

**TOWN OF STONY POINT  
Zoning Board of Appeals  
Minutes July 2, 2013**

**PRESENT:**

Mr. Morlang  
Mr. Keegan  
Mr. Casscles  
Mr. Vasti  
Mr. Fox  
Mr. Porath (absent)

**ALSO PRESENT:**

Joseph McKay, Attorney  
Katherine Zalantis, Attorney for Applicant  
Cynthia Zoller, Court Reporter for Applicant

Chairman Wright

**Chairman Wright:** Good evening. I see by the clock it is 7:00 PM. I will call this meeting of the Zoning Board of Appeals of the Town of Stony Point to order, please rise for the Pledge of Allegiance.

**Chairman Wright:** So we have a pretty small agenda tonight and I think we are going to probably be here for a little while. I am going to change around some of the items because we have other business and we can spend our time on the discussion.

I will take a motion to accept the minutes – there is one section in the minutes, there are some areas that are, because of the noise of the air conditioner last week that were a little inaudible and Kathy may find a way to supplement that in a later amendment, but just want to know if we can get a motion to accept the minutes as they are for now.

**\*\*\*MOTION:** Mr. Vasti made a motion to accept the minutes of June 20, 2013; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

**Chairman Wright:** The second item is the continued discussion for the request of the Town of Haverstraw.

**Request of Town of Haverstraw – App. #13-02**

Interpretation and appeal of the Town of Stony Point Building Inspector’s decision in regards to permitted use, located at the east end of Holt Drive, 1800 feet and the east end of South Liberty Drive/Route 9W, (also known as Hudson River View Industrial Park Building D) (property), for the proposed gasification plant.

<b>Section</b>	<b>20.02</b>	<b>Block</b>	<b>11</b>	<b>Lot</b>	<b>25</b>	<b>Zone</b>	<b>RR</b>
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So we had just gotten some information from our attorney, and I am thinking it is probably worthwhile for us to go into Executive Session and consult with him on what he has handed us, ask him some questions and come out and we will continue the discussion.

**\*\*\*MOTION:** Mr. Fox made a motion at 7:02 PM to go into Executive Session, pending litigation; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

**\*\*\*MOTION:** Mr. Morlang made a motion at 7:43 PM to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.

**Chairman Wright:** I want to continue with our discussion about the appeals from the Town of Haverstraw - Application #13-02. A couple of things I want to go through as I was reading through the record and looking at the arguments from both sides there is a couple of items in my mind that I just need to get a little more clarification on. I am just trying to open up – if the Board can help me go through these things and come to a decision here. One of them that sticks in my mind, obviously feel free with any discussion items that you have, but the whole consideration of “solid waste”...there were some mentions about “solid waste” coming into the Town and the like and I have seen arguments going back and forth, but does anybody have any thoughts about the implications of “solid waste” on this application?

None.

**Mr. Keegan:** Mr. Chairman, from the research that I’ve done, it’s generally accepted that “solid waste” is commonly redirected for other use throughout the United States. It’s an everyday occurrence. Once again that would make, not once again, but that would put it into the category of actually a “product” and a “commodity”; from the research that I’ve done. That holds true as well for “potash”.

**Chairman Wright:** I am just going to try and see if there is - anybody else has got something. I am just going to look and see if I can find something in the...

**Mr. Fox:** Just the notes on the Town of Haverstraw’s position here...

**Chairman Wright:** Sure.

**Mr. Fox:** in reference to the Stony Point Zoning Code 182-20 defines “solid waste” as materials subject to discharge and rejected as being useless...

**Ms. Zoller:** Excuse me for one second...

**Mr. Fox:** I am sorry.

**Chairman Wright:** Do you need him to speak up.

**Ms. Zoller:** Just - the Town of Haverstraw position with reference to the Town of Stony Point Zoning Code...

**Mr. Fox:** 182-20 defines “solid waste” as materials or substances discharged or rejected as being spent, useless or worthless or in excess of the owner at the time of such discard or rejection. Well under that definition of “solid waste” being a “product” and sold as a “commodity” would not fall into that Zoning Code defined as “solid waste” because it is not useless or worthless.

**Mr. Vasti:** I would agree with Mr. Fox and I would add further to that – if a product is not useless and worthless and can be converted or recycled into a useful product it would not fall under that Code at all because there is a process to turn that material or what is wasted into another product through a process either of conversion or recycling.

**Chairman Wright:** The other thing I was thinking about too is in the – just thinking about the process that they are describing about this gasification plant has to deal with it sounds like a “solid waste” is kind of an in-put. So if you think about the stages of manufacturing as an in-put, you got a production piece, then you have an out-put and I found it to be like the in-put component was the “solid waste”. Now it’s not clear if the “solid waste” is coming in in some kind of a free form mold or if it is coming in as some kind of pre-packaged configuration that’s consumed by this manufacturing process. It is hard for me to kind of make that determination, but I guess I have to kind of imply what the manufacturing process would be and it seems to be that it would be unlikely that it would just get reams of just stuff on the ground and somebody

picking it up to just shovel into this production facility. It seems to me this is more of a...almost a finished raw material that might come into the production facility and then go through this process of “pyrolysis” at which point the end result as some kind of a “syngas” out-put and there maybe some by-products from that one, but that seems to be, when I think about this overall manufacturing process, that’s the way I kind of envision it and I think those are the things that...I think that’s a consistent interpretation as to what the Building Inspector would assume it.

**Mr. Keegan:** Well I think in view of the fact that this application was withdrawn it’s impossible to make any determination as to what the exact process was. We are left with the general interpretation. First of all, we are producing “hydrogen” and “carbon monoxide”. These are all products that are produced...

**Chairman Wright:** Right.

**Mr. Keegan:** in the manufacturing of “syngas”. These are components of “syngas”. So they in themselves are not what’s being produced. What’s being produced is a combination of these chemicals which produce a “syngas”.

**Chairman Wright:** That’s a good point. I think if you say I’m going to build a gasification plant and you define a gasification plant as a manufacturing process who/that produces “syngas” then it seems to me that I may change my in-puts. So here, I get hung up on this original application, cause the original application says I’m going to have a gasification plant, but this particular gasification plant is going to use some kind of a carbon rich in-put feed stock in-put raw material, I’m going to process it and out-put it, but what if somebody else comes up with a different idea – I’m going to have gasification plant, my product is going to be “syngas”, I may have some other “non-primary” products, but I could change my in-put processes so maybe we don’t have feedstock, maybe it’s a different kind of a carbon enrich in-put, but I constantly go back to how important is the original application to the interpretations that the Building Inspector set out and the fact that that original application has been withdrawn leaves me a lot of room to kind of guess how relevant some of those things are.

I guess the other one that still sticks in my mind a little bit is about the incinerator and the “pyrolysis”. So there seems to be two definitions. Clearly it seems like the Building Inspector did not think this was an incineration; referred to different areas of the Building Code and the original application as being “oxygen free” or “oxygen deprived”. Did anybody have any additional thoughts on that part of the Code?

**Mr. Fox:** Is incineration legal in New York State?

**Mr. Keegan:** No.

**Mr. Fox:** Do we have any other plants in this state that go through this process of “pyrolysis”?

**Mr. Keegan:** Yes, we do. We have plants operating throughout; in the state, two or three plants to my knowledge. But, incineration is not allowed anywhere in the State of New York by the D.E.C. That’s not even a consideration.

**Chairman Wright:** Those were like the main items that I had; just sticking in my mind that I wanted to pick through. I kind of went through, and I think everybody has done their due diligence reading the Code, reading through the...participating in these meetings. Are there any other items regarding this application if people want to raise at this point? Do you feel as though they vetted the information sufficiently and have enough information to kind of come to their own unbiased judgment?

**Mr. Vasti:** Yes.

**Mr. Casscles:** Yes, I do.

**Chairman Wright:** Alright then, if there...

**Mr. Keegan:** Yes, I do. I have...I just would like to follow a particular logic that was used in coming to these determinations. The first thing that I felt had to be determined was Haverstraw's definition of a "product"; that this was not a "product". I am talking about the "solid waste" now. A "product" is something that is sold as a "commodity". In turn, following this logic, a "commodity" is an article of trade or commerce; something of use and in this case it's a "fuel". This is what is being used as the primary "fuel" for this gasification plant. Interim products in the gasification product/process, are "oxygen", "hydrogen", "carbon monoxide"; but, the final product, the primary product is "syngas", which is a useful gas also sold as a "commodity". I just wanted to get that train of logic in thinking onto the record. Thank you.

**Chairman Wright:** If there are no other points then I will go ahead and...I think with that there's no more discussion on this matter and so I think our next meeting would be on the 18<sup>th</sup>. At that point, I think we are going to be prepared to offer an opinion at that point, or a resolution on that. So if there are no...if there is anything from a housekeeping prospective Mr. McKay that you are thinking of that we need to address or...

**Mr. McKay:** Again, it just goes back to the timing. Based upon the fact that the Board has essentially, essentially, maybe not finally, but it has reached its, the conclusion of its deliberations, of course, I'll draft something for the Board's review. Today is the 2<sup>nd</sup>, I'll certainly try to get that to you within, within seven days, which the holidays and such will be tight, but I will try to get that to you, certainly, with as much time before the next meeting as possible. We have until the 18<sup>th</sup> to make that decision. Now, the Board does not meet in August, correct? So the issue remains, we have until the 18<sup>th</sup> to make that decision. If there is something which occurs on the 28<sup>th</sup> where the Board reviews the draft and wants some type of change that it's not final, then there will need to be another meeting.

When Mr. Silverberg was here, Ms. Zalantis has already granted the extension to the 18<sup>th</sup>. Mr. Silverberg when he was here last, said as long as there was no application pending, he would have no objection to an extension.

So the question for me is whether a representative from the law firm will be here on the 18<sup>th</sup> because if on the 18<sup>th</sup> the Board needs to take further action, I need to get a further extension. So I don't know if you, Ms. Zalantis, want to discuss extending that now or simply wait until the 18<sup>th</sup>, but my concern is if somebody's on vacation and we are here on the 18<sup>th</sup> and Counsel is not, we are going to be in a jam and I don't want to go through the process of saying to the Board, well you have to deny it, because we don't have more time to refine the decision. I don't want that to happen so I will open the question to you, Ms. Zalantis.

**Ms. Zalantis:** I am okay with adjourning it. Do you want that now or on the 18<sup>th</sup> – we are planning to come. One of us will be here on the 18<sup>th</sup>.

**Mr. McKay:** If I can have it now, that would be great. Of course, you'll have to go to the first meeting in September.

**Ms. Zalantis:** As far as the Board knows and you know, there's no pending application?

**Mr. McKay:** I have absolutely no knowledge whatsoever. So what's the Board's first meeting in September?

**Ms. Kivlehan:** September 5<sup>th</sup>.

**Mr. McKay:** So what I would ask is, so that there is no problem, I will provide a draft to the Board on our goal is to adopt on a resolution and order on July 18<sup>th</sup>.

**Mr. Vasti:** When will you provide a draft to the Board, Mr. McKay?

**Mr. McKay:** Well there's only really one more business day this week which will give me...I can't do it tomorrow; it's going to be two business days to get you a decision to get it to you one week before the 18<sup>th</sup>. The time is just short, you know, that's my concern. I don't want to have – the Board has worked very hard and Ms. Zalantis will acknowledge the Board's worked through this application and keep the process moving, done a lot of work in a few weeks. I don't want a misstep to occur. My goal is to get this to you the week before the 18<sup>th</sup>. That is a short time period so even if it's just two days past, that only gives you a few days to review it, but I will do my best to get it to you as soon as I can.

**Chairman Wright:** I would...I speak for myself, and I think the Board can say otherwise if they don't agree, but I think if we get a good draft for the weekend of the 18<sup>th</sup> I think that's probably enough time for us to have a good time to review and I would urge the Board if there are specific items that they think Mr. McKay would need to know to go ahead and get some of that information to him.

**Mr. Casscles:** It sounds good.

**Mr. Vasti:** Okay.

**Mr. McKay:** So we do have until the 5<sup>th</sup>?

**Ms. Zalantis:** Yes.

**Mr. McKay:** Just for the record, Ms. Zalantis has consented to September 5<sup>th</sup> for a final date to provide the decision and that's also based on our good faith representation that we are going to try to do this on July 18<sup>th</sup>.

**Chairman Wright:** Absolutely. So if there is no other business I will go ahead and take a motion to adjourn.

**\*\*\*MOTION:** Mr. Vasti made a motion to adjourn the meeting of July 2, 2013; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

Respectfully submitted

Kathleen Kivlehan  
Secretary  
Zoning Board of Appeals