

*****MOTION:** Mr. Vasti made a motion to place Application #13-14 on the January 2, 2014, agenda for a Public Hearing; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

Mr. Vasti: This is a commercial site so when you show up there is no obstructions. You are free to walk around the property.

Chairman Wright: So if there are no other questions, then we will have the meeting on January 2, 2014, and a site visit on the last Sunday of December.

Chairman Wright: The next item on the agenda is the request of Robert and Britta Bush.

Request of Robert and Britta Bush – App. #13-12

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article IV, Section 12-F – Converting a one family to a two family in a RR District; use not permitted, at 664 North Liberty Drive, Tomkins Cove, New York.

Section 10.02 Block 3 Lot 4

We have a letter from Mr. Cohen, who is the attorney, and he is requesting that we post-poner the meeting until our next gathering. Is there anybody from the community that wanted to speak while we had the Public Hearing open; so we can do that and then I will take a motion to continue the Public Hearing into the next meeting?

Could you please come forward and identify yourself:

**Catherine Redmond
712 North Liberty Drive
Stony Point, New York**

My husband, Ron, and I we live just north of the Bush property that is under discussion.

Chairman Wright: “The testimony you are about to give is truthful?”

Mrs. Redman: Yes, it is. Before I begin I would like to just say that I have no animosity toward Mr. Bush or for that matter toward Ms. Thurston. I am sure that she would be a great neighbor; just as the Bushes were. However, I’m concerned about the change in the way that the situation is set-up with the small garage being converted into a home. My husband and I built our home 26 years ago. We’ve never had an ounce of trouble from anybody who’s been a tenant. But, I don’t know when the tenants started or when Mr. Bush’s mother died. I can’t remember the context. Do any of you know what the year that Mr. Bush’s mom did pass away – cause I know there was a discuss two weeks ago and the number was mentioned.

The reason I feel that has significance is because one of the, or the main discussion about this whole issue has to do with economic hardship or disadvantage to the Bushes in selling their home because if they could get that building, that small building, established legally then his house would be more valuable. My comment about that is this – Mr. Bush, when his mom passed away, technically that variance that had been granted to him ended. So he has had economic advantage. See we are talking about the hardship to him, but let’s think about all the years that he’s been collecting rent from that smaller unit, illegally actually, because he didn’t have the right to do that. So I think that we need to – I would ask you to consider the fact that if you are thinking about feeling that there is a propensity to feel sorry, or to want to give Mr. Bush this economic advantage, or do away with the hardship that he is complaining about, please keep in mind that he has had an economic advantage all those years.

The other point I wanted to make is that, you see we live right next door and if that smaller building is given the same kind of value by making it either a two-story or I think you called it a two-family house, or even if it’s a separate entity with just a smaller piece of property, by doing that I think it diminishes the area in which we live and since we live right next door I think that would be an economic disadvantage for us.

Chairman Wright: From the last meeting, Mr. Sheehan brought up some items regarding “standing” and in response to some of those; Mr. Maher has filed a letter on clarifying some of the “standing”. What we want to do tonight, at least, is go a little deeper into the “standing” issue because what we are not going to do tonight is go much further until we get a better sense of where we are with “standing”. I’m not sure they are going to resolve that completely tonight, but that’s the area we really want to focus on before we go into any more details. So with that, Mr. Maher we invite you to come forward and just kind of give us what your responses to “standing” might be on that and then we will...

Mr. Maher: I know one of the points that Mr. Sheehan brought up – oh, do you want to swear me in first?

Mr. MacCartney: You are already sworn in.

Mr. Maher: Okay, just wanted to take care of that issue first. One of the issues he brought up was whether or not I had “standing”. The opinion that people who rent homes in the Town don’t have “standing”; when in fact, I believe it’s the Department of State – I looked on line they had like an educational brochure. It was sort of like a presentation for Z.B.A. members so that they could gain some knowledge as to how they should act as a member of a Board. And in that document, I found it was slide 10...I have a report, unfortunately I didn’t make enough copies, I didn’t have time to do it. I’m going to be giving a copy to Mr. MacCartney, Mr. Sheehan, and the Board’s secretary tomorrow. If it’s necessary, I will go out of my way to make additional copies on my own and deliver it to everyone one of you if you so wish me to do. This way I could...I will just breeze through this very quickly. Keep it short and in this document it said, “owners or renters of property who request interpretations from the Z.B.A. are claiming that the decision of the Zoning Enforcement Officer was incorrect and are asking the Board to reverse the decision of the Enforcement Officer”. Now this document was issued by the Department of State and here it is clearly saying the word “renter”. Now that’s what I was; or still am a “renter”. So you have the Department of State saying that someone who rents a home in Town has “standing”.

And the other issue he made was that renter’s don’t pay taxes. Well I’m not a landlord, but I know simple accounting and income taxation – if someone pays you rent you are going to off-set that rent against your expenses be it maintenance in the building, principle on interest on any loans outstanding and, of course, the big “T”, Mr. Taxes. So in a very indirect way I pay property taxes. So, therefore, on those two points – the fact that the Department of State recognizes me as a person who could bring an action and also the fact that I do pay taxes in an indirect fashion to the Town through my rent, I believe that answers those two points right there.

In addition, of course, I have through my letter requested that my appeal be amended to include my status as a Town Engineer. Now according to the State Law that Mr. Sheehan referred to; it also says besides an “aggrieved” party or an Officer, Department Head, or some other entity within the Town. I’m the Town Engineer, I’m a Code Enforcement Officer so I wish to exercise that right as well.

Now the first case that he cited: **Village of Chestnut Ridge v Town of Ramapo**. It’s a very complex case. I didn’t have time to read it, but I did come across two little sub-cases in there – **Shapiro v Town of Ramapo and Youngwirth v Town of Ramapo**. They were two people, or two entities, that were given “standing”. They were directly across the street from the project site. This goes back – it was a potential site for a yeshiva in Ramapo if I’m correct. Again, I didn’t – the case is probably 100 pages long, if not longer, and with all those legal terms in there even I was getting confused until I found these two little cases that came out of it and it said for example: The Appellate Division ruled that the petitioner did not have to show actual injury to prove “standing” given the petitioner’s close proximity to the subject parcel. That is **Shapiro v Town of Ramapo, 93 A.D. 3d 675** (2nd Dept., August 22, 2012). In **Youngwirth v Ramapo**, basically the same case, same reasons. But, they also added that the injuries were alleged by the petitioner were within the zone of interests to be protected by SEQRA and the Town’s Zoning Laws. There again, that’s where I believe I stand.

There is another case that I came across, **Goldman v A Club Properties** and in that one the Appellate Court denied the defendant’s motion to dismiss on the grounds that the plaintiff’s lacked “standing” since they failed to demonstrate that the plaintiff’s lacked the legal capacity...I will come to the very last sentence, found the defendant’s failed to prove plaintiff’s lacked “standing” to maintain a common law action to enjoin a violation of a special use permit.

In **Ontario Heights Homeowners Association v Oswego Planning Board and United Development Corp.** was another case that I came across. Same reason – an adverse effect or agreement could be inferred from the proximity of his property to the development. This is again another case.

Mr. Sheehan referred to...and I again I didn't see the actual minutes on the Town page so I am going off it phonetically what I think he said, I think it was **Roth v Sheldon**. That goes back to the grievance that term of "standing", okay. That I felt could be put aside by the fact that I've now exercised through my petition to be Town Engineer in this case. It puts aside that whole issue of a grievance. Now I am a Town Official bringing this action.

Gaylord's Disposal Service v Board of Appeals, Town of Kinderhook – that goes to somebody who has...it's centered on how someone got appointed. It round up by simply saying that (let me find the exact point in here-just give me a second); it goes back to the case cited "if someone whose appointed was issued authority must be a Town resident". Now when I first came here in January 2009, at the time, no I wasn't a Town resident. I wasn't even a resident of New York State; I was living in New Jersey and I was quickly advised by Mr. Lynch, Dennis Lynch, that I needed to change my residency and it was also Mr. Marino gave me the same request. I did change my residency to Yonkers and Section 13A of the Town Code specifically says the Town Engineer only has to be a resident of New York State. Effective February 1, 2011, I moved into the Town; where I reside right now at 130 Central Highway. So those two dates alone are important and I believe they establish my residency in the Town and give me the right to file an appeal.

Mr. Sheehan made notice also of the fact that I failed to notify him as the Building Code Official. We work in the same building and while I did file the application with Ms. Kivlehan, Ms. Kivlehan is his employee and the way I understand the chain of command notifying the employees of a department head is the same as notifying the department head. So I filed the documents then. I was never advised after that point that I had to do an official notification to Mr. Sheehan. And it even says in the Town Code – "whenever the Building Inspector shall approve or disapprove act or fail to act or otherwise perform any of his duties and shall render a decision thereon, such decision shall be reviewable by appeal to the Board of Appeals from the Building Inspector's decision. Such appeal shall be taken not more than 60 days after filing of the decision by the Building Inspector in the office of the Building Inspector; not to the Building Inspector.

It is my understanding that New York State is a "home rule state". What that means is that unless a local municipality enacts a law on its own, it must rely on the state law to make a decision. If we didn't have such a section in the Code, Mr. Sheehan would be 100% right because in the State Code it says you must go to the official; but our Code says "to the Building Department". I did what the Code said. So, basically I found two cases that I think are very important here. If you remember, when we first were talking about the appeal, the variance that was going to be granted, we had a letter from the County warning about the severity of the intersection. There are two cases that come into mind there; one is **Jennifer Hine v State of New York** and the other is **Christopher Michael Rurycs v State of New York**. Both cases, New York State D.O.T. was found to be negligent for not trimming the trees off in the edge of the right-of-way because in both cases the accidents, the approximate cause or one of the primary causes of the accidents was limited sight distance.

Now, our Code is very specific. It tells you to cut the trees, trim the trees – I keep saying this in the shaded area. You need to look at that sketch again, compare it to the site photographs.

Chairman Wright: So just real quick because what I am trying to do is...

Mr. Maher: I am getting to the "standing" and going down to everyone of the points and, of course, there is now the new letter from the County which I believe needs to be examined. They are very specific and for now I'll just...I will wrap it up right there. Like I said if the Board members would like, I will make every effort to deliver one to each of you individually; if that's what you would like.

Chairman Wright: I think...I think if you could get it to Ms. Kivlehan and she can just of kind...

Mr. Maher: Like I said I would be more than happy to do that. To help out.

Mr. MacCartney: Do you have a copy here that you can hand to me tonight?

Mr. Maher: Yes.

Mr. MacCartney: I would be happy to take it.

(Mr. Maher giving Mr. MacCartney a packet.)

Ms. Kivlehan: I will make copies for the Board members.

Chairman Wright: Any questions from the Board?

Mr. Vasti: Mr. Maher, could you please clarify for me your role as a “Code Enforcement Officer”. You described yourself as a Code Enforcement Officer. What Codes do you enforce, sir?

Mr. Maher: Storm Codes – any illicit discharge, that’s part of the MS 4 Program, any cross connection between the sanitary and the storm sewers, any illegal fill going on on properties in Town. That power was vested in me. Roadways; I will do inspections with the Highway Department and if there is pavement being put down I will work with Larry to straighten that problem out. So that is a very broad struck of my powers.

Mr. Vasti: In the capacity of your job as a Code Enforcement official, do you have the power to issue written violations to people in the Town?

Mr. Maher: Yes, I do. As a matter of fact, I have one action pending right now against Mr. Gonyea; for again several issues on his lot.

Mr. Vasti: Okay. Do you enforce Codes similar to the Codes that Mr. Sheehan enforces? Do you have shared powers in the Code Enforcement component of your job?

Mr. Maher: Well on occasion, if not Mr. Sheehan and I, Mr. Valenza and I will visit a site that is-has multiple violations on it. I don’t know if I can say this here, but Mr. Pezzementi is a good example of that. Recently, he cut off the water supply to his neighbor. Now, I got involved in that essentially with the County Health Officer. He was asking me about the availability of water in the area and essentially it’s under the Health Department Code, but I still assisted in that. Mr. Pezzementi’s also placing fill on his property. I’ve advised him that I expect him to come up with a plan and in the midst of the code violations that Mr. Valenza is pursuing with Mr. Pezzementi, if they are going to cooperate with me and give me a plan I can approve it because the materials they have placed on their property are in conformance with D.E.C. They have what’s called a “beneficial use determination” for the materials placed.

Mr. Vasti: I wanted to clarify another point – has Mr. Sheehan ever issued violations in a similar capacity of your code enforcement obligations. Has he ever shared or issued a code violation for something that normally you would enforce?

Mr. Maher: I think since I became the Town Engineer and became an Officer there for the Town, no. Prior to that, and Bill you can correct me if I’m wrong-because I don’t know, I’m just speculating at this point, when Greater Hudson Valley Engineering represented the Town as the Town Engineer, I don’t believe they had the legal authority to issue the violations. I believe they worked with you and Mr. Valenza to take care of the violations. They recommended, they cited the Code, but I don’t think they had the legal right to actually issue – because again, they were a consulting firm to the Town. They were not Town Officials.

Mr. Vasti: Okay, Mr. Maher just one last question. As the Town Engineer, you began earlier to describe some of your job duties. You clearly shared with the Board that you work with water and septic or sewer lines, probably storm water lines, could you please just share a couple of other examples of types of work that you would get involved with in the Town other than utility lines?

Mr. Maher: A very good example of this would be, we have a few building permits that have been issued over the past year, about a year – right, am I correct Bill; on Blanchard Drive we had, on Stacy Court, I believe it’s called, there is a new house now going up on Margarita Drive. I look at the grading and make sure that the things work and I also insure that, now we have to put in what’s called “green infrastructure items” to meet the new D.E.C. Storm Water Management Codes. So that’s where, again, I get to work very closely with Mr. Sheehan and also Mr. Valenza depending upon who is reviewing the Building Code aspects and Zoning Code aspects of the site plan. We work hand in hand.

Mr. Vasti: Thank you.

Chairman Wright: Any other questions? So one of the questions I have is that in terms of damage – how would you describe the damages that would be different say than anybody else in the County or the Town, how would your damages be different than anybody else’s?

Mr. Maher: Well, for example, I think it was about, I don't remember the exact date, it may have been in April, there was an accident right in front of the house I live in. A person was turning out of Sullivan Drive, another vehicle was driving north, I believe it was a white Honda, if I remember correctly; because I called the accident in. I was the eyes and ears for the police officers at the time. I assessed the situation for them and determined that no one was hurt, everyone tried to drive away and unfortunately the guy in the white Honda, something happened to his steering to his vehicle. He couldn't drive it very far. When the Police Officer showed up, I pointed down to Garyann Terrace and said he is parked over there.

There was another accident, I believe it was in November 2012 or it could have been January 1, 2013; there was a vehicle driving north on Central Highway. The vehicle turned out of Garyann Terrace, not knowing this vehicle was coming at them and there was an accident. I called it in. Someone else had as well and Officer Garcia was the first Officer on the scene. I ran over, I identified myself, and I told him I would take care of traffic on Central for him. I pulled my truck out, blocked the road and continued doing that until the fire department showed up and relieved me.

So, there are times where I really do step outside of my duties when I see something like that – that's an example of going outside of what I normally do, but again could that vehicle that struck the curb, could it of jumped the curb and come onto the property and struck the house that I live in; yes. Could it of struck me while I was out in the front yard doing something; yes. Could it of struck one of my dogs; yes. Could it of not; yes. Just as equally not.

Chairman Wright: Going on with what Mr. Vasti was going on, would you ever issue a summons for violations like we are seeing here where the corners weren't cut back enough. Would that be something that you would also be able to...?

Mr. Maher: I would bring that to the attention of the Building Department because that is a Zoning Code issue. It's not an engineering issue; unless the laws change.

Chairman Wright: Okay. Does anybody else have any questions?

Mr. Casscles: So you are saying your duties as the Town Engineer has nothing to do with the hedges or anything?

Mr. Maher: I can offer – I can offer an opinion if I was asked to look at it because of my experience in designing roadways; and unlike Rockland County where the Highway Department does have specific guidelines where if there is an encroachment in the right-of-way, they get rid of it. If it is bought to their attention, and they'd make the determination that it is a hazard, they will remove it.

Chairman Wright: Anything else for Mr. Maher?

(no response)

Chairman Wright: Thank you Mr. Maher, appreciate it. Anybody else. Again, what we are going after tonight is just the "standing" so if anybody has any things you want to present on "standing" we would be more than happy...Mr. Sheehan, do you have any items on "standing" or...

Mr. Sheehan: Yes, I do.

Chairman Wright: Please identify yourself?

William Sheehan – Building Inspector

Mr. Sheehan: I would like to just answer some of the questions that came up on Kevin's admission to you and then I would like to go into what a few items I have on...that I prepared before I came.

Chairman Wright: This is just going to be on "standing"?

Mr. Sheehan: All on "standing"; absolutely.

Chairman Wright: Okay, thank you.

Mr. Sheehan: On some of the issues that Kevin raised tonight, one of them was about some information he got out of the Department of State, I believe it was or a State website. He really didn't go into what context that was, but what I did get out of that this one goes back to as far as a renter having some type of "standing" without knowing the context of the situation at that point it is hard to comment on. The only thing I did get out of that is he did mention the word that it was "standing" on an interpretation. What's before you here is an appeal; not an interpretation. So I believe he did say he would furnish you with that information; so that takes care of that.

As far as I cited two weeks ago **Gaylord Disposal v Town of Kinderhook**, Mr. Maher bought that up about residency. That case had nothing to do with residency. That case had to do with a Building Inspector had given an interpretation of a Code to someone that came in and ask if a certain use was permitted in the Town. Subsequent than that, he changed his view and actually appealed his original interpretation to the Zoning Board and it was found that what he was actually doing was asking for an opinion; he could not appeal his own decision and then it goes into more than that. It goes a lot into who has "standing" and in this case he did not have "standing". The Code Enforcement Agent only because he was not an "aggrieved" party and they cited that he was asking the Zoning Board for an opinion not an interpretation. And that goes into what Mr. Maher had just said on, as far as I believe it was Mr. Vasti asked or Mr. Casscles might of asked about if he came up into this situation with hedges would he be able to issue a violation on that? He said, "No, I would give my opinion of what I thought was out there to the Building Inspector." So here again is what I bought up last week under the **Gaylord Disposal v Town of Kinderhook** that he is asking this Board for an opinion. He is not asking for a decision that I wrongfully withdraw the violation.

As far as Mr. Maher suggesting that both the Town...local Code says all he has to do is hand in, once he appeals the decision he has to notify the Building Department as the State requires it be presented to the Code Enforcement Officer himself, he did neither. Under the State Law obviously he didn't notify me and under the Local Code he didn't not notify the Building Department. He notified the Zoning Board Department, but not the Building Department; two separate departments.

On the three or four cases that Mr. Maher cited tonight, I don't know all the cases, but two of those cases I read. I read them prior to coming here two weeks ago and the reason I didn't bring them up is because they have to do with S.E.Q.R.A. S.E.Q.R.A. has a broader "standing" issue then what we are talking about tonight because S.E.Q.R.A. is environmental issues that do have effect on a larger amount of people in a community; not just your adjoining property owners and so forth.

I believe one of the members here bought up about damages. It's clear that under the sections I cited or the cases I cited two weeks ago, it's clear to be an "aggrieved" party. You would have to show that there is a real interest or real injury to you to appeal it. And I believe this was under a case that Mr. Maher cited tonight, **Chestnut Ridge v Town of Ramapo**. It basically says that the harm must be direct and different from that suffered by the public-at-large. So even if the public-at-large is suffering, he has to show that it is different for him to appeal; not to appeal, but to be an "aggrieved" party. I think by Mr. Maher changing his application or amending his application from a resident to a Town Engineer, I believe he's basically admitted that he does not have "standing" as a resident. I didn't say he didn't have resident as a renter or a taxpayer, what I had said was that he is not a property owner and he is not a taxpayer. Most of the Case Law deals with property owners. I guess in certain instances if you are not a property owner – I haven't come across anywhere as not a property owner where you can be an "aggrieved" party and I believe Mr. Maher agrees to that that's why he's here to amend his application to the Town Engineer.

Now getting to the Town Engineer, as I pointed out two weeks ago there are only certain parties that can make an appeal. Obviously, the #1 is an "aggrieved" party. Normally that is somebody that, for example, the VonHeins were an "aggrieved" party. I issued them a violation. Obviously they are "aggrieved" on that violation they can appeal that which they did and then they withdrew it. Normally, basically an "aggrieved" party has to be part of the situation and the reason I believe the Court's had made this is because then otherwise anybody can appeal anybody's decision at anytime. So he changed it to Town Engineer. Now, besides an "aggrieved" party, the only other people or parties that can appeal is, and this is out of Town Law 268-4 is an Officer, a Department-not a Department Head, a Department, Board or Bureau of the Town. If you cite Town Law 2-5 it lists who is an Officer. Town Engineer is not an Officer; so he cannot appeal under that premise. So my contention is that even though he is the Town Engineer he still does not have the authority, or the rights or "standing".

Now getting to...I believe in Mr. Maher's letter he wrote that he is a Code Enforcement Officer. Mr. Maher is not a Code Enforcement Officer. Mr. Maher has no jurisdiction whatsoever to enforce the Zoning Code; except two sections in it that have to do with drainage or water run-off. So, the appeal that he is seeking isn't a violation that came out of the Zoning Code which he has no authority to enforce.

Typically in New York State a Code Enforcement Officer has to be certified by the State. Mr. Maher is not certified by the State to be a Code Enforcement Officer and again Town Law 2-5 deals with who is an Officer of a Town and the Town Engineer is not an Officer of the Town. So my contention is that even if he wants to change his application to a Town Engineer it doesn't change the outcome. I will just read you Town Law 2-5; the term Officer and/or Officers whomever used in this chapter – whenever used in this chapter shall include the (inaudible) of the Offices of the Supervisor, Councilman, Town Clerk, Justice of the Peace, Superintendent of Highways, Assessor, Receiver of Taxes, Assessments and Collector.

There was a case, actually in right here, it actually comes out of **Gaylord's Disposal Service v Board of Appeals, Town of Kinderhook Department** in this case and it says:

For the purpose of this appeal we assume the Town Officer, despite the actions of Building Inspector's from the list, in its disposal the Building Inspector was trying to use that he was an Officer of the Town and it said:

The absence of the Building Inspector's from the list of Town Officials pertain to Town Law 2-5 and then it says see **Bowman v Squillance**.

So it's clearly that the Building Inspector is not even an officer of the Town, but he can appeal because normally he is the one who issued the violation or denied the permit and so forth; but the Town Engineer cannot.

So pretty much I don't see anything has changed except that obviously Mr. Maher, again, feels that his first run at this didn't work because he doesn't meet the "aggrieved" party definition so he figured that he would go on the end run and try as being an employee or an Officer, which again he is not. So, again I still don't see how Mr. Maher has the right to have "standing". And right here it says a person is "aggrieved" if his or her property value is affected negatively by an enforcement officer's action. Obviously, Mr. Maher's property value cannot be effected because he doesn't own the property. If there was a problem with that the property was effective, then this should be the property owner's appeal and to be honest with you I don't even believe the property owner of that property would have "standing" because they are not "aggrieved", there's no harm to them and their not in the zone of interest. So again I don't think it changes anything.

Chairman Wright: Question for Mr. Sheehan?

Mr. Vasti: Mr. Sheehan, did you happen to get a copy of the letter dated December 12 from the County of Rockland, Department of Planning regarding Kevin Maher item SP803A, stating that the referral to the Department of Planning for the County is going to...they reviewed the above item and acting under the terms of the above GML they are going...they recommended that the Department of Highways determine if the vegetative trimming has been done to their satisfaction. Did you get a copy of that letter?

Mr. Sheehan: Yes, I did.

Mr. Vasti: Okay. Do you have any date as to when the Highway Department will conduct their investigation?

Mr. Sheehan: I don't and to be honest with you I don't really...it doesn't really matter because they're not in the business of enforcing Town Codes. What they are basically going to do is if it is in their County right-of-way they will just go in and cut them or most likely they will send a letter to the homeowner and say please trim back your trees, but they're not going to, or do they have the authority to enforce any type of Town Ordinance.

Mr. Vasti: Thank you Mr. Sheehan.

Chairman Wright: Any other questions?

(no response)

Chairman Wright: You mentioned “zone of interest” – what is the “zone of interest”?

Mr. Sheehan: That is probably the one I threw away today because I didn’t think I would need it. Actually, a “zone of interest” is – it’s really not like a distance. (Let me see if I did bring it. I might of brought it.) I thought that question was going to come up last time that is why I bought it. Actually, even Dave can probably tell you that even the Courts haven’t actually defined exactly what a “zone of interest” means.

Chairman Wright: If you don’t have it, we can get it.

Mr. Sheehan: Am I correct?

Mr. MacCartney: Sure.

Mr. Sheehan: For example, the two cases that Kevin mentioned about the S.E.Q.R.A., the “zone of interest” would be more broad because that’s an environmental so the more people would have interest in the decision of this Board. In this case, the person appealing this would have to show to this Board that the harm...let me put it this way, the “zone of interest” could be where issuing this variance would only affect the adjoining property owners. It wouldn’t effect someone two miles away. So I believe that the “zone of interest” is on what affect would the variance have on the people in that zone. For example, in the S.E.Q.R.A. if you are going to put in an incinerator your “zone of interest” is going to be broader because it could have harm or property values affected broader. That’s pretty much my understanding of it. Again when I researched on it, again as Dave has pointed out, even the Courts have had mixed feelings on what the definition of it is. But, clearly he has to be an “aggrieved” party and that’s clear that an “aggrieved” party has to show a real interest on your decision or in your decision or show harm and harm that is different or then the public-at-large. So even if the public had an issue with this, Mr. Maher would have to show that his is different and which clearly he hasn’t. So, again as a prior resident he is not an “aggrieved” party so he can’t appeal. As a Town Engineer, he can’t appeal because he’s not a Town Officer; so he has no “standing”.

Chairman Wright: So one question I have that is stuck in my mind is about property. So let’s assume that Mr. Maher had his car parked out in the front or for some reason he had it on the grass and there was an accident and it hit his car, would he have damages that would be different than anybody else in that respect?

Mr. Sheehan: No. I don’t believe so.

Chairman Wright: Okay.

Mr. Sheehan: And we all have to remember here that...at least my end of it, I’m claiming “standing”. I’m not claiming that the VonHeins are in compliance, they are not in compliance, the trees are 40 feet wide; 10 feet wide – the issue here that I’m claiming anyway and believe it’s what you want to try and iron out tonight is “standing”. Either he has a right to appeal or he doesn’t. And as a mentioned two weeks ago, my understanding and the Case law I cited that I think the Board is doing the right thing that in any event the Case law I cited they want the Board to clarify standing prior to going in to the details of the issue.

Chairman Wright: Any other questions for Mr. Sheehan?

(no response)

Chairman Wright: Anything else from anybody in the audience? Mr. Maher you want to come up and have a couple of...

(Mr. Maher approaches.)

So if it’s okay with everyone we will let you speak and Mr. Sheehan if you want to speak after that...

Mr. Maher: Two quick points: I amended my appeal to include my status as Town Engineer; not to change it to the Town Engineer. And I am an Officer of the Town; not as listed in that document that Mr. Sheehan refers to. I am the MS4 Officer for this Town. That is the Municipal Separate Storm/Sewer System Officer. I am responsible for an overview of the entire storm water system in Town and compliance with the N.Y.S.D.E.C. Regulations. So I believe I am an Officer of the Town. I've been delegated that authority by the Town Board. It's in the regulations and the D.E.C. recognizes me as an Officer. So that is a State agency of recognizing me as an Officer of the Town. I just wanted to make those two points clear. Thank you.

Mr. Sheehan: Just one quick rebuttal. The definition of Officer is clearly in the Town Law. They spell out who an Officer is. I mean the Animal Control Officer I guess you can say is an Officer because he has Officer in his title. It doesn't mean he's an Officer under Town Law; which is State Town Law not Local Law. They clearly spell out who is an Officer and as I stated in that **Gaylord's Disposal Service v Board of Appeals, Town of Kinderhook** they determine even that the Building Inspector, who issues violations, is not an Officer. Just because you have Officer in your title doesn't make you by law an Officer.

Chairman Wright: Okay.

Mr. Sheehan: And, one thing I don't quite understand, what Mr. Maher has stated just now, that he amended his application to be Town Engineer. Is it resident and Town Engineer or just Town Engineer. I didn't understand that.

Chairman Wright: As I understand it, it is both.

Mr. Sheehan: Okay, I'm not sure you can do that either, but I just want to clarify for myself.

Chairman Wright: Unless there is any other items on this, we will go ahead and take a motion to continue the Public Hearing.

*****MOTION:** Mr. Casscles made a motion to keep the Public Hearing open; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion to accept the minutes of December 5, 2013; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

*****MOTION:** Chairman Wright made a motion to adjourn the meeting of December 19, 2013; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals