



(Whereupon, the Zoning Board of Appeals was called to order at 6:05 P.M.)

MR. DUQUESNE: Please keep your microphones muted unless you're actively speaking. Thank you.

Do you need a few moments?

CHAIRPERSON BUNTING-SMITH: No, I think I'm good.

MR. DUQUESNE: Very good. When I hit record you see that active we are all set.

CHAIRPERSON BUNTING-SMITH: Thank you so much. All right. So thank you all for being here this damp -- I was going to say afternoon, but I guess it's into evening now.

The Zoning Board will now come to order for the Town of Greenburgh. It is April 15th, 2021. We have six cases scheduled on today's agenda. Please note the Zoning Board about will have our next meeting on Thursday May 20th.

As usual, if we cannot complete hearing any case today it will be adjourned to another meeting to hopefully be completed at that time.

Also as is usual, to save time we will waive the reading of the property location and leave sought for each case; however, the Reporter will insert information in the record. This information also appears in the agenda for today's meeting.

After the public hearing of today's cases, the Board will meet in the Zoom Room to discuss the cases we have heard today. Everyone is welcome to listen to our ethics, but the public will not be permitted to speak or participate during our

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deliberations.

After our deliberation, we go back on the formal record to announce the Board's decision for that, whatever we have accomplished this evening, and provide that information to the community.

If you're going to speak today, please clearly state your name and address, or your professional affiliation. If you're not the named applicant please spell your name for the record.

We have heard testimony on some of the cases in prior meetings. All prior testimony is already in the record and please should not be repeated.

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ZBA Case 21-03 - The Town of Greenburgh Planning Board requesting an interpretation of the Town of Greenburgh Zoning Ordinance regarding the applicability of Section 285-10(A)(4)(b) thereof to a proposal before it for a Battery Energy Storage System (BESS) in a One-Family Residence District. The property on which the BESS facility is proposed to be located is at northwest side of Knollwood Road, 400 feet north of the intersection of Knollwood Road and Old Tarrytown Road, in an R-30 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 7.341-168-1.

ZBA Case 21-04 - The Council of Greenburgh Civic Associations, for an appeal related to an interpretation of the Town of Greenburgh Building Inspector regarding the applicability of Section 285-10(4)(b) of the Code of the Town of Greenburgh, in connection with a Battery Energy Storage System (BESS) proposed in a One-Family Residence District. The property on which the BESS facility is proposed to be located is at northwest side of Knollwood Road, 400 feet north of the intersection of Knollwood Road and Old Tarrytown Road, in an R-30 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 7.341-168-1.

CHAIRPERSON BUNTING-SMITH: Today's first case to be heard is actually two cases, since we are hearing them in conjunction. They are Case No. 21-03 and 21-04, which are Town of Greenburgh Planning Board and also the Council of Greenburgh Civic Associations.

Who is going to speak this evening, to start things off?

I don't hear anyone.

MR. SCHWARTZ: Walter, you're on mute.

MR. SIMON: Same chair Smith I

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would like to start.

CHAIRPERSON BUNTING-SMITH: All right.

MR. SIMON: However prior to my presentation I request that the Chair allow Mr. Bernstein to provide a brief presentation of a critical point of the law that has direct bearing on the question of the Planning Board timing for filing an appeal.

This will immediate lead into my and Mr. Schwartz's comments. In addition after my and Mr. Schwartz's comments I request that Mr. Bernstein provided the opportunity to complete his presentation with comments regarding additional concerns of his client, the Council of Greenburgh Civic Associations.

CHAIRPERSON BUNTING-SMITH: Okay, Mr. Bernstein.

MR. BERNSTEIN: Good evening, Madam Chair and members of the Board.

Mr. Sciarretta, on behalf of his client, has repeatedly argued that the Planning Board cannot ask the Zoning Board of Appeals for its interpretation of the Zoning Code because its request is untimely.

He bases his timeliness argument on contentions that the Zoning Board of Appeals's jurisdiction to hear requests by the Planning Board for interpretations of the Code is limited to appeals of interpretations of the Code by the Building Inspector, and that such appeals must be filed within 60 days of the filing by the Building Inspector of his interpretation; which, by the way, must itself be filed in his office within five days of its having been issued, and which must be a public record.

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There has been much discussion by Mr. Sciarretta, by the Zoning Board of Appeals, and by the Planning Board representatives as to whether the Planning Board knew the Building Inspector made the relevant interpretation as early as September 18th, 2020, when he checked the box on the form he forwarded to the Planning Commissioner, indicating he did not believe any variances were required or as early as November 4th, 2020, when the Planning Board was told in Mr. Sciarretta's presence on Zoom -- that the Building Inspector had given a verbal opinion that the application was code compliant. And it appeared to satisfy the requirements in Residential Zoning Districts of a public utility structure.

However, none of this matters. Because the Zoning Board of Appeals, in Greenburgh, has the legal authority to interpret the Zoning Code upon a request by the Planning Board to do so, without regard to whether the Planning Board satisfies timeliness requirements for an appeal of the Building Inspector's interpretation, which, in any event they do satisfy. But the point here is they don't need to. They have a separate basis to be heard by the Zoning Board of Appeals upon their request for an interpretation.

Let me explain why this is so. Under Town Law 267-(A)4 it states "unless otherwise provided by local law or ordinance, the jurisdiction -- the jurisdiction of the Board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article."

Here, our, the Greenburgh Town Code does provide otherwise, just as the state

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law provided it could if it wanted to.

Town Code Section 285-48(A) entitled Interpretation, states that pursuant to Section 267 Town Law, the powers of the Zoning Board of Appeals are expanded as permitted by Town Law 256(A). So that the Zoning Board of Appeals's "power and authority to decide any question involving the interpretation of any provision of this chapter" may occur "on an appeal from an order, requirement, decision or determination made by the administrative official," -- and here are the key words "or on a request made by an official board or agency of the Town."

Let me repeat, "on a request made by an official board or agency of the Town" were the words added to the Town Code to give the ZBA the authority to decide interpretation questions that are raised by the Planning Board, to this Board, the ZBA.

Those words, added Town Code mean that the ZBA has legal jurisdiction to consider a request for interpretation of the Town Code made by the Planning Board, and that such authority is not limited by the requirements of an appeal like that the request be made within 60 days of the filing of the decision of the administrative official whose interpretation is being questioned; or, indeed, that the Planning Board even be aggrieved. It doesn't have to. It just needs to make a request, which it did.

This clear distinction between the rights of the Planning Board to ask the ZBA for an interpretation of the Town Code, and the rights, let's say, of a civic group like the C.G.C.A. to file an appeal from that decision is reflected in the ZBA's agenda for this case, which clearly delineates that the Planning Board is seeking an interpretation of the Town Code while the C.G.C.A. is appealing from the Building

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Inspector's determination. That is what I wanted to bring to everyone's attention. And with that I will defer to Mr. Simon.

MR. SIMON: Thank you, very much. Mr. Bernstein, clarification \* barring based on.

MR. SCHWARTZ: Excuse me, Walter. Garrett, can you give me control of the screen, please?

MR. DUQUESNE: That's enabled.

MR. SCHWARTZ: Thank. Sorry, Walter.

MR. SIMON: Based on Mr. Bernstein's citing of the applicable law, there is no time limit as to when the Planning Board can request a ZBA ruling on the Building Inspector's interpretation of the Code. Consequently, I believe that the time limit issue is moot as applied to the Planning Board's Eagle application.

I did, however, gather additional information that demonstrates that the Planning Board met the 60-day window, even if it was required By Law, which it is not.

Unlike the transcripts, the minutes are a summary -- not verbatim -- description of events of the meeting. And while Judge Adler was correct in noting that the minutes in the November 4th, 2020 said "confirmation," the emphasis by the ZBA on the word caused me and others -- Hugh Schwartz, Aaron Schmidt David Fried, Matt Britton -- to go back and watch the tape and/or read the transcript.

It confirmed the conversation between Mr. Schwartz and Deputy Commissioner Schmidt regarding the existence of an official report of the Building Inspector's determination.

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Hugh, could you insert that? Hugh, are you able to play that insert?

MR. SCHWARTZ: You didn't hear it? Hold on. Sorry. I'm on mute? Am I on mute? Did you see my screen?

MR. SIMON: No, I didn't see your screen.

MR. SCHWARTZ: Garrett, I need to share the screen. Okay, I got it. Okay. Hang on, guys. Sorry about that.

Let me start from the beginning, if I can. Hold on.

Okay. Sorry about that. Here you go. Sorry.

MR. DUQUESNE: When you share a screen, I think you have to enable share audio.

MR. SCHWARTZ: Can you hear it?

MR. DUQUESNE: No.

MR. SCHWARTZ: Does the share audio? Hold on. Sorry about that. Let me do that again. Hold on. Garrett, I have to share audio?

MR. DUQUESNE: I'm trying to get back to the big screen.

MS. KNECHT: Are you on Power Point?

MR. SCHWARTZ: Yes.

MS. UEBERLE: If you go into presentation mode it should share when you click through and should share the audio.

MR. SCHWARTZ: I apologize, guys. I wasn't doing it in presentation mode, but I can do that.

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MS. UEBERLE: If you're in presentation mode it won't share videos often. I have to go to slideshow.

MS. UEBERLE: Go into presentation mode, slide show.

MR. SCHWARTZ: That's what I tried to do. What the heck? It's not going into presentation mode for me. I got it. You're right. Present on line. Okay. It should work.

It's uploading. Hold on for one second.

MR. DUQUESNE: I would recommend stop sharing and then once sharing I guess you're ready. You can give it a shot now.

MR. SCHWARTZ: Let me see if it works. Hopefully it will, guys. I'm sorry.

MR. DUQUESNE: I would stop share. When you reshare.

MR. SCHWARTZ: Didn't? Still didn't work?

MR. DUQUESNE: No.

MR. SCHWARTZ: The problem I'm having is getting back into the whole screen now. There it is.

MR. DUQUESNE: I just did that for you.

MR. SCHWARTZ: On share screen what do I do, Garrett?

MR. DUQUESNE: Before you hit the share in the lower left it says share sound, you would enable.

MR. SCHWARTZ: I see that. Now hit share again?

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MR. DUQUESNE: Yes.

MR. SCHWARTZ: Okay, that should work. I hope. Hopefully this will work. It's frustrating.

(Whereupon, the recording was played for the record. )

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\* COUNSEL: I will check in with Commissioner Duquesne. My understanding is we did get a verbal from the Building Inspector that it does meet the Special Permit criteria and does fall under the Special Permit, I should say.

MR. SCHWARTZ: First of all, I think that we're already or should have in writing as part of the record a written decision from the Building Inspector that it fits the code as written.

MR. SIMON: This does verify that we've got nothing -- we just had verbal communication. Okay. I'd like to move on to the next point.

In the transcript at one hour and about 15 minutes into the video recording Mr. Schwartz requested, and via Deputy Commissioner Schmidt asked for a written opinion from the Building Inspector. Could you go over that part of the record where I specifically ask for a written opinion?

MR. SCHWARTZ: I have the clarification, Walter, not a written opinion. That's what I have.

MR. SIMON: Okay. So we'll do that. But before I say why I want to put that in, if we go to the -- if we go back to the transcript-- which I went through the transcript-- and what I did is I found eight different references to the word "confirmation" as opposed to clarification.

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And we went back to the transcript. On page 25, Chairperson Bunting referred to the Inspector's determination that could be confirmed. Used the word "confirmed."

On page 25 and 26 of the transcript, again, Chairperson Bunting-Smith referred to "confirmed" in writing. On page 26, again, the Chairman and Mr. Schwartz referred to "confirmation." On page 27, Mr. Adler referred to the word "confirm." And again on page 27, "confirmation" was used by Mr. Schwartz.

Mr. Sciaretta referred to the "confirmation." So all done. The last presentation there was during -- all during there was a focus on the word "confirmation" and "clarification."

However, play that clip and the idea that at one point it went as far as Judge Adler saying that confirmation in -- let me not misquote the judge. But he said confirmation -- oh, I have the actual quote in front of me.

And while Judge Adler was corrected in noting that the minutes of November 4th said "confirmation," the emphasis by the ZBA, and the word caused me and others to go back and look at the record. Because one of the statements that was made by Judge Adler, that "confirmation" implies that I had prior knowledge, and I really understand what the Building Inspector was saying by the use of confirmation.

But if you go back in the record -- which we did -- and listened to the transcript, I did not ask for confirmation. I asked for clarification of the Building Inspector's determination, and that's what I like to be played so you could see.

I never said "confirmation." And the record at the last meeting of the Planning Board, we went over that and we

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amended the minutes of the November 4th meeting to what the statement I actually made, and a copy of the amended minutes was sent to the ZBA.

So those are now the official minutes from the Planning Board that is corrected and is consistent with the transcript, and it's consistent with the audio. I never said "confirmation." I requested "clarification."

So could you play that, Hugh?

MR. SCHWARTZ: Yes.

(The video recording was played.)

MR. SCHWARTZ: So there it is. That's the official record, that I asked for clarification. So any doubt in among the ZBA or the applicant that I said "confirmation" and had prior knowledge of intent of the Planning Board, it is just not the case.

You should then conclude that, if there is any question as to whether the Planning Board sought a confirmation indicating that it knew exactly why the Building Inspector thought the Special Permit criteria applied, it is now clear from watching -- the meeting that the Planning Board did not watch in the meeting in this case listening to the video. Did not.

This would counter Judge Adler's comment upon page 22 of the transcript. When someone asked for something confirming in writing it's arguably that they know what is going on. They are not asking questions. They have been told something, but we want to see it officially in writing.

So I'm having trouble following the logic that you weren't aware of finding of the Building Inspector. That is the direct

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quote. I was unaware of the finding of the Building Inspector. So the record -- that's inconsistent with the record. That's not so. And with all due respect to Judge Adler, I have trouble with the reference to the Building Inspector's interpretation is a finding.

So I conclude by affirming that the reason for this appeal is to obtain a ZBA finding of the Building Inspector's determination regarding the Eagle submission.

While it's interesting to note that the appeal by the Planning Board is unprecedented, that fact in and of itself is not germane to the ZBA findings. And neither is Mr. Sciaretta's reference to the case that came before the ZBA in the Town of Whitestown -- Whitestown, New York, and the Village of Blasdell, New York.

At this point Hugh Schwartz will add additional Planning Board comments. Thank you very much.

MR. DUQUESNE: Mr. Schwartz. Thank you, Chairman Simon.

CHAIRPERSON BUNTING-SMITH: One second, please.

I would just like the record to accurately reflect, the references that Mr. Simon made to Judge Adler perhaps should have been better phrased as board member.

And the only reason I'm saying it is that it we don't want to have there be confusion in somebody looking at that record, assuming that the Board Member Adler made some type of involvement in this as a judge. That's all.

MR. SIMON: Thanks for that correction. I'll be very careful not to use that phrase again.

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MR. ADLER: Could I make a statement about that?

CHAIRPERSON BUNTING-SMITH: Sure.

MR. ADLER: Absolutely. The Chairperson is absolutely right. I'm Les Adler. I'm no longer Judge Adler.

However, what nobody on the Board probably knows -- I told Ed Lieberman. The Chief Judge of the State of New York yesterday made an announcement that she's calling back the 60 judges that she relieved of their responsibility because of budgetary concerns.

As I sit here now, I don't know whether I will go back or not. If I go back I'll say goodbye to you. If I don't go back, I'm Les Adler for the rest of my career. Thank you.

MR. SIMON: Thank you.

MR. SCHWARTZ: Congratulations, less, I think. One way or other. You know that Greenburgh would miss you if you went back as a judge.

MR. ADLER: Thank you.

MR. SCHWARTZ: Good evening, members of the Zoning Board. I'm Hugh Schwartz. I'm vice chair of the Planning Board.

I'm going to really address some of the most recent correspondence in my presentation, that came in the last week or so. I have to put some of it in perspective, however, as well, sharing Mr. Sciarretta's most recent letter to the ZBA in continuation of his attempt to move the case of the Planning Board received and the Building Inspector's opinion, and was of the Building Inspector's opinion.

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First, it was sent with the initial document that was produced. When the record clearly show that the Planning Board never even received this document, he pivoted at the last hearing to November 4th, the first time we became aware at all of the opinion.

Then it was pointed out that New York law requiring a decision to be in writing. And it is most recent letter to the Zoning Board of Appeals, he pivoted again to the Planning Board staff report of October 16th, 2020.

That report had one line that referred to the Building Inspector's determination, and it's a very interesting line. It's under the heading of "variance" in the report. We get a staff report before we meet with the applicant in work session that came in on October 16th.

That the quote from that was highlighted in Mr. Sciarretta's letter exhibit 5, "Variance. The application has been reviewed by the Town Building Inspector who has determined that no area variance is required in connection with the project." Area variances. Understand that.

This may be relevant except the issue at hand has nothing to do with area variances. The issue is use, which is why on the day I first read the staff report -- which was the day of our first meeting with Eagle Energy on October 21st -- I questioned that you, in a residential zone, despite several requests for written determination nothing -- not even the initial document on which Mr. Sciarretta has claimed he relied -- was produced by the planning staff, the Building Inspector or Mr. Sciarretta until November 12th, 2020.

Hence, if a start date is required -- which is really in serious question based on Mr. Bernstein's good

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research -- the date would have to be November 12th and our appeal would be timely.

Now I want to turn to whether the Building Inspector's determination was correct.

Mr. Sciarretta relies in or \* the pan decisions from the Town of Whitestown and Village of Blasdell approving one case solar farm and the other case is bat -- I won't go into detail. But in neither case do they have specific -- a specific definition of a public utility as Greenburgh Zoning Board. Here is what I found.

Whitestown public utility says, includes offices and secondary uses of glass, electricity, water, et cetera, et cetera. It says nothing about whether it's to the public, if it has to be directly to the public. It says nothing about that. Blasdell has absolutely no specific definition in the code on public utility. I couldn't find one anyway.

The code refers to utility without a specific definition, and allows utility structures provided they meet the minimum setbacks for the zone, for that particular zone, as well as some other specific parameters like screening.

Contrary to what we have in Greenburgh -- which is very specific -- saying they have to be authorized to furnish it to the public. It says it very, very clearly. So what are the issues with -- how do we determine whether Eagle Energy under the Greenburgh code whereby -- which is the only thing that matters here -- you know, the comments by Ms. Bruckner at the last meeting were really not relevant, neither is Whitestown or Blasdell. We don't live in either of those towns or villages. We live in Greenburgh. And we are bound to the code of Greenburgh, and that's the only thing in

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front of us tonight.

Under that, the first thing is Eagle Energy is not a public utility under Greenburgh code. First of all, because the applicant at the November 4th meeting Mr. Robertson actually -- when asked about this -- said they weren't. Let's take a listen.

(Video was played.)

MR. SCHWARTZ: I'm not having good luck today with that. Shoot. I'm sorry. Here it is.

(Video was played.)

MR. SCHWARTZ: You can't even be sure it goes to the public. Where the energy is used is actually determined by NYISO, not Con Ed. So, yes, they put the energy back after the grid and then NYISO decides where the energy goes. It can end up back with Con Ed but another wholesaler, or it could be purchased by someone in the marketplace that doesn't supply energy to the public as I just demonstrated.

This has been corroborated. I'm also a member -- besides being the Planning Board and member of the Amended Law Committee for the Town of Greenburgh, and the reason I know this to be a fact is we had Con Ed at our meeting and they confirmed this.

As such, the conclusion that this facility benefits the Town and its residents, while it is possible is speculative at best.

Next let's focus on the Building Inspector's opinion. Frankly, when I reviewed his letters they are really based on incorrect and incomplete information.

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The plans also show -- this is a quote from Mr. Sciarretta's letter. The plans also show how the best Con Ed substation on Route 119 in Greenburgh, Eagle would be storing energy, feed it back to the substation. This substation serves the public.

Well, that's all true; it does. However, the substations are part of the grid that serve the public, but they also serve as a distribution point for energy to be purchased on the NYISO wholesale market place. So there is no guarantee whatsoever it will go back to Con Ed or go to the public.

The purpose of Eagle Energy is to sell its electricity and the NYISO wholesale marketplace, as they said in their application. There is no guarantee that the electricity is going to be consumed by the public; neither Con Ed nor Eagle Energy could control this.

Are you with me, Mr. Adler?

MR. ADLER: Yes, Mr. Schwartz.

MR. SCHWARTZ: I just wanted to make sure. Building Inspector's opinion based also on the April 8th. He talks about the definition of a public utility in 285.5, which says, "any person, corporation, government agency, duly authorized to furnish to the public" -- you've seen that before.

In his interpretation of that it says, in quotes, "it's my interpretation that this application falls under this definition because it serves the public."

Well, Eagle Energy isn't authorized to sell to the public. It's authorized and regulated as a wholesaler of electricity. As I said, this was confirmed in the applicant's environmental assessment form

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above.

"Finally, what's the implication of the Building Inspector's opinion? It's really overly broad and extremely dangerous for the Town of Greenburgh from a planning perspective." This is what he wrote.

And remember? I think it was you, Mr. Adler, who brought up, how do we know that this could be used for solar panels? I think it was you who brought up that question at the last meeting.

There are other uses not specifying listed in the building ordinance, for example, solar panels. There is no mention of solar panels in the Town Zoning Ordinance, but they have historically been permitted and governed by the New York State Building Code as well as battery energy storage systems.

Some of these solar panel applications which serve the properties that were installed upon the electricity also sent any unused power back into the electric grid system. That's the second part of that, is absolutely true, while that clearly states that solar panels are also covered by the Special Permit provision. And the fear that Mr. Simon and myself brought up at the last meeting is real, that if you allow this to go through you can have them anyplace, in any residential zone.

His opinion also appears on other things, to wind farms, other power-generating in residential neighborhoods.

Further, this is really interesting. If you look at his rationale, saying under this provision residential housing would also be covered, because solar systems that are installed in residences typically have the capacity to feed back into the energy grid.

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So by upholding the Building Inspector's interpretation, what you would actually be doing is saying that every residential house with a solar panel is now a public utility. Imagine the ramifications of that decision.

Finally I want to talk about Mr. Sciarretta's argument about plain language. In his April 8th letter -- pardon me. I'm not a lawyer, as you know, I just try to play one on TV, and I stayed in a Holiday Inn once, but I'll do my best.

The primary goal in statutory interpretation is to attempt to effectuate the intent of the Legislature. And he goes on to cite a couple of cases there and then comes to the conclusion, thus the plain meaning of the statute should be the starting point for this discussion.

I have no disagreement with what he said there. The problem is, you have to look at it -- it's how you analyze it. To analyze the intent of the law one must not only look to whether the specific use was not prohibited under the law but but also to the nature of the uses that were prohibited in their similarities to this specific use. And that BESS could not have been excluded from the law since they didn't exist at the time the law was written in 1997.

However, the specific exclusions are all facilities that consume a substantial footprint, as does this BESS facility.

Therefore, it could easily be concluded that the intent of the law and should be concluded, in my view, was to exclude uses that consume a large footprint and include small items like utility poles and transformers. So you have to look at that. Just because it was excluded doesn't mean it's included.

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I just want to reinforce what Walter said. It was a difficult decision for the Planning Board to even bring this appeal, because it creates some stress between people who generally work together. I mean, we work really well with the Building Department on a regular basis. We have the utmost respect for them; we just happened to agree to disagree on this particular one.

But we take -- that's why we take it so seriously. The only reason we brought this one forward is one. We think it's clear that if he was incorrect in his decision -- and we think part of the reason is he wasn't given the right information at the time he made the decision, and maybe now he would make a different one. Second, as I showed you above, the implication for allowing this are huge.

Thank you very much for your time. I'll turn it over to Mr. Bernstein, unless there are any questions.

CHAIRPERSON BUNTING-SMITH: Thank you, Mr. Bernstein.

MR. BERNSTEIN: Okay. Thank you. I don't want to repeat things that have been said, but I have a slightly different take on some of the things that were said.

Let me turn first to Mr. Fraietta's letter. He was asked to explain his reasoning in determining that Eagle falls within the definition of a public utility. Rather than address how Eagle Energy the firm qualified as a public utility he instead argues that the application falls under the definition because it serves the public.

That is a turn of phrase that elides the key words, which is that it has to be a firm which furnishes electricity to the

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public under government regulation.

So by omitting or not considering that he's dealing with an application rather than the firm, which the code says he's supposed to look at, he argues that BESS, the battery facility, would be connected to the Con Ed substation. Eagle will be storing electricity, feeding it back to the substation, and that the substation serves the public.

However, the substation serves the public within the meaning of the Town Code's definition of public utility under 285.5 only because it's owned and operated by Con Ed, which it is a public utility, regulated by the New York PSC. Eagle has no such ownership interest in the substation and is merely an electricity wholesaler. As you've heard that says it's electronic to the NYISO, retail to the other consumers who purchase from NYISO but not to the public.

Because Mr. Fraietta did not properly apply the Town Code's definition of public utility, and instead looked to see whether the application would involve electricity being furnished to the public under government regulation, without regard to the specific legal entity that's doing the furnishing, Mr. Fraietta's determination was wrong and should be vacated.

He was also asked to explain his reasoning in determining that -- even though not specifically permitted in the Town Code -- and even though Section 285-3 of the Town Code states that "any land use not specifically permitted in Chapter 285 is prohibited" -- he argues that the battery facility should nevertheless be deemed included as a public utility structure. And he was asked why and he said, well, there, are other uses not specifically listed in the Town Zoning Ordinance which the Town has allowed because they have been historically permitted and governed by the State Building

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Code.

But the Building Inspector does not have the discretion to disregard Town Code 285-3's rule governing land uses not specifically permitted when he finds such use permitted by state building codes. Because he did that, that interpretation is wrong and should be vacated on that ground as well.

Finally, Mr. Fraietta was asked what date he filed and made public his determination. And to describe the process for filing the determination-- including how it became part of a public record; part of public records. But here Mr. Fraietta does not mention at all his November 12th, 2020 memorandum in which explained his reasoning for concluding that the battery facility qualified as a permitted use in Residential Zoning District as a public utility structure.

Instead he recited a process by which the Department of Community Development and Conservation sent him a copy of the developer's application. He then checked the box showing he had no comments on the application and then returned the form to the Department of Community Development and Conservation, where it is stamped received by that department.

He then states that a copy of what he submitted is "kept in the Building Department files," but he nowhere states that such documentation is stamped received by his department. Nor does he explain how that document in his files became "part of public records," the very question this Board asked. In fact, it was never produced in response to C.G.C.A.'s FOIL requests. Nor was it made part of the Planning Board's documentation. Nor was it ever posted on the Town's website where all other documents related to this application are posted.

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So there is no response from Mr. Fraietta to the ZBA's question as to how his interpretation became part of public records. That's important, because it's statutory at least as to the C.G.C.A. I want to now make a few comments on Mr. Sciarretta's response to the Zoning Board of Appeals's questions.

Mr. Sciarretta was asked to provide data and/or documentation to show how Eagle meets the definition of a public utility under the Town's code, and "specifically how Eagle Energy would furnish electricity to the public."

In his response Mr. Sciarretta first cites the Con Ed business supply charge item, which is the wholesale cost of all electricity that the public receives. However, the sample bill he provides states under supply charges -- which is item number seven -- that "your electricity is supplied by then (in all caps) \* Sample Escrow Company." But Eagle Energy is not an escrow. It does not interface with the public. It does not interface with Con Ed's customers. It is instead, as we've said, a wholesaler that can sell to an escrow but it is not an escrow. So there is nothing in the Con Ed bills that supports Eagle's contention that it furnishes electricity to the public.

Mr. Sciarretta next argues that, "other jurisdictions have utilized local municipal definitions of public utility to support special use permit." Mr. Schwartz correctly quoted from the Town Code of the Town of Whitestown -- which has a definition of public utility which Mr. Sciarretta did not attach to his submission, but which I would like to be able to submit to the ZBA as part of the record here. So you can see for yourselves that the public -- that the definition of public utility in their code is not the same as Greenburgh's. Mr. Schwartz read it into the record, but I

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think you should have it as well.

And by the way, if you read the minutes of that meeting, it's a meeting of the ZBA in Whitestown on whether to grant a special use permit for a facility there. And the problem was that the chairman of that ZBA, in that jurisdiction, the Zoning Board of Appeals actually grants the special permits, unlike ours where the Town Board grants the Special Permit. But there the ZBA was dealing with that and the Chair couldn't believe that this application met the definition of public utility even under their code. And he was very troubled by it, but he was precluded from doing anything about it. Because the matter had already been before the Planning Board in that town, and the Planning Board had granted site plan approval, and the Building Inspector's interpretation had already been issued and it had been 60 days -- longer than 60 days and no one appealed.

So the Zoning Board chair there was saying, "I don't see how this complies but since no one appealed I can't do anything about it. The ZBA can't do anything about it. We therefore have to grant the Special Permit. "

Well, here the appeal has been filed. And because in the Town of Greenburgh the Planning Board doesn't have to appeal, they can just request an interpretation. So unlike the situation that was facing Whitestown, Greenburgh has the ZBA ready and able to address these fundamental questions about whether the Building Inspector's determination was right or wrong.

So I found that those minutes which Mr. Sciarretta did attach are very useful.

The Blasdell village ordinance, when you read their code -- again, Mr. Sciarretta didn't attach it -- but their

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code Blasdell allows for certain facilities by special use permit if they are deemed "essential facilities," which is \* not a defined term. And Case Law has supplied definitions for essential services or essential facilities but that has no application in Greenburgh, because our code doesn't use that terminology. And he was right: Public utility was not at issue there.

Next, Mr. Sciarretta was also asked why, given the legislative history showing that the Town of Greenburgh in 1997 specifically amended the provision governing special permits in Residential Zoning Districts for public utility structures to add cell phone communication towers as a permitted use under that statute.

Under that code provision, why if the Town Board undertook to amend the statute to add that specific use, should the ZBA undertake now to add battery storage facilities as a special permitted use as a public utility structure.

I thought that was an excellent question from the ZBA. In his response, though, Mr. Sciarretta argues that the Zoning Board of Appeals should do so, because the concept of a public utility or energy provider now includes a much broader scope or entities. And that quoted is therefore a common sense interpretation that the project, which is part of the delivery process for a traditional utility qualified as a public utility or public utility structure.

Well, that may be a good reason why the Town Board might want to -- might want to amend the statute -- just as it did in 1997 to add cell phone towers -- but that is not a good reason why the ZBA should substitute its judgment for the Town Board in rewriting the code to do just that.

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I thought the ZBA expressed it very well. This is a situation where the ZBA -- where the ZBA recognized that the Town knows how a specific use to the public utility structure section of the Code. It did so in 1997. It may well do so now, that the battery electric storage technology is before it -- before it's not something that should be done by the Zoning Board on an interpretation.

Finally, Mr. Sciaretta was asked why the Corrales case is not dispositive of the issue of timeliness. And here he argues that -- argues in Corrales -- this was in a written determination by the Building Inspector that the project is -- there was zoning compliant, only an inherent determination. In this case he argues that, based on that document Mr. Sciaretta obtained from the Town that we have never seen before that he -- that was never produced by the Town in response to our FOIL request. That's that staff report that Mr. Schwartz referenced.

Mr. Sciarretta has that document. I'm amazed that he has it, because we FOIL-ed all the documents. That wasn't produced. It's not on the Town Board website. Even today it's not on there. And it's not file stamped received by the -- anybody. But Mr. Schwartz said he saw it, but, as I say, we never got it. But the point, though, is that document merely says that Mr. Sciaretta -- Mr. Fraietta the Building Inspector -- made a determination -- and this is the Planning Department reporting that Mr. Fraietta, the Building Inspector, made a determination as to area variances. And as Mr. Schwartz correctly points out, the issue here is use-variance. Because the question is use.

How is it that Mr. Fraietta, the Building Inspector, concluded that this use, BESS, qualified as a public utility

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structure? That is not something that was decided except perhaps inherently, perhaps when the Building Inspector checked the box saying he had no comments; and perhaps impliedly when the planning staff prepared this report for the Planning Board. But if anything it's an inherent determination which therefore is the very thing that was deemed to have been found in the Corrales case, which is not a basis for starting a 60-day clock on anything when appealing a Building Inspector's determination.

So the Corrales case, I believe, continues to be dispositive of that issue. And the attempt to distinguish that case that Mr. Sciaretta offered to the ZBA in his letter is, with all due respect, without merit.

So thank you. I'll answer any questions you may have. Otherwise, it's time for others to be heard.

CHAIRPERSON BUNTING-SMITH: I really would like to hear from the Building Inspector at this time, if we could, because we did not get an opportunity to hear from him previously.

MR. FRAIETTA: Okay. Ask your question.

CHAIRPERSON BUNTING-SMITH: Well, there has been lot of information that's been put out there with respect to statements you've heard this evening. And I think one of the -- well, there is a few questions.

Going back to the filing, where was this determination by you filed, Mr. Fraietta?

MR. FRAIETTA: The way I explained it in my letter is, these applications don't start in my department. Okay. They start

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in the Community Development Department. They generate that form or that memorandum and they send it to me and I read it. I read through the plans. I looked at the documents that were sent to me and I made a determination that no variances were needed or any types of variances were needed. I checked the box.

I send it back to the Community Development, where they stamp it in, that they received it, and I keep a file -- I keep a copy of the plans and the letter in my office.

CHAIRPERSON BUNTING-SMITH: So there is no formal filing really? In other words, once you check the box you send it back?

MR. FRAIETTA: Yes.

CHAIRPERSON BUNTING-SMITH: Keep a copy of what you sent.

MR. FRAIETTA: If there were variances like -- take a hypothetical. If there were variances or any other items that had to go to the Zoning Board I would have generated another memo to the Planning Department listing the property, and then listing the variance that -- the variances that would be required. Okay. And again, same thing. We send that document off to the Planning Department. They stamp it in and usually send -- I believe they send it to the Board at that time, the Planning Board.

Now, if an application begins in my department -- or the Building Department, I should say -- yes, the plans are sent to us. It's stamped in. Everything gets stamped in. Physically stamped in. Then we put it under -- you know, we go through the review process. Some of them may need variances, a lot of them don't. We need zoning. And we send them off for their permits. Others

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that do require variances I give my normal denial letter sent off to the applicant and to you. It was actually sent to Carole, the zoning secretary.

CHAIRPERSON BUNTING-SMITH: So are those?

MR. FRAIETTA: I want to clear up. That's the way, since I've gotten -- since I came back here, or since I became Building Inspector -- it's always been done. Even my predecessor did it the exact same way. There has been no change.

CHAIRPERSON BUNTING-SMITH: So the copy of the document that you checked the box on, was there any request ever made of you to produce that document?

MR. FRAIETTA: Not that I recall, no.

CHAIRPERSON BUNTING-SMITH: Okay.

MR. CRICHLow: So in hindsight, Steve, when you checked that box, did you ever think that it would become this kind of a commotion?

MR. FRAIETTA: Oh, no. No. Not at all. I really thought this was going to be vetted out in front of the Town Board. That was my -- that was my assumption, that this was going to go to the Town Board. And they would do all the process, and they would decide whether -- does this belong here or it doesn't belong there -- by granting the Special Permit or not. Believe me, that's what I thought. I would not want to put everybody through all of this.

MS. KNECHT: But when you checked the box you did know that this project was going to need the Special Permit?

MR. FRAIETTA: Absolutely. Yes. This is not something that I said I can

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ultimately grant a permit for. I can't do that. I don't have the authority to do that.

I saw that. Hey, look, I felt it met the definition of a public utility structure. It met all that part. It can move forward to the Town Board to make the decision.

MS. KNECHT: So your opinion at that time --

MR. FRAIETTA: I would -- I don't have the authority to just go ahead and grant a permit. This was going -- I felt that there was enough information where I made my decision with the help, with others, that I made my decision, okay, I think there is enough information here that to go to the Town Board to be vetted out; not this.

CHAIRPERSON BUNTING-SMITH: Go ahead. Did you finish your question?

MS. KNECHT: Yes, that one I did. Yes.

CHAIRPERSON BUNTING-SMITH: Any other questions of the Building Inspector at this time?

MS. KNECHT: Just one more, actually.

So when the Town -- this is maybe for a town in general. When the Town gets a larger development project, does it typically come -- go into Community Development and not the Building Inspector?

MR. FRAIETTA: That's correct, yes.

MS. KNECHT: So it comes into the building -- to that Community Development, and they send out that letter. They send it to you, they send it to DPW, to send it to public safety. Everybody kind of gets the

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same summary letter with the box at the bottom that says "check if you have a comment"?

MR. FRAIETTA: Correct.

MS. KNECHT: And so if you have the comment at the time you would then put in whatever your comment is and get it back to Community Development

MR. FRAIETTA: If I had a comment I would write it out; I wouldn't check the box.

MS. KNECHT: Okay.

MR. FRAIETTA: I would write a comment. I would write -- my response would be required. It has to go to the Zoning Board, and I don't specifically write out what variances would be required.

MS. KNECHT: So then any Department's comments go back to Community Development, and then to the Community Development department, do you then assemble those comments -- even if there is no comment -- and then you give that all to the Planning Board? Or what exactly does the Planning Board receive when it gets the package from you guys to review?

MR. FRAIETTA: Yes.

MR. DUQUESNE: I can speak to that. When we send out the application that's filed and the request for comments, we compile them. They either will be straightforward and not require changes to an application, or sometimes departments will ask for various information. And we will either send those comments to the applicant, if there is a request from the department or additional information. Or for, let's say there is no comments. We would work with the applicant's -- further the application along and then send the application in its entirety to the

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applicable board.

So, in this case the Town Board, along with great staff report, and that comprises the formal application and goes to the Planning Board.

MS. KNECHT: For every project?

MR. SCHWARTZ: Kristi, that's not true. It's not true. Because I can tell you, in this particular case we searched our file. We never ever got the initial document. And I ask -- by the way. For the record, it was asked for -- when I got the staff report and I said the staff report was strange because it only talked about area variances, not use-variances. And I knew the issue was a use-variance in this case. After all, it's a hundred acres in an R-30 zone.

I didn't think parameters -- that dimensional parameters would be a use. It was a use issue, not an area issue. And that wasn't -- that wasn't in the staff report. We never got the initial thing. I asked on at least two occasions, okay, the last time in writing to Aaron Schmidt, I wanted a written thing from Mr. Fraietta. He could have produced the initial document then. It was not produced by the Planning Department. It was not produced by Mr. Fraietta. Mr. Sciaretta heard me say it at the November 4th meeting. He didn't produce it either.

The first written correspondence we got from Mr. Fraietta was the November 12th letter, period. The law is very clear, by the way. The law, the Town Law -- I think it's 267(a). The Town Law clearly states it is a deciding agency that is supposed to stamp and file the decision. If we have been doing it wrong all these years, mea culpa.

But in this particular case there is

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no possible way -- there is no possible way we could have appealed this unless we got that letter November 12th. And I think otherwise it makes no sense whatsoever. But we never saw that initial letter until I believe it was shown to us by Mr. Sciaretta, or maybe it was referred to by Mr. Fraietta in his November 12th letter. That's the first thing we knew about that.

MS. KNECHT: One other question then. Why give a neutral recommendation on this to the Town Board given, you know, how --

MR. SCHWARTZ: Good question. The neutral recommendation -- as we said from the beginning of this -- and it's several months, so it's been a while since we talked about this. We're not necessarily against this project. That's not why we're here. Okay. The reason we gave a neutral recommendation at the time was on the site plan. We gave a neutral recommendation because what happened, as this thing went on we got more information, including got ahold of the safety manual from Tesla which said it needed 3,000 gallons of water to put out a car fire. And said, gee, you know what? We don't know enough yet of whether or not -- whether or not we can manage this from a safety point of view.

And a recommendation that was, hey, this looks good but we don't know enough about the safety, and we recommended at the time that the Town Board hire a safety consultant, which in fact they did. Okay, they hired a safety consultant.

In terms of this we made a separate representation. You heard Walter talk about two recommendations. The second one was, we questioned the Building Inspector's opinion, okay. We didn't agree with it. We questioned it. We didn't think it was our place to appeal it, since the Town Board was the Lead Agency, and suggested that the Town

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Board look into it.

A week later -- and it was after our meeting -- so Mr. Simon and I wrote another letter to the Town Board saying, you really need to consider appealing it. They had three work sessions, I think, between then and the ninth of January, something like that, right after New Year's. We only have one meeting in December, the first week in December; our next meeting was in January.

And those work sessions, ultimately the Town Board decided not to appeal it, in which case at our next Planning Board meeting we said this needs to be appealed. And that's when we did what -- that we took the action we did.

But we had no -- we didn't have any basis for an appeal on before November 12th.

MR. SIMON: And assuming that we only had that 60-day clock was running out; which we find now that it was not, but we operated on the premise that it was. And as Mr. Schwartz said, all of our efforts with the Town Board being the Lead Agency, they decide not to appeal.

So we were, quite frankly, forced into that position, to appeal, because we knew that it would be detrimental to the town if this application was approved under the Special Permit law, because of all sorts of implications to the rest of the Town, which Mr. Schwartz just articulated.

So that is why we did it. Again, we never saw that check-off document that was generated by Mr. Fraietta. We never got that document. We never got that. And that's why we requested something in writing, because we never saw the document.

We knew -- we were told that Mr. Fraietta felt that it was approved. It's

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okay under the Special Permit law, but we have no understanding of the logic that went into making that decision.

So we could not make a decision on our own before we had appropriate information and documentation. So that's exactly why we delayed what we were doing. That's exactly why we asked for something in writing. So we will have a basis for making our own decision regarding their appeal.

MS. KNECHT: Okay, one last question. This is for Mr. Bernstein.

Can you just explain again when -- the very first thing that you spoke about this evening -- about Section 285-48(a) and how -- why the timeliness issue would not be applicable here?

MR. BERNSTEIN: Sure. The way the statute works is that the jurisdiction of the ZBA is defined under Town Law, State Law, Town Law 267(a)4. And it says "unless otherwise provided by local law or ordinance, the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article."

But here, Greenburgh, the Greenburgh Town Code does provide otherwise. And the Town Code Section 285-48(a) entitled "Interpretation," states that, "pursuant to Section 267 of the Town law, the powers of the ZBA are expanded so that the ZBA's 'power and authority' to decide any question involving the interpretation of any provision of this chapter 'may occur' on an appeal from an order requirement, decision or determination made by an administrative official."

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That is the part that's consistent with State Law. And then these words, "or on a request made by an official board or agency of the Town." Those words of "on a request made by an official board or agency of the Town" are words that appear in the Greenburgh Town Code. They do not appear in the State Law. But the State Law authorized municipalities to expand the jurisdiction of their Zoning Board of Appeals, if they so choose to do so, and here Greenburgh did.

So when the Planning Board filed its -- for lack of a better word we'll call it appeal -- the ZBA recognized that they had -- that the Planning Board had the right to request an interpretation, which is why the agenda for tonight's meeting and the legal notice all state that, with respect to the Planning Board, they are seeking a request -- they are requesting an interpretation from the ZBA.

By contrast, the C.G.C.A. has filed an appeal. So while the Planning Board keeps talking about their having appealed and having made a decision to appeal, under the law they have a right that the C.G.C.A. does not have, which is to request an interpretation from the C.G.C.A., from the ZBA.

And this notion that boards -- land use boards or the Town Board of a town can independently request such an interpretation has roots in the state law too. Because, for one thing, it says that under the State Law that a board of a town can file an appeal. But if it does, it doesn't have to show that it's aggrieved; whereas, say, a Civic group like the C.G.C.A., they have to show that they are aggrieved in order to be able to have standing; an issue that was raised by others on the Zoning Board of Appeals concerning whether the C.G.C.A. has standing.

We think it does. But that issue

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goes to whether the C.G.C.A. is specifically aggrieved to be able to file this appeal. But the boards of the Town -- whether it be the Planning Board or the Town Board or any other duly appointed Board of the Town -- they don't have to show they are aggrieved. They can file an appeal without showing that they are aggrieved; just the mere fact that they have a board of the Town.

Now, the wrinkle here is, the Town Board in the Town of Greenburgh amended its code at some point in the past to say that, here in Greenburgh we want the Zoning Board to have the authority to hear requests for interpretations, without having to be subject to the requirements of an appeal. That's why they added those words. That's all that's needed, is a request for made by an official board or agency of the Town.

And so, you know, that's why we are where we are; that, you know, all this talk about whether the notice was done properly, whether it was an inherent determination or a written determination, whether Mr. Fraietta should have file stamped his check box or not, all those are interesting issues and they probably should result in a change in the way the Town -- and particularly the Building Department -- does business. But as far as the ZBA's authority to decide the question raised by the Planning Board -- which is an interpretation of this section of the Code regarding special permits and Residential Zoning Districts for public utility structures, that decision is the ZBA's and the ZBA's alone to decide opinion having received that request. Does that answer the question?

MS. KNECHT: Yes, I understand. I get you now. Thank you.

MR. SCHWARTZ: I'm just a little concerned, Kristi, that our focusing on that -- I'm glad Bob found it, but I want to make it very clear.

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The New York State law says, to appeal decision, the decision needs to be in writing.

So if you take a look at the road map of Mr. Sciarretta's arguments, including moving the date to November 4th at the last hearing of the Zoning Board on the subject -- it is now clear from the video that you saw tonight -- videos you saw tonight -- I was a lousy producer but I'm a pretty good editor -- that we never -- not only hadn't we seen it, but you could hear me saying, "we need it in writing," at the meeting. Okay. "We need it in writing."

I said that -- there is an e-mail which I produced in my last response from April 30th asking for it in writing. Well, if he had it, why didn't he produce it? If this was a real decision why wasn't it produced? Why? From the time we first asked for it until the time we got the November 12th letter was over three weeks. We asked for it way before the November 4th meeting.

So, to conclude, anything the clock -- if there is a clock -- and it's quite questionable, given what Mr. Bernstein has told you, if there is a clock it couldn't possibly have started before November 12th. No rational person can think otherwise. I'm sorry, but that's the way I feel about it. How can I make decision based on air?

And with a conflicting staff report that talks about area variances. That's what I was -- I was faced with. That's what I was faced with. And testimony from the applicant's principal, Mr. Robertson, that clearly states they are not a public utility, and explains why they are not. We had no choice. And I don't believe, by the way, given the information that came out from November 4th through January -- and a lot of it came out actually not only on the

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Planning Board but in the Battery Energy Storage Law committee. Then Mr. Fraietta had the correct information to make the right decision.

And I'm not sure if he had all the information we have now, which clearly states that Con Ed is a distribution center for them. That's all they are. They may end up buying the energy back at some point. They might. But what they do is provide a transmission line, so that Eagle Energy could sell into the NYISO marketplace. That's all Con Ed does.

What happens beyond that is all up to the wholesale marketplace and nothing else. When I read Mr. Fraietta's decision, he assumed that it was going to benefit the public and local public. So did we -- by the way, when we first heard it on the 21st of October, that was our impression, too, until we got into it, and that turned out not to be the case. And Mr. Fraietta at that point wasn't privy to that information, clearly.

And I understand that he wasn't. And that would have -- may have changed his decision. I don't know. I can't speak for him. But it clearly is a change, and more information came out as we went along, which is why -- as I said, this is really a critical decision for this Board. And the implication of allowing this and would allow solar farms, wind farms to go in residential areas unless we change the law. That's very, very scary. It's the only -- that's the reason I feel so passionate about it, and why the Planning Board took an unprecedented move to appeal a Building Inspector's opinion.

It's not something we would do on most cases. It just wouldn't. Or virtually any case, we're never done it before. Thank you.

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CHAIRPERSON BUNTING-SMITH: All right. Are there any other questions before we hear from the applicant?

MR. ADLER: I'd like to briefly discuss something which I addressed what I had sent to the zoning chairman -- I mean the Commissioner -- about something that, you know, still concerns me about the arguments made here by Mr. Sciaretta. And some of it was touched upon by both Mr. Schwartz and Mr. Bernstein. And so much of what Mr. Sciaretta has said up to now -- and probably will say later -- is that whenever a statute is ambiguous, it should be construed in favor of the applicant.

My point is that before you consider ambiguity, it is the legislative intent of a statute, which is controlling. If I may site the two case that is I happened to come across, Feeres, F-E-E-R-E-S, versus the City of New Rochelle, 68 N.Y.2d, 446.

Another case I came across is, Petterson, P-E-T-T-E-R-S-O-N. I'm sorry I don't have the other name, but it's 17 N.Y.2d at 32.

Now, based on what I read in those cases I would make the following arguments: The legislative intent is the controlling principle in any case involving statutory interpretation. \* FIX. The spirit, purpose and objective of the statute must be considered by the Court. In this judge's view where there is, as here, a public officer has interpreted an ambiguous statute, administered by him; that interpretation should serve as a starting point for the Court's analysis, but not as a substitute for the Court's primary focus on legislative intent as gleaned from the wording of the statute. An analysis of the statutory scheme, and, if necessary, an examination of the legislative history.

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The point I'm trying to make is, as these cases cite -- now, as I said in the question I submitted, these three lines -- and 1997 statute were three lines in a 20 page statute that was consumed with the issue of cellular towers. And I would submit that under those circumstances, I don't see how we can even assume that these four lines which appear in a 20 page statute -- which clearly deals with cellular towers -- I would say the legislative intent, the spirit and purpose of the statute trumps the ambiguity argument made by Mr. Sciaretta.

Now, it is my belief that it was not the legislative intent of the drawers of that statute to deal with this kind of issue.

I have a question, if I may. One question. I'm advised that a staff proposed statute has been submitted to the Zoning Board and, I'm told, to Mr. Sciaretta. Is it appropriate, Madam Chair, that I ask Mr. Sciaretta if he has -- if he's willing to say something about that statute?

CHAIRPERSON BUNTING-SMITH: Well, you could certainly ask him.

MR. ADLER: I'm asking.

MR. SCIARETTA: Thank you. We will address it. And, again, we have been waiting for about an hour and a half now. We've heard a lot from the applicant, being the Planning Board and this Council. So we'll address those issues and I will get to your question. But, again, we're prepared to answer a lot tonight. So we're just waiting for our turn. I'd like to begin the presentation by addressing a lot of what we've heard this past hour, but I will get to your question. I promise you.

CHAIRPERSON BUNTING-SMITH: Any other questions before we go forward?

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Paragraph.

(No response.)

CHAIRPERSON BUNTING-SMITH: Let's hear what you have to say, Mr. Sciaretta.

MR. SCIARETTA: Madam Chair, Members of the Board, town counsel and staff, my name is Lino Sciarretta with the law firm Bleakley, Platt and Schmidt, on behalf of Eagle Energy.

Also with me on the line this evening we have Mila Bruckner from Hodgson, Ruff \*, and James Robinson from Eagle Energy Storage.

You know, we heard a lot tonight. And I hear a lot of explanation, you know, my son is studying share spear and you know the term, you know, the lady doth protest too much comes to mind.

So why do I say that? Because I've heard about an hour worth, maybe longer, of explanation from the Planning Board and the Council. At the end here what we're really getting at and what we're talking about is what I stated from day one. This whole appeal here is based on the Building Inspector's determination and his reading of the language of the Code, and basically whether he got it right. Whether he said that this particular project falls under the definition of public utility and public utility structures under the Greenburgh Town Code.

And I'm going to put a pin in that, because we're talking about the Greenburgh Town Code. We're not looking at anything else, and I'll explain to you about those other cases in other jurisdiction, we cite

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and the reason why we did. But that's what we have here. We're talking about a town statute and we're talking about those two definitions which the Building Inspector say we fall understand.

Now, I've done land use in a long time I'm in a usual situation where I have both the Planning Board members and the Council both say that this is a good project. I'm usually getting, you know, objections or saying "we don't like your project." But, you know, I know we had the video played together tonight, or the audio from the last meeting. That was the Planning Board meeting of November 4th, 2020 where, you know, Mr. Schwartz is playing back. But you look at those same minutes which it in place -- I'm going to cite it for the record. But at .14 and two seconds you have Mr. Simon saying, "in my opinion the current code works." You also have Mr. Schwartz at one hour and 8 seconds saying he's not concerned about this project, it's not a problem.

So it's kind of interesting that we're here talking about it, which ultimately it is a question of, with all due respect, semantics.

You know, we get to a point, too, which is the first time I've seen we've actually had minutes changed. So we have minutes from the Planning Board that have been changed or corrected to help out the Planning Board situation here. So we'll talk about that in a minute.

So, again, we're in an unusual situation where everyone is saying this is a good project but we're talking about this code provision.

So again, like I was saying, this all stems on Mr. Fraietta's interpretation of the Town Code.

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Now, let's talk about those minutes. You know, the minutes of the Planning Board from November 4th, 2020 was changed and I I understand why they were changed. I went back and listened to those minutes. I encourage this Board to do so as well. But, you know, they spent a lot of time talking about clarification versus confirmation.

You know, the bottom line is, you hear it, you don't hear that word said. Okay. And on the video you hear Mr. Schmidt saying that his understanding that he believed that there was a verbal determination \* S DR H. But, in fact, here we are today we know that were writings by the Building Department that the Planning Board was well aware of. So it wasn't a verbal. These were writings that were in the record and we'll get into those.

We have a no comment check off box by Mr. Fraietta of September 18th, filed with the Community Development Department on December -- I mean September 24th, 2020. So they were notified, they knew back then.

I also put into the record October 16th, 2020 memo, staff memo to the Planning Board. Because it also is another point in time when they were aware of it. So in both instances they knew that a determination was made by the Building Inspector, and yet they didn't appeal within the time-frame which is provided for under State Law. I know Mr. Bernstein commented about that and we'll get to that shortly.

So what we have here is, you know, I appreciate the Planning Board going back and saying that they, you know, they want to correct their minutes. I appreciate them also -- Mr. Schwartz and Mr. Simon -- saying that they like our project. That's a great thing. But, again, the issue here is, you know, not whether they like our project, but it's whether the Building Inspector got it

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right; and we submit he did.

We submit submission here dated 8 February 20, 2021 and April 8, 2021 that is lot of information there, all in the record, if your Board cares to review it as part of your deliberations.

Now, a couple of things I want to say about the comment that I heard from Mr. Bernstein.

So we talked -- first we talked about the 60-day window. We spent the last three meetings talking about the timeliness of this. You know, whether or not the Planning Board was timely in bringing their appeal which by the way the letter to the Planning Board to the ZBA calls it an appeal.

So first we're going back and forth whether or not they were timely. And now, for the first time tonight, I'm hearing that, you know what? Forget that there is no time-frame. There is no 60-day time-frame. It's whenever they want to appeal. They could do it at any time, at any stage during the process. An applicant could be before the Board for a year, two years and then you can file an appeal on an interpretation that at any time. That's not what Town Law 267 says.

Now, with all due respect to the Mr. Bernstein, I wrote down something he said. And if we could rewind the video tape -- but we won't -- he says, the Town Code, they are expanded, powers are expanded. And he cites 25-48 which starts off saying pursuant to Town Law 267. Town Law 267(a)5 (b) provides that 60-day time-frame. Filed determination, okay, or decision or writing. That's 60 days. There is no whatever of that provision by the Town of Greenburgh local code. It doesn't say that. You can read 285-48 and it starts off by saying, pursuant to Town Law 267. Town Law 267 on

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interpretations is a whole wealth of -- body of Case Law. It's a 60-day time-frame.

So I appreciate what the Planning Board and the Civic Association are trying to do here with respect to timing, because it is an issue. So it's a convenient argument to say well, guess, what? There is no time-frame now, so we just put that aside.

So another thing that I want to get to is that, you know, when you talk about the Corrales case. So the Corrales case -- and I said in my memo, there was no written determination there. That determination was an inference that we argued by the Planning Board by the Building Inspector in Dobbs Ferry forwarding an application to the Zoning Board -- or to the Planning Board, rather -- that was deemed a determination. The Court said it wasn't.

Here, however, I have two instances, I have that November -- letter filed November 24th, 2020 and I also have the staff memo, okay, that they were aware of which the Planning Board acknowledged but did nothing about. So in fairness to the applicant here, yes, there is a time-frame, and it's our position that the Planning Board missed out on whether it was a September memo or whether it was the October 16th statutory time-frames on both those instances. They missed.

Now, with respect to the interpretation of public utility and also public utility structure. You know, we went some time -- I know Mila will get into briefly. But, you know, nowhere in the Town of Greenburgh code that it stays wholesale versus retail. It's not in your code; your code is very specific. It talks about public utility structures and public utilities. We cited that several times. It's in the letters. It's in the record. The Zoning Board is aware that those

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definitions.

So, with respect to what Mr. Schwartz is saying about the local law. I understand -- and it was provided to me today, or, I believe yesterday for the first time -- which was a draft of the local law that the Town Board is considering with respect to operator energy storage systems.

Now, I will say, while it's encouraging to see that it has no bearing on this Board's deliberations as to whether or not the interpretation of the Building Inspector was correct or rationale for that matter. It's a good that they are doing it, but here is another thing. Even without the local law, the Town Board, under the Special Permit powers, still has the power, as part of the Special Permit, to impose reasonable conditions on this project.

So, you know, I know we talked about parameters and metrics of these battery energy storage systems. And it's all well and good to have a local law, but it's not part of your record with respect to, well, the Town Board may have a local law that they are contemplating. It has no basis with respect to your deliberation as to this project as to this interpretation.

It's good to see. But, again, the Town Board -- even without the local law -- still has the power to grant to impose certain conditions on battery energy storage.

So I'd like to do -- now I'd like to go to Mila to talk about some of the comments that were made about public utility and public utility structures, and then I'd like to come back to a couple of other things. So, Mila, if you can.

MS. BUCKNER: Mila Bruckner, from the law firm Hodgson Russ on behalf of the applicant. I think there is a few points

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I'd like to address.

So starting with some of the comments that the Mr. Bernstein made. He mentioned how we had submitted examples of approvals that had occurred in the Village of Blasdell as well as Whitestown. So in the Village of Blasdell they approved a 20 megawatt Battery Energy Storage System that's almost identical to the ones you have before you here.

And much a very similar discussion occurred about, you know, what is this project? How does it fit under the Town Code? And specifically they looked to provision and Town Code that allowed for essential services, under the definition of essential services is mentioned utilities.

And in Blasdell I think it was just -- a different way of looking at the Village Code. Rather than treating this as a straight jacket they looked at the intent and the spirit of the law and sort of questioned, you know, is this an essential service? Is electricity essential to our constituency? And found that battery storage systems fit perfectly within the definition of a utility. And, in fact, pointed even to the word "electricity" within that definition and approved the project.

Similarly, in Whitestown again, you know, they looked at the intent of the Code here. The use group was specifically for public utilities and as Mr. Bernstein pointed out the meeting minutes show there was a lot more back and forth a lot more questioning about whether this was appropriate or not -- but it ultimately went to was the Town looked to the Rosenberg case and authority in New York law that's demonstrates that public utilities are afforded special consideration under zoning and in Rosenberg there is three fact order that determine whether something is a public

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you an actuality to be chair not all three factors need to be satisfied it could just be the majority of them but fact battery project does satisfy all three. So it needs to first provide an essential service. Second, be subject to public regulation. And third, provide minute to minute -- serve minute to minute demand.

I think we've submitted quite a bit of material to this Board demonstrating that we meet all of those prongs. But in Whitestown when really looking at the case you allow and have -- courts have interpreted this, they realize that a battery storage system, again, fits squarely within the definition of a public utility.

Finally, you know, I think that there is this confusion theory that maybe you know public utility isn't just an investor owned utility so you think national grid you think of Con Edison, companies like that, but it really, the definition of public utility is something much broader. And in the 25 years since deregulation has occurred the utility system is much more broken down and made up of smaller components including things like battery storage systems that help carry electricity to the public.

So, you know, I feel like I've heard this Board acknowledge that an escrow would be considered a public utility. We want to point out one more time that we are a part of an escrow of services to the public. Again, we're all within the family of public utility and appropriately follow within that stroke.

MR. SCIARETTA: Thank you Mila.  
Mila are you done?

MS. BUCKNER: I'm done. Finished.

MR. SCIARETTA: Thank you. Just

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coming back to another point that I heard.

You know, it it is interesting because the Land and Civic Association utilized Town Law 267. Obviously, you know, when it works for them they will cite it but when it doesn't they will not.

One of the things that, you know, we looked at you know with respect to the comments that the Planning Board was forced to appeal. I've heard that. That was stated. And they didn't think it was the Planning Board's place to appeal. They wanted the Town Board to appeal. You know, in our interview basically that memo that later memo of November from the Building Department and Building Inspector, you know, we believe that clarification that we saw was sought by the Planning Board was really just an attempt toll really just have the Statute of Limitations Justin because they knew that they couldn't meet the 60-day window and they also knew that the Town Board wasn't going to appeal so they were stuck at that point. So they needed something further down the road in order to get them into the door with respect to the appeal.

Now, I heard also about Mr. Bernstein talking about standing and also talking about the council --

MR. HARRISON: Mr. Sciaretta, can I interrupt you for a minute, before you move on on this point?

So is it your -- I don't know -- position is that the publication of the Building Inspector's memo -- this is checking the box -- was published when it went back to the -- back to the Department of Conservation and Community Development?

MR. SCIARETTA: I'm sorry. I can't see which member I'm speaking to. Sorry.

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MR. HARRISON: It's Rohan Harrison.  
I'm on my audio.

MR. SCIARETTA: Hi. How are you?

MR. HARRISON: Fine, fine. I just want to find out how you were expecting that it was -- that it was published and it was in public record and the 60-day started. Before you go on to your other point.

MR. SCIARETTA: The statute doesn't say it has to be published. It says it has to be filed.

MR. HARRISON: I'm sorry. Become public record and accessible for the public?

MR. SCIARETTA: That's correct. That's correct. So just another point. So just going back to what he was saying about Mr. Bernstein's standing issue.

So in Mr. Bernstein's March 10th, 2021 submission on page--

MR. HARRISON: Before -- I'm sorry for interrupting you again. I just want to find out if you considered that, if it is public record and it was available to the public after the Building Inspector checked the box, no variance is needed, and it went back to the Community Development and Conservation Department, states, is it your contention that it satisfies -- now it's a public record and it's available for inspection?

MR. SCIARETTA: That's correct. That's our position.

MR. HARRISON: And your position is that the 60-day starts to run from then?

MR. SCIARETTA: Correct.

MR. HARRISON: Now, how is the

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public made aware that it's now in that department, and whoever is aggrieved would know that the 60 days start so that they can appeal it or, you know, just leave it?

MR. SCIARETTA: Well, because we knew about it. And you have a Planning Board members who are pretty sophisticated who are aware that a determination was made by the Building Inspector, so they knew a determination was made. So, again, having that determination made we were able to get a copy of it. So it must have been available. Obviously it was available to the public because we were able to obtain it.

MR. HARRISON: Okay. So it doesn't have to be filed then with the Building Department, just with the development and concentration department.

MR. SCIARETTA: It was filed. You heard Mr. Fraietta's testimony that he did file that letter with the Building Department. In addition to the Community Development department; it was also filed there as well.

MR. HARRISON: Okay. I heard that. No, I heard that. And that's not a requirement.

MR. SCIARETTA: The law says filed; it doesn't say published, and I know.

MR. HARRISON: No. Yes. Absolutely. All right. Did you address -- are you going to address later what Les said about legislative intent? If you've addressed it and I missed it can you clarify that? If you haven't addressed it I'll wait for you to address it later.

MR. SCIARETTA: I'm going to get to it. I know Mila touched on it but I will get to it.

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MR. HARRISON: Awesome. Thank you. Sorry for interrupting you.

MR. SCIARETTA: Certainly. So what I was saying, the standing of the Council, okay, so back on March 10th, 2021 in Mr. Bernstein's submission on page 22, he states that the standing, okay, he gets for Mr. \* u given says that he Mayfair Knollwood is a Civic Association -- I'm quoting here -- closest to the Battery Energy Storage System.

Now, I recall also went on to the Greenburgh, you know, the Civic Association website took a screen shot of it. And I can share. There are with your Board but when you look at the list of members of the Council of Greenburgh Civic Association you don't see the Mayfair Knollwood Association as one of the members. They are not listed; others are, but they are not. So, again, with respect to the standing of the Council here, we believe they do not have standing, because that Civic Association, okay, is not a part of that group.

Now, going on to the question of the statutory intent. Now, I have not seen that case that you cited \* Mr. Ed. But I will state in having another case in Greenburgh that had to do with the statutory intent, if Mr. Bernstein knows.

You know, with respect to the intent here, yes, you're not going to find back in 1997 that the Board contemplated battery energy storage systems at that point in time. Because, quite frankly, they didn't exist back then. But you have to look -- the statutory intent therefore with respect to this statute at least from what I've seen -- there is not a lot there with respect to this particular issue paragraph now go back 25 years ago and that's why we site the Rosenberg case many statutes local code didn't have cell companies in the regulation as well, but they were treated

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and that Rosenberg said they were treated ultimately as a public utility. Okay.

So, with respect to your position on intent, when there isn't too much intent to look at you have to go back to the plain language of the statute. That's what you start with. And I know you're shaking your head but, you know, you've litigated -- I've litigated this, too. We can agree to disagree. But I will say, you know, I can't hear you, but I see what you're saying.

But when there is not a lot out there and this -- you've got to look at the language. Because us land use guys, we have it to look at the language of the Code to make a determination. So that's what we did here. The Building Inspector did that here. So they look at the plain language; you're not going to have a lot of statutory intent on a Battery Energy Storage System.

Now, to your point about the local law that they are looking at. Yes, I took a look at that because we received just received is this there is a lot there preamble about the Battery Energy Storage System and where it's permitted. So, yes, you know, when that law if that law ever gets adopted they can go back and look at the statutory intent with respect to that statute.

But here you don't have that here. So what are we left with? We're left with a broad definition public utility and public utility structure, and that's what we have to go by. That's what you have to look at. Just like the other matter that I looked at and we cited, when it's pretty clear, okay, we agree it's clear on its face that we comply, we're fit into those definitions as the Building Inspector determined. But on the flip side of that coin, if there is any ambiguity -- we heard a lot of explanations tonight about whether wholesaler, retailer or whether or not, you know, we provide

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energy to the public. We submit we comply with all of that but if there is any ambiguity you said I would say it I'm going to say it again yes if there is any ambiguity we get the benefit of that as the applicant.

Okay. That box gets checked off -- no pun intended -- in our favor because there is ambiguity. And from what I'm hearing from the applicant here the applicant being who filed the appeal, the Planning Board and the Civic Association -- you know you heard Mr. Schwartz saying well we're not this we don't comply we're not he cited a snippet of a meeting where he had taken out of context James Robinson was not saying that we're not a public utility.

Yes, we are a public utility in respect to the Greenburgh Town Code. Those two cases up in Blasdell and Whitestown are examples to show you that, yes, those are pretty broad definitions similar to what Greenburgh has. And in those jurisdictions they were interpreted as being pretty much encompassing to allow for a solar farm, to allow for a Battery Energy Storage System, just like the Greenburgh Town Code does.

And, again, what the Building Inspector did here, he's vague, yes, we comply, we can get a Special Permit from the Town Board on this. He didn't say we can get a Special Permit orna we Special Permit should be granted. He's saying we get to go to the Town Board and they make the call as to whether we meet those criteria.

So, again, going back to how this all started. This all starts on a question of interpretation. And I hardy lot tonight and a lot of explanation, and even so far as to go that certain State Law provisions don't apply. And that was just as stop issuing to me that I heard for the first time that a 60-day limitation does not apply with respect to interpretation. Just think

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about that for a second to all the Members of the Board I know there are some lawyers and judges former Judge's on this Board. Think about that what that means. That there is no statutory timeline so that anyone could file an appeal any time in the process. That's clearly not what it says and, you know, when Mr. Bernstein said "our expanded" that language is not in the code. So again, it doesn't mean you ignore the time-frame set forth in Town Law 267.

So, again, I want to thank the Board for hearing us tonight. You have a lot on the record. There is a lot there. I think you have enough from both the Planning Board, from Mr. Bernstein and Eagle Energy to make a determination with respect to this application which, again, I'm going to -- I'm going to come out loud here and say it from our standpoint. This is a simple question here. Did the Building Inspector make the right call or not? That's really what it comes down to.

So, again, I'm going to turn to my colleagues Mr. James Robinson and Mila unless you have anything else to add at this point?

MS. BRUCKNER: Nothing further.

MR. SCIARETTA: James Robinson?

MR. ROBINSON: Nothing for me.  
Thanks.

MR. SCIARETTA: Thank you all for your time. I know that you have a long agenda. But, again, we want to thank you for listening to us tonight and letting us comment on this.

MR. SCHWARTZ: Madam Chairperson, I need to correct the record.

CHAIRPERSON BUNTING-SMITH: Just a moment, please. Just a moment. We have spent an inordinate amount of time on this

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case so far this evening and we do have other cases waiting.

I just want to know whether there are any members of the public who wanted to address this this evening?

(No response.)

MR. DUQUESNE: Not that I'm aware of.

CHAIRPERSON BUNTING-SMITH: All right. If you could, Mr. Schwartz, please make your remarks very brief.

MR. SCHWARTZ: I understand. Madam Chairperson, thank you for the opportunity to correct the record.

Mr. Sciaretta, if we lose this on the facts that's fine. But when you put in facts that aren't in evidence, I get angry.

He said that we saw the initial document. I will state on a stack of bibles as high as the highest building in this state that we never ever saw that document, number one. So that is incorrect.

Okay. Paragraph number two, the October 16th document referred to area variances; not use-variances, okay, when it referred to the Building Inspector's opinion.

Okay. So, again, we didn't have the information. And then he said we did nothing. That's absolutely not true either. I immediately called the Planning Department and asked them where -- under what code this is being done.

Garrett Duquesne wrote back to me saying it was properly filed -- didn't give me the Building Inspector's opinion -- properly filed under the code they filed it on.

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Asked for Ms. Bruckner, this is the same person who in 2019 agreed for her firm to write a revised code similar to what we now have in front of -- by the way it's in front of the Town Board -- \* that Legislature.

They say they try to find a law that avoids public hearing. Well, gee. I guess she's never she's never worked in Greenburgh, because public hearing is the way we do things in Greenburgh.

If she looked at our law there would have been public hearing any way as a result -- as a result of the Special Permit and the site plan, irrespective of whether that was the law. And I'll be happy to submit Ms. Bruckner's letter to you, and -- hopefully -- you'll be as horrified as I was.

As I said, can we make this on the facts not on some -- on some fantasy that Mr. Sciaretta has said and questions the credibility of the Planning Board. This is a group of volunteers just like you are and I don't appreciate being questioned in terms of the integrity of us changing the minutes of the meeting for our benefit.

We changed it because we went back and researched it and I actually demand a polling from Mr. Sciaretta for his behavior tonight in attacking the credibility of a Planning Board. I really do. I don't appreciate it. And I don't appreciate minimum has representing the fact. In terms of your decision it's a tough decision on your part and I fully appreciate all the time you've given us. Thank you very much.

CHAIRPERSON BUNTING-SMITH: Thank you.

MR. SCIARETTA: Madam Chair, I did this --

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MR. SIMON: I'm sorry. I'm not sure who is speaking. Madam Chair, I'd just like to reiterate what Mr. Schwartz has said.

CHAIRPERSON BUNTING-SMITH: I don't know if that's necessary, Mr. Simon.

MR. SIMON: He did attack our integrity in implying that we were changing the minutes without the due facts, without going back to the record. I think that's insulting to imply that we manipulated the minutes.

The record is clear. The video is clear. The records of the meeting is clear what we said of the we manipulated nothing. Nothing.

CHAIRPERSON BUNTING-SMITH: Thank you.

MR. DUQUESNE: One member of the public did indicate they'd like to comment, and that's Mr. Bodin.

CHAIRPERSON BUNTING-SMITH: Yes, Mr. Bodin.

MR. BODIN: Since this project has started we've become much more aware of global warming. Volkswagen and others are going all electric. When this project started that wasn't so. The question then becomes, what environmental damage is done by the construction of this project?

Much dirt is moved in; much dirt is moved out. And the other question is, is there an alternative that does less ecological damage than construction and the answer to that is yes. Up on Saw Mill River Road where Con Edison has this facility and there is space, the same type of thing could be constructed with less environmental damages.

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This project presents an ongoing environmental project because it has to be maintained, fire departments have to be coordinated, and it's in a residential. But that's not really the issue. Can a project of this size be done with less environmental damage? And the answer to that is a yes. The world has changed incredibly since the project started.

I heard the president of RPI discuss modular nuclear plants. That's the first time I heard that and the first one will be online this fall. That information is not widely known yet. The world has changed and we have to say what we did last year may not be appropriate anymore. And this project has to be looked at in the environmental damage done to construct it. Thank you.

CHAIRPERSON BUNTING-SMITH: Thank you.

\* \* \* \*

CHAIRPERSON BUNTING-SMITH: I'd like to go to the next case on our agenda tonight, which is Case No. 21-07, the Luk-oil service station at 258 Tarrytown Road. Who is here to address that matter?

MR. ZAMBRANO: I am Madam Chairperson. Can you hear me okay? Matt Zambrano.

MR. DUQUESNE: Yes.

MR. ZAMBRANO: Chairperson, Members of the Board.

CHAIRPERSON BUNTING-SMITH: Just identify yourself, Mr. Zambrano.

MR. ZAMBRANO: Yes my name is Matt Zambrano of Zambrano Enterprises. I'm representing Poet's corner realty and

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Luk-oil, New, York regarding a sign variance.

This pertains that to an I.D. price sign as well as a canopy sign on our east elevation of the canopy. We had met last month. Our proposal that the was for a 53.91 square foot sign. This is again the I D in price sign. The variance would be an increase of the 20 foot code. 20 square foot code, excuse me. After deliberating with my client we had gone back and forth and came up with a revised proposal of a new sign of 29.31 square feet. This is a reduction of 24.6 square feet. So my client is making a substantial decrease to what it they are requesting.

If I may screen share.

MR. DUQUESNE: Yes, please.

MR. ZAMBRANO: Great.

/SWRA\*PL /SWRA\*PL /SWRAPL Sam again the stakes is located at 258 Tarrytown Road in White Plains. Tarrytown roads. Luk-oil. On the left we have a picture of the existing I.D. and price sign. Middle is a proposed price sign. I believe renderings were sent over to you guys earlier this week. Again the new sign that we are proposing is 29.31 square feet. Luk-oil sign will be internally illuminated as well as the minimart signage and the price signs for the different fuel types will be LED illuminated.

This proposed sign matches up with the size of the sign currently at the property. Also part of our proposal for the separate variance, this is for the Luk-oil signage on the canopy. Currently there is no signage on the canopy and we are looking to put a 14.05 square foot Luk-oil sign on the east elevation of the canopy.

That sign will also be internally illuminated. So there are a few /KWR-PBS we

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are were looking to move forward with this our proposal for this variance. As you can see from these pictures, typically a gas station would have their I.D. and price signs on the corner of the property \* as this location it is a little point tight side. We also have an existing utility pole as well as traffic signage at the corner. The additional square footage would assist our potential customers see our price signage, our prices, excuse me, as the sign would be at the end of the lot instead of on the corner of the property.

As you can see also see in some of the other pictures there are trees lining the sidewalks that would be behind our I.D. and price sign. That is the largest reason we are requesting for a variance for the canopy signage to allow for any potential clients or drivers to be able to see that it is a Luk-oil gas station so again you can check all these other pictures. It's difficult to see the existing sign as is but having the Luk-oil signs on the canopy would allow for Mr. /PWRAPBGD and just allow our client to advertise properly.

I will show you a real quickly the mobile gas station that we had talked about last hearing. Can everybody see this okay?

CHAIRPERSON BUNTING-SMITH: I don't see mobile but.

MR. ZAMBRANO: Do you guys see the Google street view or?

(No response.)

CHAIRPERSON BUNTING-SMITH: All I see is your station.

MR. ZAMBRANO: How about now?

CHAIRPERSON BUNTING-SMITH: Yes.

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MR. ZAMBRANO: Okay. Sorry about that. So we spoke about this mobile gas station and the signage here being 20 square foot. This mobile site does have their I D sign on corner as it's, you knowers feasible for them to install it there. So they have a much, you know, they don't have as much of a need for that variance as someone like Luk-oil would and similarly the Gulf station that is also nearby the Luk-oil station also has that corner area where they can have you know their sign so that is something that my client does not have the luxury of having.

I believe I also sent over a spec sheet nor dimensions. This is what it would look like and these are the dimensions of all the signage. These are the dimensions.

I'd like to open up for discussion.

CHAIRPERSON BUNTING-SMITH: I'll hear from the Members of the Board first any questions?

(No response.)

CHAIRPERSON BUNTING-SMITH: Okay. I will ask an ask a question then. Since I'm certainly one of the individuals who pass by this location at least twice every day, sometimes more than twice every day. And I find that your putting the Luk-oil as presented on the canopy, to me is more intrusive visually I think than is necessary.

Is there any way that you could have the luck oil but perhaps not have the signage as large as it is? And I say that because the station is very close to the street. It's very visible. And it's probably one of the most due to the colors though that it uses due to the location and due to the fact that it's probably the busiest gas station we have in this fair viewer area here for various reasons.

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So I understand wanting to present your brand but I just find it a little more intrusive since you would now have the yard sign in addition to that large canopy sign as perhaps if the canopy would be could be reduced what in size it would be more acceptable to me certainly.

And I brought into consideration what Tesla did next door to you, which is they have a very large building with a considerably as you'll put the two together small sign and they of course one of the large early sign which really wouldn't have fit with the building but we explained that there was really no need to have it because what they have is certainly visible and has proven to be something that does show their brand. And I think the same thing would happen here.

So those are the comments that I'm throwing out at this point. I understand the need for your yard sign or desire for it I guess I should say. I don't know if it's needed necessarily. But it does fall in line with with what other gas stations do with respect to yard signs.

So that's where I am.

MR. ZAMBRANO: And I understand where you are coming from. I would like to say that the Luk-oil sign that would be proposed on the canopy is consistent with all Luk-oil gas stations also going through the section of the Code that we are requesting a variance on aside from this being zoned as an I guess in a U R zoning area, this signage would meet all other code requirements under section or chapter 240 section 3 C 9. So the canopy sign would be less than two feet in height. So it would not compete two feet. It would also only 7 feet 8 inches long which would be less than half of the length of that canopy run. So those for those reasons you know we feel like what we're asking for is reasonable.

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You know, like I said, it does meet every other aspect of the Code that we are asking for variance. Spec spec.

MR. CRICHLLOW: I just want a clarification and I might have missed this but did you say that the signage on a canopy would be on the east side only or on the east and west sides of the canopy.

MR. ZAMBRANO: The signs would be on the east and west side of the canopy. I believe the east side is the only side of the canopy that requires a variance.

MR. CRICHLLOW: Oh, okay.

MR. ZAMBRANO: In our original proposal that we had sent over we provided six page renderings that the first page we've shown the west, the west elevation of the canopy. I can also bring it up over here indicating. One second.

So this would be page one. So this is the west side of the canopy where we're proposing to have a Luk-oil sign. Page two is what we were just discussing which is the east side elevation. This is also additional sign and on building minimart and service sign we which we are also understanding that there would not be a variance for either of those signs.

Page three is another minimart rendering. Four is the service and minimart rendering again. This is also another service sign on the west elevation of the building on page five and then page six which would have been revised in the renderings we submitted for this hearing which show the I.D. sign.

MR. CRICHLLOW: Okay thank you.

MR. ZAMBRANO: You're welcome.

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CHAIRPERSON BUNTING-SMITH: Any other board members? If not is there anyone in the audience who wanted to address this application.

MR. DUQUESNE: Murray Bodin.

MR. BODIN: I have a question. Can this sign be since it's going to be 24 hours a day could can it be solar powered with a battery back up to store the energy needed for that sign at night?

CHAIRPERSON BUNTING-SMITH: Mr. Zambrano, do you know?

MR. ZAMBRANO: I'm sure it's something that could be done. But that is, you know, nothing that my client had discussed or, you know, I guess thought about.

CHAIRPERSON BUNTING-SMITH: Any other questions?

(No response.)

CHAIRPERSON BUNTING-SMITH: All right.

\* \* \* \*

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CHAIRPERSON BUNTING-SMITH: We will move on to the next case on today's agenda. Case No. 21-05, GHP Taxter, LLP, for property located at 555 Taxter Road.

ZBA Case 21-05 - GHP Taxter, LLP, for property located at 555 Taxter Road, (P.O. Scarsdale, N.Y.). Applicant is requesting an amendment to a condition of a previously granted variance application in ZBA Case 90-30 limiting the hours of illumination of a sign from 8:00 am to 6:00 pm; in order to allow hours of illumination to be 24 hours a day. The property is located in an OB-Office Business District and is designated on the Town Tax Map as Parcel ID: 7.240-103-1.

MR. RODRIGUEZ: Good evening, Madam Chair, Members of the Board, Council and staff. My name is Adam Rodriguez. I'm an attorney at Bleakley, Platt and Schmidt. And I'm joined by who I think is -- I'm not. Are you still here, Joe?

MR. LANZA: Joe Lanza, from Sign Design is on, Adam.

MR. RODRIGUEZ: There he is. I'm sorry. I'm here with Joe Lanza from \* N Y sign design.

As I stated we're here on behalf of

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GHP, who are the owners of 555 Taxter Road, and that whole corporate office complex there on Taxter.

We're seeking relief from a sign illumination restriction and a variance that this Board granted in 1990. And if I may, I'd like to share my screen. Do you have to -- do I have to wait to get determination?

MR. DUQUESNE: No. You're all set, Mr. Rodriguez.

MR. RODRIGUEZ: Thank you. Is that visible?

MR. DUQUESNE: Yes.

MR. RODRIGUEZ: We are looking at 555 Taxter. That's the back of the building. And the sign in the top right corner is the Montefiore sign issued here. This is the north facing side of the building. I have to move one second.

This is the inside lobby of 555 Taxter. It's a beautiful building. The landlords took over the office park in early 2019 at a foreclosure, and since they have taken over -- it's complicated.

They have spent a lot of time and money and effort in revitalizing the units and really turning it into a primo classe office park for Westchester County. They spent millions of dollars refurbishing it. It has brought substantial revenue to the town through permit fees, taxes. They have attracted new tenants, including Montefiore, which is really the subject of this application here today.

I'm going to scroll -- counsel talked about the property in general -- and Zoom in. Bear with me.

I'm sure you're all familiar with the general area. But there is going over

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for the public if anyone is listening, so the that the sign is on this north face of the building.

As you can see, the property is surrounded by 287 to the north, 87 to the west, Taxter Road to the southwest, and, you know, \* string along up the northeast corridor there and to the northeast by 119.

The building is set back from the property line, significantly, I think a hundred feet in certain places. There are residences to the south of the property. But as we can see the sign is going to be on the north face. So it would have no impact -- and the application would have no impact on the residences to the south. There are also residents to the north and I will scroll down again and \* \* \* \* fix this.

The residences to the north are thousands of plural feet away and obviously separated by the 119 commercial corridor.

The 119 commercial corridor is, you know, you folks probably know, has significant signage at night, you know; not all that dissimilar to what the application is here today.

This is the Marriott sign that is lit at night. The early morning photo during the week. These are some of the businesses on 119. There is an actually similar although much smaller medical facility that has a, you know, sign that's lit at night.

So that's sort of the context. To the extent there are any specific questions about the sign itself, you know, Mr. Lanza is prepared to, if you can, just give them a quick run-through of the sign. It doesn't blink or anything. It's a fairly innocuous sign.

\* MR. LANZA: It is a led populated

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sign box aluminum structure \* struggle \* ex instruction. There were some signs up there before that were not very safe. We removed them when we saw that. They weren't ours. We put these up and through -- putted through the parapet there, for safe to say.

Once again, the sign we're looking for is facing -- I believe it's 287, mostly for just identify the location of \* upon the field. So if there is any other specific questions, if you want to hear about things like lumens. Lumens. It's hard to compare lumens with incandescent and other kinds of lighting. We're looking at about 400 lumens. It's a very even light, too, like the Montefiore sign.

MR. RODRIGUEZ: Just to give you a little context. Montefiore entered into a lease late December '19, right before COVID. And the idea was this location is going to be the centerpiece of their Westchester County presence.

They are going to have a variety of different services there, but because of the pandemic the plans were delayed a bit. They have opened some operations there. They had an I.T. operation there. They are doing some business, physical therapy, but longer term they are going to fill out the approximately 130,000 square feet of space they have with a variety of you know medical services, you know, diagnostic capability. I can go through them in more detail if there is interest.

But ultimately this is going to be the centerpiece of their Westchester County operation and they really want to promote that through the use of the sign, bearing during the nighttime hours to make sure that the public has an awareness of the presence, that it's easily located, you know, from 287. You can see it. That sort of thing.

And we think that because there is

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essentially going to be no impact particularly given the context of the surrounding neighborhoods and the commercial areas that would, you know, intervene. You know, we think we meet the statutory criteria for variance, although technically I think it's just modifying the conditions of an already granted variance. I think we meet the statutory criteria.

MR. CRICHLLOW: I have a question regarding the examples that you showed of other locations with lighted signs, like the Marriott and the other health care center.

They were obviously taken at night. But were those signs lit 24 hours or were they just on at six clock at night and in the winter time it's dark?

MR. RODRIGUEZ: Sure, it's a great question. I couldn't tell you whether they were on 24 hours to be Frank we didn't have someone sit out there 24 hours they were taken in the early morning hours. I want to say around 5:00, 5:30. I could get, you know, exact times, but that's -- it was -- I think it was around 5:30, maybe closer to 6 in the morning. So the presumption was that they were on all night, but I couldn't verify that.

MR. LANZA: If I may add. A number of medical locations /THRAEFGS /WAOPB \* Montefiore is included; the White Plains Hospital is another. They are looking for just identification, so people can find them, and often do look for that. A longer -- longer time of lighting their location.

MR. ADLER: I have a question. I'm sorry. I have a question. Does this facility accept any emergency care situations? I mean, if someone were to get sick in the middle of the night and would have to be taken to a -- for medical attention, would they be going to this facility?

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MR. RODRIGUEZ: Well, right now the answer to that is no. The only medical services that there are are physical therapy -- excuse me, physical therapy in a partnership with Burke Rehabilitation. And, you know, the more short and medium term I think answer to that question is no, although there is a potential possibility for that in the future.

MR. ADLER: So this is a place where people came and then they go home. Correct?

MR. RODRIGUEZ: Yes, that's correct. That's the anticipated --

MR. ADLER: Excuse me. I'm talking now. Okay. I'm talking now. So you showed us the Marriott. White Plains Hospital you mentioned. You talked about urgent care. As far as I know, these are places that accept people in the middle of the night, if needed.

MR. RODRIGUEZ: That's incorrect, sir.

MR. ADLER: Urgent care doesn't take? I apologize. Tell me what they don't take.

MR. RODRIGUEZ: They close at 8:00. I have their hours here. Give me one second.

The urgent care hours are 8:00. Urgent care hours are Monday through Friday, 8:00 to 8:00, and Saturday and Sunday nine to five.

MR. ADLER: But they do not take people who are in emergency situations, I believe.

MR. RODRIGUEZ: I mean, yes, I suppose that's probably -- yes, I suppose

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that's true.

MR. ADLER: Certainly White Plains Hospital takes people in emergency situations.

So, are you trying to attract business from 287 in the middle of the night? These are -- excuse me. If they come during the day for treatment, it's more than likely the next time they come they will know where they just were. Why does it have to be lit up all night long?

MR. RODRIGUEZ: To establish a brand. To establish an awareness in the community.

Again, it's going to be centerpiece of Montefiore's Westchester presence. And, you know, they really want to establish that goodwill, if you will, connection with the surrounding community.

And, you know, I would like to point out, you know, the variance that's under-- they were already granted the erection of the sign in the first instance in 1990. The rationale --

MR. ADLER: 1990? 1990.

MR. RODRIGUEZ: The rationale was to facilitate visibility and identification of the building. It goes on, you know, for those people who are traveling to the building, to make that traveling safer and more easily carried out.

And I think that was in connection with Fuji for photo lab. We're talking about a medical facility. To your point there is no -- at this point there is no intending to turn it into an emergency services location. But I think that, you know, given the medical nature of it, you're going to be building with folks that still are going to be compromised in some way,

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shape or form.

I think the rationale holds on in more solid ground in connection with this use than it would have been for Fuji film.

MR. ADLER: Just one more question. Why would someone go to this facility after it's dark and before it gets, you know, during the night?

MR. RODRIGUEZ: Well, it will be open. It will be open at night and outside the restrictions that currently stand on the variance. So there will be scenario if the variance is not modified, if conditions are not lifted where it's dark and the sign has to be off.

MS. UEBERLE: Can I ask what the business hours are then? What the hours of the building are?

MR. RODRIGUEZ: Yes. Sure. So right now Burke is operating Monday through Saturday, eight to six, with the intention to expand to Sunday. Then the idea is that Montefiore will be operating from 8 A.M. to 8 P.M., Monday through Saturday.

MS. UEBERLE: Okay, thank you. Thank you.

CHAIRPERSON BUNTING-SMITH: Any other questions?

(No response.)

CHAIRPERSON BUNTING-SMITH: Anyone in the audience that want to address this application.

MR. BODIN: Murray Bodin. Yes, I do.

Mr. Rodriguez, I understand you're

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from Yorktown and you're thoroughly familiar with the battery storage unit at the shopping center there, which I saw. It's very nice.

Is this complex that you have here, do you think that that same type of storage system would be advantageous to everybody to have that installed in this unit? Thank you.

MR. RODRIGUEZ: I'm not sure I understand the question, to be honest.

MR. BODIN: I'll repeat the question.

MR. DUQUESNE: Mr. Bodin, there is a Battery Energy Storage System at this location presently.

MR. BODIN: Thank you.

MR. HARRISON: Let me ask the obvious question. Why don't A.T.M. work for you? Why?

MR. RODRIGUEZ: I'm sorry, sir?

MR. HARRISON: Why doesn't A.T.M. work for you?

MR. RODRIGUEZ: Well, as I said earlier, I mean, words -- the intention and the desire is to promote the Montefiore brand broadly and consistently to establish the new presence in Westchester County and going forward in the future.

It's a -- the lease is a very long-term lease. Montefiore has the intention to be there long-term; and, again, establish this as its hallmark of its presence in Westchester County.

MR. LANZA: May I say something? I

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don't want to step on your --

MR. RODRIGUEZ: Sure.

MR. LANZA: But typically we don't stop at 8 p.m. When we do signage and put timers on they will go a number of four or six hours after the dusk. We have to think about the winter and the summer. But besides that, I think this is a request of Montefiore, and in this case we're not impacting the public so much.

You may be seeing it from 287. It's not that big. When you're seeing this in that distance and the homeowners -- it doesn't impact. So we thought in this case it's a situation where we can give our client what they are looking for, of a little exposure, without impacting the possible --

MR. CRICHLow: But there is a multi-tenant facility, correct? It's not just Montefiore.

MR. RODRIGUEZ: That's correct. But Montefiore has 130,000 square feet, which I do believe is more than half of the building. But I don't know that for certain.

MR. CRICHLow: Okay. It sounds like a lot just to create a presence in the neighborhood.

MR. RODRIGUEZ: Well, I mean, as I sort of indicated earlier, there are other signs -- other businesses have their signs on 24 hours day that are not urgent care facility, not medical facility. There is -- I could pull back up a screen shot. But there was a business next to the urgent care which also had sign on at 5:30 in the morning.

You know, I mean, I think this is a special case dealing with the medical nature

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of it. And so, you know, again, we think we've met the criteria. And we are happy to answer any other questions.

MR. HARRISON: People go to the Marriott late. Right?

MR. RODRIGUEZ: Presumably they don't go to the urgent care late.

MR. HARRISON: No. Right. That's why they -- Marriott would have the sign on so that when their guests come in, they are coming in late to check in, will be able to find it.

MR. RODRIGUEZ: No. I understand. But the urgent care on 119 closes at 8:00 and 5:00, I think, on Sundays, and their sign is on.

MR. HARRISON: Do you know if they received a variance for that?

MR. RODRIGUEZ: I don't know.

MS. KNECHT: What is the height of the building?

MR. RODRIGUEZ: It's four stories. I'm not sure that I know. I don't know the exact height.

MR. LANZA: I'm going to guess. Because we had cranes there in the past. In the back it's about 75 or maybe as much as 80 feet. And the other locations of the building are different. One is about 60 or 65.

CHAIRPERSON BUNTING-SMITH: Any other questions?

(No response.)

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CHAIRPERSON BUNTING-SMITH: Okay.  
Hearing none we will move on.

MR. RODRIGUEZ: Thank you.

CHAIRPERSON BUNTING-SMITH: Thank  
you.

MR. LANZA: Thank you guys.

\* \* \* \*

CHAIRPERSON BUNTING-SMITH: The next  
case on tonight's agenda is Case No. 21-08,  
Jarrod and Giselle \* Lindsey, for property  
at 248 inferiority Hill Road. Who do we  
have here to speak to us?

MR. ALFONZETTI: I'm here. I'm  
Ralph Alfonzetti. I'm the engineer for the  
project. Mr. Lynn say is here, the property  
owner, and day sack Kearney the contractor.

CHAIRPERSON BUNTING-SMITH: Could  
you spell the names, please, Mr. Alfonzetti?

MR. ALFONZETTI: Sure. My name is  
Ralph Alfonzetti. A-L-F-O-N-Z-E-T-T-I.

CHAIRPERSON BUNTING-SMITH: Well,  
the applicant's names we have. Is anyone  
else that you mentioned?

MR. ALFONZETTI: Dave Sacarny.  
Last name is S-A-C-A-R-N-Y.

CHAIRPERSON BUNTING-SMITH: Thank  
you. Go ahead, please.

MR. ALFONZETTI: We have a  
single-family residential lot, address is  
248 Fort Hill Road. This is located on the  
west side of Fort Hill Road in an R-2 zone.

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If I can share my screen. (Check zone.) \*

As you can see on the \* sequence map that I've pulled up that was filed in Westchester County land rights in March of 1966, it is lot number two on this map. Everyone can see that. Switch over to our proposed site plan.

We are proposing a single-family house. It is zoning compliant in every way other than the existing frontage. When the lot was subdivided in 1966, 15 feet was approved as our frontage. Now the requirement is 25 feet. Essentially there is nothing we can do about that. It's not self-created. It's not going to change the neighborhood.

It is what it is. And we are here to request a variance.

CHAIRPERSON BUNTING-SMITH:  
Questions from the Board?

MR. CRICHLOW: I suppose you can't widen the driveway 10 feet?

MR. ALFONZETTI: We can not do anything: It's not our property.

MR. CRICHLOW: I wasn't trying to be facetious; I just wanted to get that in the record.

MR. ALFONZETTI: Yep; absolutely.

MR. DRORGEZ: I have a question.

MR. ALFONZETTI: Yes. If the lot was approved in '66 why it cannot develop \* within foot wide?

MR. ALFONZETTI: Why we cannot?

MR. DRORGEZ: Yes. Yes. Why you need the variance?

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MR. ALFONZETTI: Well, because now the frontage is 25 feet. And somewhere between 1966 and now I believe the zoning variance came into -- the variance -- I'm sorry. The frontage law came into effect in '87 or '88. Essentially it's a non-conforming lot.

CHAIRPERSON BUNTING-SMITH: I'm sorry. You asked a question. Could you please put your name on the record, please.

MR. DRORGEZ: Yes.

CHAIRPERSON BUNTING-SMITH: Spell it.

MR. DRORGEZ: D R O R G E Z.

CHAIRPERSON BUNTING-SMITH: Are you a neighbor?

MR. DRORGEZ: Yes.

CHAIRPERSON BUNTING-SMITH: What is your address.

MR. DRORGEZ: \* \* 107 front?

CHAIRPERSON BUNTING-SMITH: Do you have any objection to this property being developed and a house going there?

MR. DRORGEZ: I have a question. Since this it's approvable buildable lot it's been obviously it's a flat lot and it doesn't have \$40,000 square foot requirement today why are you asking to apply for variance if it's already been conforming land.

MR. ALFONZETTI: We were told that we needed a frontage variance in order to get a building permit.

MR. DRORGEZ: You don't need a buildable site.

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MR. ALFONZETTI: No. It meets the criteria as far as lot area. The only we need variance on is frontage.

CHAIRPERSON BUNTING-SMITH: If you want we could perhaps have the Building Inspector go.

MR. ZACAROLLI: Yes, I will. It's a different section of the Code that requires that every lot that is going to be developed have minimum of 25 foot frontage on a town approved record a town improved or a road town road improved to town standards. So that has to be 25 feet frontage on a town approved road or a road approved town standard. That's the regulation.

It's separate from the regulations and conditions of a flag lot section of the Code. And this particular section does not give any year where prior to that year it was grandfathered in. So any lot from the adoption point of this Code Section has to adhere to that.

MR. DRORGEZ: So what you basically grandfather in just for the size so he can build --

MR. ZACAROLLI: For the size of the lot, correct. Correct. For the size of the lot so it's grandfathered for the 20,000. That provision that was added at the later point, you know, was not exempt from that.

MR. DRORGEZ: So the size of the lot is okay. When it was created?

MR. ZACAROLLII: Yes.

MR. DRORGEZ: Because it was created before the zoning change, so it's grandfathered in on the size of the lot but he can not grandfather in the size of the frontage?

MR. ZACAROLLI: Exactly. Because

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the section does not allow -- the section applies to any building permit that's issued or any development of a new lot has to meet that requirement.

MR. DRORGEZ: So basically what you're saying, any lot that was existing that was conforming lot prior to 1987?

MR. ZACAROLLI: Yes.

MR. DRORGEZ: Doesn't to me, the area, but does need to make the frontage.

MR. ZACAROLLI: Yes, it has to meet the frontage. Any lot even, if it was created prior to, by that section. If you look in the flag lot there is exemptions for lot area by the year. This section of the Code that is applying to this for variance does not have an exemption. It is, you know, the section reads, you know, straight \* \* \* cowhat that any -- I'm just going to grab the section for you.

So the section of the code is 285-39 9(a). And it states that lots have to have 25 foot frontage on a town approved road. And it basically goes on to say and access thereof --

MR. DRORGEZ: Because across the street, close to -- what is it? 252, across the street there is another flag lot that, those have less than 25 foot frontage that exist now. So but four or five years ago, is that the same case?

MR. ZACAROLLI: I can't answer that right now. I don't have those documents. I would have to research the whole thing.

MR. DRORGEZ: Okay.

MR. ZACAROLLI: May have been granted a variance. I don't know.

MR. DRORGEZ: Okay, fine. Good

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luck. Thank you.

CHAIRPERSON BUNTING-SMITH: All right. Any other questions?

(No response.)

CHAIRPERSON BUNTING-SMITH: Any comments further from anyone?

(No response.)

CHAIRPERSON BUNTING-SMITH: Okay. Thank you.

\* \* \* \* \*

CHAIRPERSON BUNTING-SMITH: We have Case No. 21-09 Hampshire Management Company, for property at 215 305 North Central Avenue.

MR. SANTOLIQUIDO: Good evening Michael Santoliquido, San Signs and Awnings in Yonkers, New York representing Hampshire Management. Michael Santoliquido. S-A-N-T-O-L-I-T-O-Q-U-I-D-O Santoliquido.

We're representing Hampshire Management in the property located at 215 through 305 Central Park Avenue. This property is also known as Westchester Square and currently houses Best Buy, Marshalls, Trader Joe's, City M.D. and Bareburger, to name a few.

We're before you tonight with the proposal for a new pylon sign. As you could see from the renderings which we provided. We're requesting four variances.

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If you'd like I could share my screen.

MR. CRICHLLOW: Yes, we would like.

MR. SANTOLIQUIDO: Can you show that?

CHAIRPERSON BUNTING-SMITH: Yes.

MR. CRICHLLOW: That's not what I wanted to -- that's not it either.

MR. SANTOLIQUIDO: I'm sorry. Do you see the pylon sign now?

CHAIRPERSON BUNTING-SMITH: Yes. Okay.

MR. SANTOLIQUIDO: You do?

MR. CRICHLLOW: Yes; old and new.

MR. SANTOLIQUIDO: Good.

MR. CRICHLLOW: And proposed?

MR. SANTOLIQUIDO: Thank you. So one variance we're requesting is to increase the size from an existing 65 square feet to the proposed size of 144 square feet.

As you know, the Town Code only allows for a 30 square foot 30 square foot pylon. So this existing sign has an existing variance.

The second variance we're requesting is in regards to the height of the overall sign. The current sign is 20 feet tall, the new proposed sign will also be 20 feet tall, whereas the code requires a max height of 12 feet tall.

So we'll be requesting an eight foot variance. But as you could see from my images to scale, they are both at 20 feet in height.

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The third variance we're requesting is with regards to the open space at the bottom of the sign. The current pylon is 8 feet to the bottom of the sign and we're requesting a variance to bring the height from grade to 6 feet and then to have a 27 inch planter at the base where we could plant some plants and to beautify the property.

Our fourth request is for the overall width of the sign where a variance would increase it from six foot max allowed to 12 foot, it's currently shown.

Our situation here is unique and we're lucky to be currently full with 16 tenants. Our current sign only has 13 tenants left at 6.5 inches on the small and a 11 inches on the large. \* \* \* slats.

As you could see from some of the photographs which I will attempt to share -- I'm assuming that you could see that.

MR. DUQUESNE: Sometimes it's helpful to stop sharing. So I'm going to stop for you and then go ahead and reshare your photos.

MR. SANTOLIQUIDO: How is that?

MR. DUQUESNE: Okay. We see a photo of a vehicle.

MR. CRICHLLOW: Good.

MR. SANTOLIQUIDO: Like I said, our situation is unique. And with the small signage that's on here, you could see from this photo coming north on Central Park Avenue, it's not even visible. And as I progress closer, yes, you could start to read Best Buy and Marshalls, but the rest of them are really useless.

I took some photos from within the

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property for you to see how 90 percent of them you can't read.

Now, we also have a far setback here, as you could see. And there is no site distance at the bottom.

The main reason were we're seeking the variance from 65 square foot to the 144 square feet is to create more tenants and to increase the sign slots to make them function.

In regards to the height variance, I suspect there is already one in place. The existing sign is almost 20 feet tall. So I'm hoping that would be -- we can go ahead and continue that variance and keep it at the same height.

In regards to the third variance in the open space, if the Town Board wants us to remove the planter then we could certainly remove the planter. It would be at the six foot height, but as you can see in this particular location from the photo that's here, the clear space underneath the pylon is a moot point due to all the shrubbery and the fact that it doesn't \* affect a clear line of sight as we're pulling out of the Mall.

From my experience, the reason for the eight foot or six foot above grade code requirement is so a vehicle can see north and the oncoming traffic. As you could see, that wouldn't be an issue here with this particular sign (indicating).

Our final variance is in regards to the width of the sign. We're seeking a variance from 6 feet to 12 feet; once again, to increase our panel sizes here (indicating). We're not going any closer to the street. We will be infringing on our property, but it is double the width. It is double the width of the existing sign.

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I know it's asking a lot. And as you know, the Petrillos have been in town and kept this mall occupied. I think you are also aware that we just built a building north with City M.D.; currently they have no signage.

You approach the Building Department in thoughts and in hopes that we could erect a second sign for them and take them off of the main pylon. But due to the way this property is situated we are only allowed to have one pylon sign. So now we're at 16 tenants and we've got 13 slots. So we have a predicament, and it's something that we need to solve here.

I think that the rendering of our sign is absolutely beautiful. Yes, it will be internally illuminated, with light box, with LEDs. Upper panel will be negative cuts only. The edges of Westchester Square will illuminate. But we've kept the faces and the logo branding to a size that will function on Central Avenue.

I don't think that there is any impact to the public around us. We are on Central Avenue. And this sign will have a timer on it which will go off at 11 clock as per local ordinances.

If you have any questions I'd be happy to answer them. If you have any suggestions on what we could do here I'd be happy to listen to them as usual.

I'll open it up to the Board.

MR. CRICHLLOW: So, it looks like you have two empty slots for signs at the bottom of your proposed pylon sign. But I count 16 signs there already. Are you expecting to build more buildings on your site?

MR. SANTOLIQUIDO: No. Louis, here is our predicament. With COVID there has

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been conversations with Marshalls down-sizing. There has been conversations with Best Buy down-sizing.

With the way retail is set up in the market, we were just preparing for what we think is the inevitability that we are going to have to subdivide at one point or another here.

So instead of doing what was done in the past, as you could see, Choice Pet came in here and added a light box at the bottom. So I'll assign that Choice Pet does not have a permit for that.

So in order to avoid that, and something that we do as a rule of thumb is, we try to go ahead and put a couple of extra slats. Because what if there is space available here, or, like I said, we subdivided in the near future. But it's a conversation that's already being had with the people at Marshalls.

Now that's a very large space.

MR. CRICHLLOW: Understood. Understood. Then my second question is, in the width of each individual sign, in actuality even though you are doubling the width of the entire pylon sign -- except for Best Buy, Trader Joe's, Marshalls and CVS the remaining signs aren't any wider, and I don't know if they are going to be any more readable.

MR. SANTOLIQUIDO: They are double in height. They are double in height of what area is currently existing .

And if you notice, if you could just look at City M.D. or Jersey Mike's, or even Bareburger -- in regard to the utilizing their logos, Central Seafood would be another one. You know, obviously some fonts could be changed and \* gangrene know dentistry to make him work out better.

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But it's a matter of adding for our tenant and giving them some visibility from central area.

MR. ADLER: Michael, without revealing how I might vote on this issue, I might take exception with your conclusion that this is, quote/unquote, a beautiful sign.

MR. SANTOLIQUIDO: I guess it's a matter of opinion.

MR. ADLER: Okay. I think -- yes. I don't think I believe will follow that. Thank you.

MR. CRICHLow: In your package that you sent to the Board you have photos of other pylon there and the reason for that.

MR. SANTOLIQUIDO: Those are other signs that I included up and down Central Avenue. My intent was their location to show how their line of sight is underneath the sign and it's there for a reason.

I was also showing, in regards to size, relationship of square footage that there are existing signs that are bigger than the 34 square feet, that are bigger than 65 square feet of our existing sign.

I mean, I think our tenants are hindered by not having a sign there, but definitely the three that aren't existing on the existing one. But like I said, suggestions are welcome, ladies and gentlemen of the Board.

Over the years we've always seemed to work well together. So if there is something you would like to see and you would like me to do, to go back to my client and advise them, so be it.

But I think what we're presenting

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here fits Central Avenue.

MS. UEBERLE: I have a question in regard, on the colors in the background. The original sign there were a lot of colors with everybody using their kind of own unique branding colors and backgrounds and fonts.

Are you going to have this with more uniformity as you've shown? The only ones you have seem to have to be able to use their individual \* client's \* a whole on background are Best Buy and Marshals. Is it going to have the \* claim of this white background or will the individual slots look more like the original sign?

MR. SANTOLIQUIDO: No. What you are looking at currently, at what we're showing in the proposed, would be what we're intending on using.

The only ones that we have control of where I could say to you from a design point of view -- and maybe if I -- correct me if I'm wrong -- but the pet supply one, that we could make those possibly into a negative panel and make them into the same fonts and make them more uniform.

MS. UEBERLE: I don't want to give away what I'm going to vote here. The white looks cleaner than the original sign where you have an orange, a blue, and a lot of different color backgrounds.

You know, a lot of times people will show signs and it will all look more uniform. But when it's actually produced will go back to Choice Pet looking green and, you know, the nail salon, having their name -- having it be in orange. Is it going to be this clean?

MR. SANTOLIQUIDO: Diane, excuse me, but it will be exactly like this rendering shows. It will be the same color.

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MS. UEBERLE: Okay.

MR. SANTOLIQUIDO: There has never been a board that I've proposed that would look like we're what we're proposing here, if not better.

I do think there could be improvements done on Nail in Spa, Tarrytown Jewelers, Central Seafood and bakery regarding fonts, but Front Choice. And if we --

MS. UEBERLE: I'm sorry. You got cut off.

MR. SANTOLIQUIDO: What I was trying to say is, if I look at this rendering now like \* marine another and urine and fine Italian shoes, we could do even work further there with font choices to make it more functional and maybe even appease the Board more with colors or lack colors.

MS. UEBERLE: Up at the top the \* County of Westchester and Westchester Square with the number is much larger than it had been in the past. Is there a reason behind that? Is there a need for that?

MR. SANTOLIQUIDO: Listen. I wanted to finish off the top of sign. I think someone -- if you look at the sign on the right, that was never part of the original approval either. Someone stuck a band-aid on top of that sign that said Westchester Square and wired it in without a permit, just like Choice Pets.

I don't know. To me it's branding the mall. It's branding the location where you're located, that Westchester Square. Does it need to be that big? We could down-size it. It's something that we've contemplated on what type of concession that we could make with you.

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I'm coming to you with my hopes, dreams and aspirations, to think I could satisfy everybody's needs and still make a nice-looking, functional sign, but it can be down-sized.

But, once again, I'm always looking for direction from the Board members. I mean, I'm at 144 square feet. If that's not do-able, ultimately I want to be able to go ahead and get some input about what we think could function and would work here.

I know you're not necessarily allowed to tell us how you're going to vote but --

CHAIRPERSON BUNTING-SMITH:  
Sometimes we do.

MR. SANTOLIQUIDO: I know. I've got enough experience with you, Eve.

CHAIRPERSON BUNTING-SMITH: I'm sure. Okay. So I may as well jump in. All right. When you talked about Best Buy possibly going out and that space being present rented out to someone else, I'm not sure that I got an answer to the question that was raised regarding the colors here.

Because you're saying the sign would be as presented here. As presented HERE shows up us a yellow background for Best Buy; Marshalls has the blue. So is that something that would necessarily be passed on to another tenant, or would all of the signs potentially convert to the white background, if in fact those current tenants would no longer be there?

MR. SANTOLIQUIDO: Well, Eve, it comes down to national branding colors and what their criteria would be. And the beauty of a sign like this, let's say Marshalls did get subdivided. CVS could slide up and then you could further divide the CVS panel. But color scheme within the

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national brand I can't control. I can only control -- I can only control the non-national branded tenant, as I was trying to explain to Diane.

CHAIRPERSON BUNTING-SMITH: Okay.

MR. SANTOLIQUIDO: Best Buy, Marshals and Trader Joe's still have 10 years left on their leases.

This doesn't mean that as retail changes that they maybe further go ahead and pursue down-sizing. I mean, we've seen a lot of closures of some big companies like Lord and Taylor. I know that was a big hit for us here in Yonkers and Eastchester.

CHAIRPERSON BUNTING-SMITH: So my next question is, although I don't have an issue with the design of the sign per se, I think it's an attractive sign, because the one that's there now is so horrible.

MR. SANTOLIQUIDO: I didn't make it.

CHAIRPERSON BUNTING-SMITH: I know. What you didn't say I think -- I'm not sure that the new members are aware that the signs now do have to have the numbers, the street numbers for the locations. That's one reason that those numbers are there. And they do require something to be added to the sign just for that square footage.

But the space that's below Westchester Square, it's -- as nice-looking as it is, it looks like just a lot of airspace that's made the sign taller than it needs to be.

MR. SANTOLIQUIDO: Yes, it actually is created as airspace as for visual impact.

So when you're looking at it coming and going, the top section is floating. But

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certainly you can get rid of that 12 inch gap and decrease the height of the sign by a foot. That's very possible. It's more of a design element than it is anything else, Eve.

CHAIRPERSON BUNTING-SMITH: Okay. \* stant had nothing to do with the height. As I said, we were already at 20 feet, and I was asking for so much as it is it was. But certainly that --

MS. UEBERLE: Sorry. Go ahead.

MR. SANTOLIQUIDO: And I'm sorry, certainly that could be eliminated, if that's something that the Board choose.

CHAIRPERSON BUNTING-SMITH: Well, we probably choose to squeeze it down a bit if you could.

MR. SANTOLIQUIDO: Sure. Absolutely.

CHAIRPERSON BUNTING-SMITH: We're not sign people so, you know, sometimes what we suggest doesn't necessarily work.

MS. UEBERLE: I would just say that -- where I was questioning the top is it looks like that's the largest font of all, the fonts there; even though it's not bold like some of the others.

So that's -- the old sign it wasn't as large. So I was wondering if that could be made a little smaller. I also would say from a national branding perspective there is no brand that exists that doesn't have options with white background or a black background. Because there are restrictions. I was in branding and design for years so I know they all have those options, even if they don't want to use them.

So I'd like to see, for uniformity, the white background. I would hate to see

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it go back to a place where there were all those colors. I go there pretty much every day. I live over in that area. And every time I drive by that sign I just cringe at all the different colors.

MR. SANTOLIQUIDO: So you're happy to see this then?

MS. UEBERLE: Yes.

MR. SANTOLIQUIDO: I know Marshalls has a blue. We can do Marshalls with a blue letter and a white background. Best Buy.

MS. UEBERLE: That would be a suggestion.

MR. SANTOLIQUIDO: Black and white. And maybe if they needed yellow, we did a yellow outline.

MS. UEBERLE: I'm sure they have options, that they all have options for, you know, however to bring their colors in.

CHAIRPERSON BUNTING-SMITH: I know that we could probably pull these files, and I just don't recall. I don't know if any of the other members recall what the square footage of the two signs that are further north that you show in your renderings here (indicating). The one where H-Mart is, I guess it would be. I'm trying to see which one this is. Is this the McDonald's that I'm looking at?

MR. SANTOLIQUIDO: Yes.

CHAIRPERSON BUNTING-SMITH: We knew this was coming when those signs that were approved recently. So I'm just wondering how square footage wise they compare. I realize they are different. Certainly those locations are much closer to the street than the tenants in Westchester Square for the most part.

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MR. SANTOLIQUIDO: We have no impact from our building signage from the road.

CHAIRPERSON BUNTING-SMITH: Yes. So I know you don't know that but that's --

MR. SANTOLIQUIDO: I don't know that. But I certainly, Eve, I'd certainly be willing to get that information.

CHAIRPERSON BUNTING-SMITH: Okay.

MR. SANTOLIQUIDO: Unless the Building Department can provide it at their fingertips.

CHAIRPERSON BUNTING-SMITH: They might be able to. Any other questions.

(No response.)

CHAIRPERSON BUNTING-SMITH: Not hearing any noise at this point, hearing only silence, I think we need to adjourn and deliberate. If we can. I'm sorry, Mr. Bodin. Yes.

MR. BODIN: Considering the economic climate we're in, and I think this sign is excellent. By the way, I'm a sculptor and an artist. And my sense of proportion looks at that sign and says it's excellent.

Second as a driver.

MR. SANTOLIQUIDO: Thank you.

MR. BODIN: I do. It's well put out. And colors are something that we need.

If someone were giving me directions to go there they'd say, Go to Best Buy. I don't have to read the bottom. I need the direction to Best Buy when I pull in the lot, then I need to read what the bottom is. But there is no reason to read the bottom of

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the sign, but because that's not what I'm looking for.

The sign is very well done. Commercial real estate are buying stuff in real estate in source today is very difficult. Anything we can do to help them survive and prosper we should do. But I need to see Best Buy and Trader Joe's, then when I get in there I know what to do. The.

Numbers on the top are excellent. That space between Westchester Square and Best Buy is correct visually. And I want to compliment them on doing a very good job. Should they compromise? No. Standard color is in today. The rules that we used last year and before don't work today. Everything is changing. You've heard me speak before about various things. This is excellently done.

The space between Westchester Square and Best Buy is correct. And once I get in there I'll decide where I have to go.

My compliments on very well designed sign. Thank you.

MR. SANTOLIQUIDO: Thank you, sir.

MR. HARRISON: Can you hear me, Eve?

CHAIRPERSON BUNTING-SMITH: Yes.

MR. HARRISON: I had trouble with my audio.

In the event that you subdivide Best Buy and Trader Joe or Marshall's I believe -- and would you bump up CVS and split where CVS is now?

MR. SANTOLIQUIDO: Yes, the four top panels are the same size.

MR. HARRISON: Well, in the event,

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you know, you're planning for that, why do you still need the two empty ones at the bottom, that blue reference?

MR. SANTOLIQUIDO: Well, you've also got 12 other tenants that are there.

MR. HARRISON: Oh, I'm sorry.

MR. SANTOLIQUIDO: Some of those faces are 36, 4,200 square feet, which can very easily be a Subway of 1,200 square feet. It's just looking for options.

But, with all due respect, if that's something to hinder the application, by all means, you know, Greg -- the Petrillos are very reasonable in their thought process and gracious for whatever you guys are going to go ahead and grant us here. So we're willing to work with you as we always are.

MR. HARRISON: Thank you.

CHAIRPERSON BUNTING-SMITH: Thanks. All right. Anything else?

(No response.)

CHAIRPERSON BUNTING-SMITH: Okay. Let's begin our deliberations.

MR. ADLER: Can we take a break? We're not going to take a long break.

MR. SANTOLIQUIDO: Thank you very much. Have a good night.

CHAIRPERSON BUNTING-SMITH: It's past ten.

MR. HARRISON: I move that we extend the meeting.

MS. KNECHT: Second.

CHAIRPERSON BUNTING-SMITH: All in

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favor?

MR. CRICHLow: Aye.

MS. KNECHT: Aye.

MR. ADLER: Aye.

MS. UEBERLE: Aye.

CHAIRPERSON BUNTING-SMITH: Chair votes aye.

MR. DUQUESNE: Thank you.

(Whereupon, at 1050 the members of the ZBA returned to give their decisions for the record.)

MR. DUQUESNE: Janelle, we're going to go live. Just give me the cue via chat, then I'll hit "record."

CHAIRPERSON BUNTING-SMITH: Janelle. Are you all set on the live recording?

JANELLE: Yes.

MR. DUQUESNE: Okay. We're all set. 10:50.

CHAIRPERSON BUNTING-SMITH: We are back on the record with regard to our deliberations and the results of them for this evening. And I will take the cases in the order that they are on the agenda.

Case No. 21-03 and Case No. 21-04, which I'm mentioning together because they both address an interpretation with respect to the Building Inspector.

Those will be adjourned for all purposes to the meeting of May 20th. Because, although we did have quite I thought extensive deliberations on the record, after having a meeting with counsel with regard to our executive session some

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other issues came up with respect to the parties that led us to believe that we really do need to come to some unanimity that we do not have at this point.

And we wish to read the law and determine if there may be more questions for the parties at this point. So that our decisions are very clear and backed by the information that does \* Thursday what ultimately they will be.

\* \* \* \*

CHAIRPERSON BUNTING-SMITH: The next case that we have is a Case No. 21-07. Poet's Corner, Luk-oil. That's adjourned for all purposes to the meeting of May 20th.

\* \* \* \*

CHAIRPERSON BUNTING-SMITH: The next case is GHP Taxter, LLP. And that case also is adjourned to the meeting of May 20th.

\* \* \* \*

CHAIRPERSON BUNTING-SMITH: And the next case is Case No. 21-08, Jarrod and Giselle \* lend say. And I have:

WHEREAS, the Greenburgh Zoning Board of Appeals has determined that the above-referenced application with regard to SEQR compliance; and WHEREAS the Greenburgh

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Zoning Board of Appeals has determined that the application will not have a significant impact on the environment;

Now, therefore, be it \* resudden that the subject application is a Type II Action requiring no further SEQR consideration. Do I have a second?

MR. HARRISON: Second.

CHAIRPERSON BUNTING-SMITH: All in favor?

MR. CRICHLLOW: Aye.

MS. KNECHT: Aye.

MR. UEBERLE: Aye.

CHAIRPERSON BUNTING-SMITH: Do we have a motion?

MS. KNECHT: Yes. I move that the application, in Case No. 21-08, be granted, provided that:

1. The applicant will obtain all necessary approvals and file same with the Building Department;

2. That construction begin no later than 12 months after the granting of the last approval required for the issuance of a building permit and proceed diligently thereafter in conformity with the requirements of the Zoning Ordinance, in conformity with the plans dated October 6th, 2020 and revised February 25th, 2021, submitted in support of this application.

3. The variances being granted are for the improvements shown on the plans submitted in support of this application only. Any future or additional construction that is not in conformity with the requirements of the Zoning Ordinance shall require variances, even if the construction conforms to the height, setback or other

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variances we have approved herein.

CHAIRPERSON BUNTING-SMITH: Second.

MR. CRICHLLOW: Second.

CHAIRPERSON BUNTING-SMITH: All in favor?

MR. HARRISON: Aye.

MR. CRICHLLOW: Aye.

MR. ADLER: Aye.

MS. UEBERLE: Aye.

CHAIRPERSON BUNTING-SMITH: The Chair votes aye. Do we have findings?

MS. KNECHT: In granting this application the Zoning Board of Appeals has weighed the benefit to be derived by the applicant from the proposed variance against the impact that the variance would have on the surrounding neighborhood. We have found that:

1. Granting the variance will not result in a detriment to nearby properties and will not adversely impact the character or physical or environmental condition in the neighborhood or district because the applicant proposes to construct a single-family home on a half acre piece of property \* in a Residential Zoning District. The lot is considered a flag lot, so the lot frontage is less than the 25 feet required. This narrower lot frontage will not detract from the overall \* pick of the neighbor the \* /ROEPD hope will be similar in size with regard to the zones in that there are no significant environmental features on the site.

The goal of the applicant cannot be achieved by some other feasible means without requiring the variance we are

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granting, because the lot was created in 1966 prior to when the required street frontage \* code was amended, the existing frontage is 15 feet and not the required 25 feet. There is no other feasible way to enter the property except from the 15 foot driveway entrance on Fort Hill Road. Nine access at this location is not an excess to have access on to the property.

The requested variance is substantial in the relation to the the requirement sought to be varied in that the applicant is requesting we were lieved is 15 feet, compared to 25 feet (required), a 40 percent decrease in the required lot frontage. However, it should be noted that other than required lot frontage the proposed home is fully zoning compliant.

The applicant's need for the variance was self-created because they purchased the property with knowledge of the requirements of the Zoning Ordinance; however, the fact that an applicant's need for an area variance is self-created does not, by itself, require us to deny an area variance.

CHAIRPERSON BUNTING-SMITH: Thank you.

\* \* \* \*

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CHAIRPERSON BUNTING-SMITH: And the last case on tonight's agenda is Case No. 21-02, Hampshire Management Company, which is adjourned for all purposes also to the meeting of May 20th.

And with that we have completed our evening. I wish you all well. And safe home. Good weekend and see you next month.

MR. HARRISON: Good evening.

CHAIRPERSON BUNTING-SMITH: I hope everyone has their shots.

(Whereupon, the meeting of the Zoning Board of Appeals was adjourned until the next meeting on May \* , 2021 at 6:00 P.M.)

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CASE NO.	CASE NAME	HRG	PGS.
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3/18/21

- 21-03 Town/G-burgh Planning Board
- 21-04 Council/G-burgh Civic Assoc.
- 21-05 GHP Taxter, LLP
- 21-07 Poets Corner Realty/Lukoil
- 21-08 Jarrad & Giselle Linzie
- 21-09 Hampshire Management Co.

DECISION/ADJOURNMENT

- 21-03 Town/G-burgh Planning Board
- 21-04 Council/G-burgh Civic Assoc.
- 21-05 GHP Taxter, LLP
- 21-07 Poets Corner Realty/Lukoil
- 21-08 Jarrad & Giselle Linzie
- 21-09 Hampshire Management Co.

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C E R T I F I C A T I O N

This is to Certify That the Above Transcript is a True and Accurate Transcription of My Stenographic Notes.

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Debra L. Rinaldi  
Senior Court Reporter