sign permit. I have the application."

Chair: "Okay. Did you inspect this sign, current sign?"

Tennyson: "Yes".

Chair: "I don't know if you have this offhand...do you have the dimensions and the setback? (Could not hear reply). Can you tell us what that is with regard to the ordinance?"

Tennyson: "In regard to the ordinance, well I have okayed...but I haven't done anything because there's been an appeal by Ms. Maxam. Uh...I haven't issued anything. The sign is up.

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As far as I interpret the ordinance, what he has there is allowed."

Chair: "Both with regard to the size and the setback?"

Tennyson: "Yup."

Chair: "And, is there any need for a variance application 379V to place a sign in corner of the property,,,?"

Tennyson: "Only if you consider my determination wrong."

Chair: "My understanding is, that application is for a different location. Correct?"

Hill: "You're speaking of 379V, now?"

Chair: "379V, the one that we considered."

Tennyson: " V ?...yes...there was an application for a variance."

Chair: "Was that withdrawn, as far as you know?"

Tennyson: "Yeah..."

Maxam: "By whom?"

Tennyson: "Mr. Redmond called our office, said he withdrew his application."

Maxam: "Then why isn't it memorialized in the zoning file...?"

Chair: "Mr. Redmond, did you withdraw..."

Redmond: "Yes, I withdrew that."

Maxam: "May I speak?"

Chair: "We'll get back to you in a minute."

Maxam: "Don't call us, we'll call you."

Chair: "No, you had your opportunity and you spoke, even though you shut me up, now I'd like to..."

Maxam: "Oh, so now we're gonna have a little retaliation, are we?..."

Chair: "There's no retaliation, ma'am ...it's the same way with every meeting..."

Maxam: "I'm glad this is taped. Well, I would just like to state, and I always do state...:"

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Chair: "Excuse me..."

Maxam: "That... excuse me..."

Chair: "Excuse me..."

Maxam: "No, excuse me..."

Chair: "You're out of order...sit down."

Hill: "Ms. Maxam, you're out of order..."

Chair: "Sit down...please..."

Hill: "This is an opportunity for the board members to ask questions, that's where we are, and the chairman indicated..."

Maxam: "It must be based on correct information..."

Hill, loudly: "THE CHAIRMAN INDICATED YOU WOULD HAVE AN OPPORTUNITY TO SPEAK AGAIN. PLEASE..."

Chair: "Are there any other questions?"

Sewall: "I've always got questions...so, Walt. I'm reading what you wrote...and what you're saying is...let me make sure I understand it...that, Sect. C doesn't specify distance from the lot line, and because of that, your determination is that the sign is a conforming sign."

Tennyson: "That's true..."

Sewall: "Okay...well, that's good."

Hill: "Mr. Chairman, if I may at this point, because I believe you just referred to a writing to the file that was provided by Mr. Tennyson, the zoning officer, is that right?"

Sewall: "That is correct..."

Hill: "...according to this memorandum of January 18th..."

Sewall: "Exactly..."

Hill..."I don't believe that Ms. Maxam has seen this..."

Maxam: "I don't believe I have, and I believe THAT is out of order."

Ms. Redmond asked to be recognized, and was told that she could ask a question of the board.

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Ms. Redmond: "Okay, well, it's referring to something that I seem to remember that was quoted in one of the prior meetings, that Mike had said that the sign would have to be the 17 feet back, or whatever it was, certainly not the 5 feet, where it is. And that's what the whole premise was, based on his determination, and based on what the zoning book said."

Hill: "Mr. Chairman, if I may, I would like to respond to the question being raised by Mrs. Redmond..."

Chair: "Okay."

Ms. Redmond: "Ms..."

Hill: "Ms., I'm sorry, and, thank you for raising it, because I did want to address this. Mrs. Maxam, in her remarks here, earlier this evening, referred to a determination that I had made at a previous zoning board of appeals meeting, with regard to a setback. I want the record to clearly reflect that, town counsel, neither I, nor Mr. Schachner, nor anyone else from the town counsel's office makes any determinations with respect to the town zoning code and applicable setbacks, or anything else. I think you're referring to remarks that I made at the last ZBA

meeting in an attempt clarify the determination that had been made by the zoning officer, Mr. Tennyson. He is the appropriate person, here at the town, to make initial determinations and interpretations of the town zoning code, and it's applicability. It was Mr. Tennyson's determination that with respect to the particular sign applied for, that was to be located at the northeast corner of Mr. Redmond's property, for that particular sign, that it fell under a particular provision of the code that required a setback, in that case, a setback of, I believe it was 15 feet..."

Ms. Redmond: "It's the same sign..."

Hill: "...with some additional setback, perhaps, depending on the size of the sign. Mr. Tennyson has made a different determination with respect to the existing sign, that it falls under a different provision of the code, and that's what was referred to here earlier. And that's what Ms. Maxam was handed a few minutes ago..."

Ms. Redmond: "But it's the SAME sign...so what you're saying...if it had been in the northeast corner, it would have had to have been the 15 feet back. But, this same sign, being it's located where it is, doesn't...and along the same boundary line in the front, doesn't need to be 15 feet back?"

Hill: "I would have to refer you to Mr. Tennyson's determination as memorialized in the memorandum to the file of January 18th, a copy of which Ms. Maxam has right there. And perhaps that will further explain. But, Mr. Tennyson has determined that the existing sign is governed by a different provision of the town's sign regulations. And so, therefore, for that reason, there's no setback, 15 foot setback that's applicable to that sign. And that's explained in the memorandum to the file, where he explains his determination."

Ms. Redmond: "Doesn't the zoning book specifically say that?"

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Hill: "You would have to, again, read Mr. Tennyson's determination, and refer to the specific provisions of the zoning code, he's determined that the sign, the existing sign in the present location is governed by a different section of the code than would have governed the sign for which he made application for a variance, and which was proposed to have been located in the northeast corner, at the northeast corner of his property."

Ms. Redmond: "Have you been on the property and actually viewed the sign?"

Hill: "I personally have not been on the property, no."

Ms. Redmond: "Okay...answered the question."

Chair: "Is there anyone else has anything to say about this?" Pause... "Ms. Maxam, yes..."

Maxam: "I would like to question why this so-called determination was not issued until January 18th of 2008. The sign was relocated to the current position on October 24th. Mr. Tennyson claims that he was holding off his decision until, because I had an appeal. I think if you'll check

with the zoning office, my appeal wasn't filed until sometime afterwards... in late November. Mr. Tennyson's story doesn't hold water, and that's just what it is, is a story..."

Chair: "Ma'am..."

Maxam: "Whether or not I have an appeal pending, what does that have to do with why there are no zoning certificates, no sign permits? And I still dispute the fact...I don't believe there's a sign application for the current sign...there's a drawing in the file, but I find no application for it's current location."

Chair: "I don't think it's fair that you characterize the determinations of the zoning administrator, or the decisions that have been made. You can state what they are, you can object to them...you don't have to agree with them. But they're not 'so-called.' They were done. This memorandum..."

Maxam: "So you're stating...that this was a done decision?"

Chair: "Don't twist my words..."

Maxam: "I'm not twisting your words..."

Chair: "This memorandum..."

Maxam: "...I'm asking you to clarify your words..."

Chair: "This memorandum was written on January 18, 2008 to the file by Mr. Tennyson..."

Maxam: "Two months after the appeal to his non-determination. What took him 2 months to do this...?"

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Chair: "Do you want to hear why?"

Maxam: "Oh, this ought to be innovative...sure..."

Chair: "This memorandum was written to the file...this wasn't written to any person, any individual...uh...excuse me, now it's my turn..."

Maxam: "Excuse me, but I haven't said anything..."

Chair: "Well DON'T. This was written to the file..."

Maxam: "EXCUSE ME..."

Chair: "NO! I won't excuse you. This was written to the file..."

Maxam: "Well I'm sorry, but I'm going to speak. I was in the zoning office today, this

memorandum was NOT in the file. Today is January 22nd. If it was written to the file, where was it on January 22nd?"

Chair: "This was written for the benefit of the board."

Maxam: "Well then, now we're twisting words."

Chair: "I didn't twist anything. All you had to do is..."

Maxam: "You said it was written for the file, you didn't say for the board..."

Chair: "Well, excuse me...but the board reads the file."

Maxam: "Well, excuse me..."

Chair: "Does anybody else have anything to say in this matter?"

Maxam: "This is why you should not be sitting in that position. Mrs. Dower did a much better impartial situation, but then again, she didn't have any interest in the property..."

Chair: "I'm sure she did..."

Maxam: "She did..."

Chair: "Well, I'm sure of that..." Pause... Addressing the board: "Is there any need to continue the public hearing?"

Sewall: "I was just about to make a motion that we close it."

Hill: "I think you probably want to, before making a motion, ask the public once again if anybody has anything further that they wish to comment on, or add, at this point."

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Chair: "Okay. Any other comments anyone would like to make?"

Mr. Redmond, recognized by Chair: "I'd just like to clarify a couple things. A.) I did withdraw my request for a variance for the sign being placed on the northern part of my lot, which was for a single sign. The location now, in the application for a sign permit, is for a multi-use, which I've been through Site Plan Review for, and have obtained, and it's for two signs, all incorporated in one. Okay? That's just for clarification. And uh, that's basically it, and that's the reason why the confusion about the setback. That's all I have to say."

Chair: "Thank you. Anyone else?"

Maxam: "Yes, I think it should be clarified that the approval given at the Planning Board meeting was for the conduct of a second business. It had absolutely nothing to do with signs. They said they didn't have jurisdiction for a sign, so Mr. Redmond's comment is improper...not correct."

Mrs. Dower: "How big is this sign?"

Tennyson: "The sign is a total of 37 and ½ square feet...of the two signs."

Chair: "Any other comments?"

Hill: "Before you close the public hearing or entertain a motion, would you allow me to ask a question or two of Ms. Maxam?"

Chair: "Sure..."

Hill: "Ms. Maxam, in your letter accompanying your appeal application, on the last page there are 3 items noted that you're appealing. You state that you are, first of all, appealing Mr. Tennyson's determination to allow withdrawal of variance application 379V, and refuses to place his determination in writing pertaining to relocation of the sign. With regard to the withdrawal of the variance application, I think we've heard here tonight that Mr. Redmond withdrew his application, called the zoning office to withdraw his application, and I guess I would ask, for the record: 'Did you ask, Mr. Tennyson, did you make any determination with regard to Mr. Redmond's withdrawal of his application, or does the code, as you understand it, does the code require you to make any determination with regard to you allowing an applicant to withdraw a variance application?'"

Tennyson: "Not that I know of."

Hill: "Ms. Maxam, is there any part of the code that you're familiar with that would require the zoning officer to render a determination with regard to an applicant's withdrawal of a variance application?"

Maxam: "Not within his jurisdiction, it's within the board's. The application was before the Zoning board of Appeals."

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Hill: "Okay...alright, thank you."

Maxam: "However, I do believe it was Mr. Redmond's responsibility, as well as Mr. Tennyson's, to memorialize that. There's nothing in the file that so states that there is any withdrawal."

Hill: "Alright, I'm not sure...is there any particular section of the code that you can point us to that requires a memorialization of withdrawal of a variance application?"

Maxam: "Well let me research that, and I'll get back to you."

Hill: "Okay...that would be fine."

Redmond: "If I may? I made the notification to the Secretary of this board."

Secretary: "You called..."

Redmond: "Yes. I called."

Secretary: "There was no written..."

Redmond: "No... no, no, no. I'm not saying there was a written. I'm saying I verbally contacted the Secretary of this board. Is that correct?"

Secretary: "You did, yes...you did."

Redmond: "I'm a lay person, but I believe that's official..."

Hill: "I don't think I have any further questions. Thank you."

Chair: "Anybody else?"

Mrs. Dower: "It still says the maximum size for any sign at this 5 foot minimum distance shall be 12 feet. That's still...it's in the book. Any free standing sign. For a single sign...is there more than one sign there?"

Redmond: "It's for a multiple purpose, multiple business...it's different."

Tennyson: "It's two signs."

Mrs. Dower: "Where's that?"

Tennyson: "Section 7.04."

Maxam: "Approval for that wasn't given until December 17th for a second business on that one."

Chair: "7.04, but you're talking about paragraph 2-c, as opposed to 2-b, is that correct?"

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Tennyson: "Say that again..."

Chair: "I'm looking at page 60, which is all 7.04. Number 2, Business signs, a, b, c, d..."

Tennyson: "C."

Chair: "Okay, this is based on C, as opposed to B."

Tennyson: "Right. Not B, ...C."

Maxam, recognized by Chair: "As I read Section B, it allows a sign of 12 square feet at a minimum of 5 foot setback. So, are what you trying to tell me...that a 40 square foot sign, which is obviously 3 and...almost 3 and 1/2 times the size...can be closer to the road than a 12

square foot one?"

Chair: "We're not trying to tell you anything."

Maxam: "No, that's exactly what direction you're going, and it doesn't make sense."

Chair: "Well, I really object to you saying that, because..."

Maxam: "Well, that's too bad, then I guess, you know what? We're all going to Supreme court, just like the Broderick's, and we'll let the court rule. How does that grab you. Because, obviously, you have no impartiality, and you've demonstrated it over, and over, and over."

Chair: "Are we ready for a motion?"

Hill: "I think that it would be important at this juncture, and appropriate, for you to reiterate that you've determined that you can be impartial in your review and any decisions you make with respect to this matter, so that's on the record. I would encourage you to reiterate your statement in that regard..."

Maxam: "That doesn't mean it's so, just because you encourage it, and, by the way, I object to this going on, because you seem to be benefiting to the tune of over \$10,000.00. The more we let this proceed, the more you gain, and you seem to be the one benefiting the most from this..."

Chair: "Okay...I feel that I can be impartial in this, and I've stated my reasons before, and I still have not changed my mind. I object to the idea that I've predetermined any kind of a decision. I think what needs to be done here is, the board needs an opportunity to discuss this..." Recognizes Ms. Redmond.

Ms. Redmond: "I would like Mary Jane to go a little bit more into what her thoughts are, and when she's reading out of the zoning book about the size of the sign ..."

Chair: "Well that's not part of the public hearing. That's part of the board discussion, and I think that's going to take place next month, public meeting."

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Maxam: "You're postponing a decision on this for a month?!"

Chair: "Yes, ma'am."

Maxam: "Mr. Hill...would you accept case law?"

Hill: "Well, I know that under New York State law, the Zoning Board of Appeals has 62 days of the close of a public hearing within which to render a decision..."

Maxam: "That wasn't my question...Application 379V's been open since last April, so, what the hell...what's another 62 days? My question was, will you accept case law?"

Hill: "I'm sorry, I don't see any need to...for any recourse to case law, because statutory law is directly on point, and allows the Zoning Board of Appeals 62 days from the date of the closing..."

Maxam: "No, that's not what I'm arguing... I'm not arguing your 62 days..."

Hill: "I think you asked, rhetorically, a moment ago, was the board going to wait and make a decision at some later time..."

Maxam: "No, actually, I had my hand up before to ask if you would accept case law, and then he interjected 62 days... That had nothing to do..."

Hill: "I'm sorry, I thought you were asking whether I would accept case law with respect to the question of the 62 days. I'm sorry, I misunderstood you..."

Maxam: "No...I'm well aware. Trust me...I'm well aware of procedural angles of this. I am asking you if you will accept case law in regard to this matter?"

Hill: "It's not up to me to accept anything. It's up to the board to accept, and whatever you want to submit, and that you want to be part of your submission for the boards' consideration, then I would encourage you to submit whatever it is that you want to submit for consideration, and they'll, of course, give it to me, if they want me to review it. So, whatever you want..."

Maxam: "Well, at \$140.00 an hour. I still...Mary Jane has exhibited tonight, exactly why she should have continued this hearing. It wasn't a continuation of the hearing, but she should have conducted this hearing tonight. Mary Jane has absolutely nothing to gain, one way or the other. She has demonstrated over the years that she can be fair and impartial. Mary Jane should have conducted the meeting tonight, and I still establish, on the record, my objection, that that gentleman, acted as the chairman."

Hill: "And your objection is duly noted, again. Thank you. You have a motion before you to close the public hearing...?"

Chair: "No, not yet..."

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Hill: "Are you withdrawing that motion?..."

Sewall: "No, I said I was getting ready to make a motion..."

Hill: "Oh, I'm sorry... Before you make that motion, if I may interject, at this point, I would suggest the board, given the complexity of the issues involved here, that you consider having counsel draft written decisions for your consideration and review in this matter."

Redmond: "If I may? If this is going to be adjourned...could I request that it be adjourned for two months? I will be not present next month when your normal meeting takes place."

Maxam, to Redmond: "Well, I don't think we need you..."

Redmond: "I will be out of the ... I think I have a right to be here..."

Exchange between Redmond and Maxam, Chair intercedes...

Chair: "Okay...okay...okay. That's enough from everybody. I'm inclined not to do that, because if we go two months, we're gonna be really, really close to a 62 day limit. Number 1, number 2, I don't think we need 62 days.. Number 3, as a practical matter, we don't have a meeting every month. We know there's gonna be one next month, and I think I'm gonna pretty much stick to telling everybody we will make our determination at that time."

Hill: "Well, in that regard, I think you can say that you'll review a draft decision at that meeting, and there will at least be a possibility of you making a decision..."

Chair: "Well, we'll review, and we'll definitely discuss it at the next meeting, and, since we're keeping the public meeting open for the sake of anything else that might come along, we can do all of that, if necessary. But, I really hesitate to jump a month...I mean, it's been how many months already? And the other reasons." Recognizes Mr. Sewall.

Sewall: "So my motion is that we continue the public hearing to our February 26th meeting, and request from counsel draft decisions in regard to this matter."

Chair: "And I think we should add to that, that we could consider at that time any other submissions to the file that might be made. We've always done that, anyway, but.."

Sewall: "I'll agree with that..."

Chair: "Maybe it ought to be included. Do we have a second?"

Motion seconded by Mr. Findholt, carried 4/0, no opposed.

Chair announced that we've had a request from Counsel to move the time of the meetings from 7:00 p.m. to 6:00 p.m. partly because Brant Lake has their ZBA meeting on the same night, represented by same counsel. Part of the request is that anyone being represented by counsel be considered first on the agenda.

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Mr. Hill explained that it would reduce expenses, having counsel present for those issues that might be controversial, and the board dealing with those matters that were less so, with counsel being allowed to leave, to promote efficiency. Chair asked if everyone could make it at 6:00 o'clock. At this time of year, does not appear to be an issue. Secretary offered to notify the Broderick's and Taverni's of the change in time.

Determined that February meeting would convene at 6:00 p.m.

MINUTES: Mrs. Dower ran this portion of the meeting, as Mr. Marcheselli was not involved in the June 26th, and Sept. 25th 2007 meetings, having recused himself. On a motion by Mr.

Sewall, seconded by Mr. Findholt, the minutes of the June 26th and Sept. 25th meeting were accepted, as presented. Carried 4/0. Mary Jane commended Secretary for a job well done on the Sept. Minutes. (Thank you Mary Jane!!!)

Maxam: "I'd like to know the status...are you gonna close, open, continue, or what...application #379V. It remains open."

Chair: "I think we're gonna make that a part of our determination."

Sewall: "My question to counsel is, 'do you view it as open, or do you view it as withdrawn?'"

Hill: "I think the indication this evening was that a request was made to withdraw the application, and I think that moots the issue of the status of the application."

Maxam: "But I don't think Mr. Tennyson has the authority to (garbled...) to withdraw the application."

Chair: "Can you make that part of your opinion? Because that was one of the basis of the appeal."

Maxam: "And please cite the section of ordinance that you are referring to."

Hill: "Cite the section of the ordinance that I was referring to?"

Maxam: "If you're gonna say that Mr. Tennyson has the authority and jurisdiction to allow the withdrawal of an application, please so site the section of the ordinance which allows that."

Hill: "Uh...if you thought that I said that tonight...then apparently...(taped relayed to second side...conversation lost).

Maxam: "Well I'll just wait for the determination, and we'll go from there."

On a motion by Mrs. Dower, seconded by Mr. Sewall, the meeting adjourned at 9:30 p.m.

Respectfully submitted,

Patricia M. Smith ~ Secretary