

2 COUNTY OF ORLEANS

3 TOWN OF GAINES

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6 Application of Kast Farms, Inc. for
7 Variances, located at 2824 Densmore Road, in the Town
8 of Gaines, Orleans County, New York

8

9

PUBLIC HEARING

10

October 23, 2013

11

12 A transcript of the Public Hearing held at the
13 Gaines Town Hall, 14087 Ridge Road West, Albion,
14 New York 14411 at 7:00 P.M.

14

15 CHAIRMAN: Mike Grabowski

16 COUNCIL MEMBERS: Ray Burke
17 Marilynn Miller
18 Curtis Strickland
19 George Flesman

19 SECRETARY: Carol L. Claus

20 ZONING ENFORCEMENT
21 OFFICER: Roger Kopas

22 TOWN ATTORNEY: Andrew Meier

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(The proceeding commenced.)

MR. GRABOWSKI: It's 7:01 p.m., we will start this meeting.

Let's start with the pledge to the flag.

(Pledge of allegiance.)

MR. GRABOWSKI: Call to order: Mike Grabowski, present; Ray Burke?

MR. BURKE: Here.

MR. GRABOWSKI: Marilyn Miller?

MS. MILLER: Present.

MR. GRABOWSKI: Curt Strickland?

MR. STRICKLAND: Here.

MR. GRABOWSKI: Dave Thom is excused.

And, George Flesman?

MR. FLESMAN: Here.

MR. GRABOWSKI: And we do have a quorum.

First on the agenda is the approval of the meeting minutes. We have two in front of us, the transcribed public hearing from September 4th and the recessed meeting minutes from September 4th.

Are there any corrections or additions?

THE ZONING BOARD: (No verbal response.)

MR. GRABOWSKI: If there are no additions or corrections, I will accept the motion to accept the

1
2 transcribed public hearing and the recessed meeting
3 minutes as written.

4 MS. MILLER: I so move.

5 MR. GRABOWSKI: Moved by Marilyn.

6 MR. BURKE: I'll second.

7 MR. GRABOWSKI: Seconded by Ray.

8 Any discussion?

9 THE ZONING BOARD: (No verbal response.)

10 MR. GRABOWSKI: All those in favor?

11 THE ZONING BOARD: Aye.

12 MR. GRABOWSKI: Opposed?

13 THE ZONING BOARD: (No verbal response.)

14 MR. GRABOWSKI: And that's carried.

15 Our next order of business is the Kast Area
16 Variance Applications. We have before us both a
17 foundation area variance and a density variance.

18 I just want to start by saying - giving a
19 little background information. Basically the variance
20 policy of the Town of Gaines as a general rule a
21 variance will only be granted to those applicants
22 seeking an area or conventional variance. Use
23 variance, since they allow activities that would be
24 otherwise prohibited, in particular, zoning district
25 will be carefully reviewed and will be granted only in

1
2 exceptional circumstances.

3 These are two area variances we have before
4 us. For a property owner to qualify for an area
5 variance this Board must weigh the benefit to the
6 applicant against the detriment to the health, safety,
7 and welfare of the neighborhood. In making the
8 determination this Board must consider whether an
9 undesirable change will be produced in the character of
10 the neighborhood or a detriment to nearby properties
11 will be created by the granting of the area variance.

12 Number two: Whether the benefit sought by
13 the applicant can be achieved by some other method
14 feasible for the applicant to pursue other than an area
15 variance.

16 And number three: Whether the requested area
17 variance is substantial.

18 And number four: Whether the proposed
19 variance will have an adverse effect or impact on the
20 physical or environmental conditions of the
21 neighborhood or district.

22 And five: Whether the alleged difficulty was
23 self-created, which while relevant to the Board's
24 determination, shall not necessarily preclude the
25 granting of the variance?

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2 The following factors shall not be considered
3 by the Zoning Board of Appeals in determining whether a
4 practical difficulty exists: The mere inconvenience of
5 the applicant; the fact that denying application for
6 the variance would preclude the applicant from erecting
7 a second subsequent structure; the fact that denying
8 the application for the variance would preclude the
9 applicant from erecting a structure as large as he
10 would like; and lastly the fact that the proposed
11 improvement would merely improve the efficiency of an
12 existing business or yield a greater profit.

13 The first application to be considered
14 tonight is the foundation variance.

15 And I will open up the discussion.

16 MS. MILLER: I looked at the criteria - the
17 five criteria - and I really couldn't come up with an
18 undesirable change to the neighborhood being it's
19 situated so far back. I thought maybe the visual
20 impact could be mitigated in case we have other people
21 seeking similar variances, that we could apply that
22 across the board. I don't know what other feasible
23 method could be used other than the slab foundation.

24 It is a substantial variance about nine
25 thousand dollars or more. I don't see that it will

1
2 have an adverse impact - so much of an adverse impact
3 on the neighborhood. Although, if the units are ever
4 removed I think we need to put something in writing
5 that says the foundations would be removed also.

6 As far as the alleged difficulty
7 self-created, it seems like it had been in a respect
8 because Mr. Kast was on the Town Board that approved
9 the zoning ordinances.

10 So, I guess I have four out of five - four to
11 one in response that it's okay to use the posts.

12 MR. GRABOWSKI: Anyone else?

13 MR. BURKE: I would like to clear a couple of
14 things up from the public hearing that we had. I
15 mentioned that I thought in August that this was
16 brought before the Town Board.

17 Resolution 59-11: Resolution duly adopted at
18 a recessed meeting of the Town of Gaines Board held on
19 the 16th day of August, 2011 at 7:30 p.m., at which the
20 following were present: Mr. Kirby, Mr. Kast, Mr.
21 Lattin, Ms. Oakley, Ms. Smith.

22 None of the Board members were absent.

23 Councilman Kirby moved the adoption of the
24 following resolution; Councilman Kast seconded the
25 motion:

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2 Whereas, a local law of the Town of Gaines
3 previously designated as Local Law No. 2 of the Year
4 2008, later re-designated as Local Law No. 2 of 2009,
5 now designated as Local Law No. 2 of the year 2011,
6 entitled a "Local Law Amending the Zoning Ordinance of
7 the Town of Gaines Orleans County, New York", which
8 previously introduced and placed on the desks and the
9 tables of the members of the Town Board at least seven
10 (7) days prior to the final adoption, and

11 Whereas, the Gaines Town Board did conduct
12 several public hearings to consider the adoption of
13 said proposed local law, the latest of which was held
14 on the 9th day of August 2011, at 7:30 p.m., at which
15 public hearing all persons wishing to be heard in favor
16 or against said adoption were heard, and

17 Whereas, the Gaines Town Board determined
18 such action to be a "Type 1" action within the meaning
19 of the State Environmental Quality Review Act (SEQR)
20 and, accordance therewith caused a Full Environmental
21 Assessment Form to be prepared and filed with the
22 Gaines Town Board; and

23 Whereas, based upon the findings set forth in
24 the full EAF, the Town Board intends to issue an
25 Unconditional Negative Declaration indicating that the

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2 adoption of said local law will not result in any
3 significant environmental impacts; and

4 Whereas, it is now the intent and desire of
5 the Town Board to adopt said Local Law, now therefore,
6 be it

7 Resolved, that in accordance with the
8 sequential filing requirements of the New York State
9 Comptroller, the aforementioned local law, previously
10 introduced and designated as local law No. 2 of the
11 2011, be and the same is hereby re-designated as Local
12 Law No. 3 of the year 2011 of the Town of Gaines; and
13 be it

14 Further resolved, the Gaines Town Board does
15 accept the Full EAF prepared by Martin Environmental
16 Services and based upon the foregoing, hereby
17 determines adoption of said local law will not result
18 in any significant environmental impacts and authorizes
19 the issuance of an Unconditional Negative Declaration;
20 and be it

21 Further resolved, that said local law appear
22 after re-designated as Local Law No. 3 of the year
23 2001, entitled, "Local Law Amending Zoning Ordinance of
24 the Town of Gaines", will be, and the same be, the same
25 is hereby adopted and will be further resolved that

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2 this local law and amendments to the Gaines Zoning
3 Ordinance set forth herein have been under
4 consideration by the Gaines Town Board in various forms
5 since on or about July, 2008; and as such shall not be
6 construed to be amendments to the Gaines Zoning
7 Ordinance as part of any master plan amendments or use
8 regulations contemplated at the time of the adoption of
9 the so called zoning moratorium as provided by Local
10 Law No. 1 of the year 2000, adopted by the Gaines Town
11 Board on May 2nd, 2011.

12 Upon putting to a vote, the following voted
13 a) in favor of the adoption: Now, there's no names
14 mentioned, but the following sentence or two says, "The
15 following was voted no in opposition thereto and there
16 was none. So the resolution id declared adopted."

17 That was one question that came up about when
18 this was brought into play and that's when it was. It
19 was August 6th, 2011 at 4:30. And its noted Jim Kirby
20 made the motion and Dave Kast seconded it.

21 Also there was a question around the two half
22 thing. And there was an inference in here I think
23 where - it said, "Dave is a Town Board member has to
24 put a different hat on to make sacrifices for the town.
25 The fact that he's a Town Board member or a public

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2 servant shouldn't work for or against him with respect
3 to his application in a private manner. Just like I
4 don't think anyone else on this Board when seeking some
5 other kind of initial approval would want their status
6 on the ZBA to be used against them when they were
7 working on things in their private capacity."

8 I think that was directed at me and I just
9 want to say that it's got to do with the house over
10 here at 98, 104. Before we even purchased that
11 property I had Ron Ebbs in there - code enforcement
12 officer - prior to purchasing. I believe he was in
13 there twice, but I could be wrong. I've had our code
14 enforcement officer, Roger Kopas, in there on numerous
15 occasions. He's had to come back and look up rules and
16 laws and stuff to make sure we were in compliance with
17 that stuff and we sat down and got everything worked
18 out.

19 I just wanted to make the point that wearing
20 two hats has some responsibilities too. I just wanted
21 everybody to know I'm trying to do the best I can with
22 the house over there and I will try and do the best job
23 I can.

24 And as far as answering all of the questions,
25 I guess I pretty much agree with what Marilyn has

1
2 said, with the exception of course the fifth one here
3 with it being self-created.

4 MR. GRABOWSKI: Anyone else?

5 THE ZONING BOARD: (No verbal response.)

6 MR. GRABOWSKI: Do you have anything to say?

7 MR. FLESMAN: I have no comment.

8 MR. GRABOWSKI: Okay. George?

9 MR. FLESMAN: I'm just curious about the pier
10 thing.

11 At this point are we saying it's done or are
12 we still on the edge with this?

13 MR. GRABOWSKI: Well, tonight's discussion
14 will make that determination.

15 MR. FLESMAN: Can we ever get a document, a
16 drawing of it to see what the construction was?

17 I know there was a question from Roger at one
18 point and here it doesn't look as though it was ever
19 satisfied.

20 Did you ever receive any information on how
21 it was constructed?

22 MR. KOPAS: Nope. I received in early
23 September there was a hand-drawn diagram that has pier
24 spacings, concrete and the mention of the six inch
25 crushed stone over top of six mil. plastic. There is a

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2 frame plan that says it's for transport that came along
3 with it. But there is no foundation review checklist
4 with this.

5 I provided one back in July.

6 MR. FLESMAN: We don't now how it's attached
7 to the frame?

8 MR. KOPAS: Not really, no, sir.

9 MR. GRABOWSKI: But this is whether they
10 should deviate from what's in our town code of the full
11 foundation versus allowing him to explore the
12 possibility of piers.

13 After our determination if successful he
14 still has to -- he would not get a building permit
15 until the code enforcement officer was satisfied by the
16 specific requirements of that foundation system.

17 MR. FLESMAN: I thought - maybe I
18 misunderstood Marilyn, but thought I heard her say to
19 the effect she believed that the foundation was the
20 direction that she wanted to go with this.

21 I'm saying wait a minute we haven't really
22 fully looked at these piers and really analyzed to
23 there effectiveness or our we saying hey, something
24 else. When we all know that they're used throughout
25 the area.

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2 So I'm still in the fog with the pier thing.
3 Pardon me, but I'm sorry, that's the way feel. We can
4 make a judgment and say okay, the foundation is okay to
5 the tune of ninety thousand dollars or whatever it was
6 I read.

7 You know, to me it would be make the decision
8 and let's go with this things. Either he can do the
9 piers or he can't. If we knew what the construction of
10 it was.

11 MR. BURKE: Well, piers are allowed in mobile
12 homes parks.

13 MR. FLESMAN: True.

14 MR. BURKE: They are allowed in there.

15 MR. FLESMAN: I've seen them.

16 MR. BURKE: Since this was enacted back in
17 '11 - August '11 - due to another lawsuit is why it's
18 put in there. There have been instances where we have
19 forced individuals to comply with this - with the
20 zoning laws - which means full basement, solid brick or
21 cement walls and/or block walls.

22 MR. FLESMAN: But once again it comes back to
23 we're saying trailer parks are different. They're held
24 in a different form. Then we take the same unit and
25 maybe little exceptions with what he's got in there

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2 four bedrooms, blah, blah, a few cabinets removed - but
3 it's basically the same construction with what you
4 would see in Heritage Estates or Oak Orchard or
5 wherever. There's no fundamental differences in the
6 fabrication that I've seen.

7 So why would you allow it - penalize someone
8 when it's proof all around you that it's practical and
9 it works?

10 MR. BURKE: I don't think there's any
11 question it works. I think it does works.

12 MR. FLESMAN: Yeah, it works.

13 MR. BURKE: But that's not what our law says
14 and that's what we're here for.

15 MR. FLESMAN: And so the law would say that
16 some people are going to live residential and, you
17 know, like we've talked before, they're going to go in
18 there and live. And they're going to settle on a full
19 foundation. The people next door could be Heritage
20 Estates they're sitting on piers.

21 MR. BURKE: Uhm-hum.

22 MR. FLESMAN: I mean --

23 MR. BURKE: Like I said, that was due to a
24 lawsuit back prior to 2011. That's why those rules are
25 in there.

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2 MR. FLESMAN: So we've made a decision to
3 move everyone --

4 MR. BURKE: The Town Board did.

5 MR. FLESMAN: -- residential will have
6 foundation. But there is nothing that states which is
7 better or is safer or which looks better.

8 MR. BURKE: No.

9 MR. FLESMAN: There's nothing glamorous about
10 either of them.

11 MR. BURKE: No.

12 MR. GRABOWSKI: One thing I could speak to
13 that our town code would not allow a single-wide
14 trailer lot for a residential purpose. It would only
15 exist in a trailer park. So that might play to the
16 reasoning behind a full foundation versus a pier
17 system.

18 MR. BURKE: Trailer park or farm labor too.

19 MR. GRABOWSKI: Yeah.

20 MR. FLESMAN: Well, there is a different rule
21 for Local 665. There is a different rule for farm
22 labor.

23 I mean, you see what we're doing here is
24 we've got all these different things happening to the
25 same object.

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MR. BURKE: Yes.

MR. FLESMAN: It's tying our own feet. We can't make a good, sound, competent ruling when we say, "Well, next door John has," he's sitting on a foundation he's got four kids in there. These people come up here, you know, same -- a life is still a life is it not?

MR. BURKE: Uhm-hum.

MR. FLESMAN: If something would happen to these people whether they got blown away because they were on piers by a windstorm or a tornado or something of course we would all feel bad.

MR. BURKE: Well, they're tied town. They have these screwed in things that go into the ground and they tie these down when they're on the piers and then on the foundations they have to be bolted or welded or something. They've got to be held down on the foundation.

So they're both being held down.

MR. FLESMAN: Yeah, I'm aware of that. I'm just pointing out to me I still don't see -- I still don't understand this. I mean, pardon me but I don't really understand what the conflict is or what the concern is. To me if it's sitting on piers and they're

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2 safe and the foundation and it's safe. You make a
3 ruling and say okay. People -- the life is still the
4 same whether they're from Honduras or wherever it's
5 still a human life that's in that trailer.

6 MR. GRABOWSKI: Well, it would be the code
7 enforcement officer that would satisfy whether it's
8 safe, whether a pier system is in place of a foundation
9 - a full foundation system. Until he is satisfied a
10 building permit would not be issued.

11 So basically what we're here discussing is
12 whether it's an accepted practice to use the piers
13 versus what we have in our code as full foundation.

14 MR. FLESMAN: So there's more at this impasse
15 then what I'm reading? There's more coming from this
16 than what I'm seeing?

17 MR. GRABOWSKI: There may be. I can't --

18 MR. FLESMAN: No, there is. There has to be
19 because to me it's so logical. I'm just saying to me
20 it's very logical setting what we believe to be a
21 proper foundation or a pier foundation it's still
22 perfectly fine.

23 There should be no struggle over the decision
24 on who lives in that trailer.

25 MR. BURKE: Right. That goes back to code

1 enforcement. He has to --

2 MR. KOPAS: If I may?

3 MR. BURKE: Sure.

4 MR. KOPAS: The manufacturer has preapproved
5 design. There is alternative foundation systems
6 Champion approves. You have to -- and it says - here
7 we go, "Champion approves," -- Champion is the
8 manufacturer of the manufactured housing in question.
9 So, "Champion approves the use of alternative
10 foundation systems if first reviewed and accepted by
11 the local authority having jurisdiction and recognize
12 HUD - third party agency. All systems also must meet
13 one of the following: Systems or designs are
14 manufactured and installed in accordance with their
15 listings by a nationally recognized testing agency
16 based on a national recognized testing protocol; or
17 system designs are prepared by a registered engineer or
18 a registered architect or tested and certified by a
19 registered engineer or registered architect in
20 accordance with acceptable engineering practice and our
21 manufactured and installed so as to not take the home
22 out of compliance with the manufactured home
23 construction and safety standards."

24 That's who decides what's safe.
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I provide a foundation construction --

MR. FLESMAN: Okay. So --

MR. BURKE: -- checklist to the applicant,
who --

MR. FLESMAN: So Kast Farms will have to make
sure that they meet that requirement?

MR. KOPAS: Yes. The installer -- Kast Farms
has employed an installer. And if I understand if the
situation hasn't changed since the last time we spoke
it is the duty of that installer to make sure that they
comply with state code, local ordinance and of course
HUD requirements. The foundation review checklist that
I provided is to be given to the installer so that they
can fill out the information requested by this
checklist. And as long as all of that information is
in there - it even tells which codes they have to
comply with - they check these boxes off and it makes
it easier for all of us. Then I could decide that the
foundation does comply with the necessary standards and
is safe.

Then it's my job to make sure that they said that
they were going to put it in - conforms with the plans
filed with the code enforcement office.

I don't decide if it's safe. The manufacturer and

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2 Hud determine whether that's a safe design. If they
3 say it's safe that's what I have to go with because
4 that's the law.

5 MR. FLESMAN: And that would also hold true
6 with the full foundation?

7 MR. KOPAS: There are several foundations
8 according to Champion that are acceptable. Several
9 foundation styles are acceptable and one of them is the
10 concrete block or the poured concrete foundation.
11 That's what our Town of Gaines ordinances call for if I
12 understand them correctly. And Champion says that we
13 could do this - construct foundations for homes with
14 load-bearing perimeter wall. And there is steps here
15 in the manual that Champion furnishes - installation
16 manual.

17 MR. STRICKLAND: I guess I would just like to
18 question - to me it seems like we're going down a bunny
19 trail or a tangent again.

20 Don't we have to basically look at the four
21 items that deal with granting an area variance and just
22 deal with them, whether we agree or disagree with the
23 current codes?

24 MR. GRABOWSKI: Correct.

25 MR. STRICKLAND: So, to me, I'm seeing out of

1
2 those four things the only thing I could say that there
3 is unnecessary hardship is that the hardship is not
4 self-created. From that point of view it seems like
5 Mr. Kast and company knew that this code was enforced.

6 So from that point we've only got three out
7 of four and we need four out of four to grant a
8 variance.

9 Am I understanding that right?

10 MR. GRABOWSKI: Not an area variance. You
11 have to weigh those factors --

12 MR. STRICKLAND: A use -- I'm sorry. A use
13 variance.

14 MR. GRABOWSKI: The use variance -- well, we
15 consider this the first time, you would have to pass
16 all parts of that.

17 This one is just a weighted average because
18 what you're dealing with is you're comparing - you're
19 weighing the benefit that the applicant receives from
20 granting this variance --

21 MR. STRICKLAND: Um-hum.

22 MR. GRABOWSKI: -- versus the public's
23 health, safety and welfare.

24 MR. VURRARO: If I could just point out that
25 this state statute that sets forth the guidelines for

1
2 area variances has specific language in the
3 self-creation subparagraph that says self-creation in
4 an area variance is not a bar to grant a variance,
5 unlike use variances. The legislature was very clear
6 in recognizing that most if not all area variances have
7 an element of self-creation just by their nature. So
8 they went out of their way to make that distinction
9 between the two.

10 MR. GRABOWSKI: I'll weigh in. I mean,
11 granting a variance, an area variance, runs with the
12 land. So what we're deciding here if it's contrary to
13 what our building zoning ordinance says will have
14 impact long-term.

15 You know I understand that this is a small
16 part of that parcel and I think Mr. Kast did a nice job
17 of setting that back so it wouldn't have a huge impact
18 on the surroundings. However, it reports that a single
19 single-wide trailer would not be allowed with the
20 exception of a trailer park. And now we have four of
21 these in close proximity. And if I read this right
22 they're within twenty feet of each other. Again,
23 granted he's more than exceeded the distance setbacks.

24 So in my mind will an undesirable change be
25 produced in the character of the neighborhood?

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2 Long term, I believe yes. However, I think
3 Mr. Kast has taken pains to minimize that. And, again,
4 because of the proximity of the trailers and even
5 though they are far off of the road and from adjacent
6 neighbors I would like to see some type of skirting if
7 approved to lessen that impact.

8 In my mind, Curt, a full foundation has some
9 permanence to it. It's not just a cost thing because
10 that's really something we cannot solely make this
11 determination on.

12 So if you want the -- I mean, if you think of
13 trailer parks those trailers are typically there for -
14 they can be moved, but typically they're there for
15 duration. I think that the expectation is these
16 trailers would be there for a duration of twenty,
17 thirty, whatever the practical life of these trailers
18 are.

19 Talking to: Can benefit be sought by
20 applicant, can it be achieved by some other method
21 other than an area variance?

22 Well, the answer is yes. They can go with a
23 full foundation and there's other approved methods of
24 construction. He's bringing to us that he wants to
25 consider the piers.

1
2 Whether the requested area variance is
3 substantial?

4 I don't have any doubt that these are
5 constructed per New York State code that there's little
6 difference between the construction and the safety
7 afforded public any inhabitants of a full foundation.
8 Is it going to be tied down? It's not just four piers.
9 There's probably a series of twenty-four piers. And
10 again, that element of it would be reviewed by Roger
11 based on criteria submitted to him.

12 Lastly: Will the proposed variance have an
13 adverse effect or impact on physical environment?

14 Honestly, I don't think piers versus a full
15 foundation would make a difference long term. I mean,
16 I don't buy the argument that if they move these
17 they're easier to take out because it was already
18 stated that the life of these trailers are thirty
19 years. So what I'm looking at it is a series of - a
20 cluster of - single-wide mobile homes sitting on a
21 parcel that's going to be there for a very long time.

22 In terms of whether the alleged difficulty
23 was self-created, to me there is no doubt. These are
24 purchased. These are speced out and designed with that
25 foundation system presented to us.

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Is there any other discussion?

At this time I will take a roll call vote and we talked about the practical difficulty of the proof that would either grant or deny. So I'm going to ask this in easy terms.

Would you approve or deny the use of piers?

Marilynn?

MS. MILLER: About them using them, I would approve with a stipulation that there would be skirting to mitigate the view and also that there would be a clause that the foundation would be removed if the trailers were ever removed themselves. I would approve if those two clauses were put into the variance.

MR. GRABOWSKI: Ray?

MR. BURKE: Well, I would deny on the fact that it was seconded by Mr. Kast in putting - instituting this whole three parts of this law that wasn't there before. So I would be forced to deny.

I have a clear conscious on that.

MR. GRABOWSKI: I would approve the use of the pier foundation system if it met the criteria of the code enforcement officer.

I do agree with Marilyn, I would like to see some type of skirting. Part of that is so it does not

1
2 appear to be a transient type operation. And I don't
3 have a problem with the stipulation that the piers are
4 removed if and what time the trailer be removed - the
5 trailers themselves.

6 George?

7 MR. FLESMAN: I agree with the piers. I
8 think they would be fine.

9 The skirting is a good idea. Even though
10 they're way back there, it's still a nice idea.

11 MR. GRABOWSKI: Curt?

12 MR. STRICKLAND: I would agree with the
13 piers.

14 MR. GRABOWSKI: So it looks like four against
15 one. So the granting of the piers area variance is
16 granted.

17 MR. KAST: Just for your information - and,
18 Roger, correct me if I'm wrong - I believe in the code
19 that there has to be skirting and certainly these are
20 designed to have skirting, just so you know.

21 MR. GRABOWSKI: Thank you, Mr. Kast.

22 MR. MEIER: And, Mike, you could clarify that
23 the variance was granted then with two conditions.
24 One, the skirting which might get --

25 MR. STRICKLAND: But that's a condition now?

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2 MR. MEIER: Yes, you're correct. And the
3 second being if the mobles are removed then the piers
4 are removed?

5 MR. GRABOWSKI: Correct.

6 Okay. The next order of business is the
7 density variance asking for eight individual versus six
8 per single-wide unit.

9 I will open up that discussion.

10 MS. MILLER: I could begin.

11 MR. GRABOWSKI: You may begin.

12 MS. MILLER: Whether or not there would be an
13 undesirable change to the characteristic of the
14 neighborhood?

15 I believe that we as Town Board, Planning
16 Board, ZBA have an obligation to ensure the character
17 of the Town of Gaines and ensure the health and safety
18 of the population within Gaines.

19 We have heard complaints from neighbors of
20 noise and trespassing from other farm labor houses.
21 And to me, simple social science tells us the more
22 crowded a living area becomes the more the chance for
23 conflict and crime increases. So I think the more
24 people you add into an area the more you have got the
25 potential for an undesirable change to the

1
2 neighborhood.

3 The second question is: Can the benefit
4 itself be achieved by some other feasible method?

5 Mr. Kast had the opportunity to purchase
6 three double-wide units when he was applying. He now
7 has the chance of purchasing another single-wide unit
8 and those would both give him thirty people that could
9 occupy the units. He would need a variance for two
10 people in that case and not six. He could also
11 purchase two more single-wide trailers which would give
12 him four in excess of what he now needs. So then he
13 would have four potential laborers that he could add
14 without having to create a variance.

15 So I believe that there are other avenues for
16 him to seek out.

17 Is this variance substantial?

18 The cost according to Mr. Kast's attorney to
19 purchase another two units is eighty-six thousand seven
20 hundred and fifty dollars, which would leave him the
21 option of adding four more workers, but that is a
22 substantial amount of money. But I also know that
23 government provides farmers with a reduction of
24 property taxes, subsidies, low-interest loans and
25 grants that could help with this increased burden. And

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2 I don't believe that the profit to his farming
3 operation, being as large and diversified as it is, is
4 going to be substantially reduced by complying with the
5 zoning ordinance as far as density.

6 Will the variance adversely impact physical
7 or environmental conditions of the neighborhood?

8 Farm labor housing is permitted in
9 agricultural districts. So there's no variance that is
10 going to totally eliminate where -- there's no way to
11 totally eliminate that and so I don't think that it's
12 going to adversely impact the physical or environmental
13 conditions. Although in the future there could be a
14 whole ton of them and that would be a whole different
15 ball game.

16 Is this difficulty self-created?

17 Mr. Kast had the opportunity before he
18 purchased these units to come before the ZBA and ask a
19 general consensus of what the feeling was. He also
20 knew by having voted for the zoning ordinance changes
21 what these zoning ordinances were. So I believe this
22 was a self-created hardship.

23 So I think in this respect I have got a vote
24 in the opposite way. I've got four issues against
25 granting the variance and one issue saying that there

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is no impact.

Does that make sense?

MR. GRABOWSKI: Makes sense.

Ray?

MR. BURKE: I can go along with Marilyn.

I'm not going to read all that stuff again.

I guess I'm on the same page as Marilyn is.

MR. GRABOWSKI: George?

MR. FLESMAN: I don't want to go down a bunny trail, but I'm struggling with this one. Because, you know, having had a business of my own and having to deal with people, you know, hiring people and then to be stuck in a situation that a farmer could get stuck into, where you don't have local skill levels, you don't have enough people to hire and those that are available don't always play by your rules. So, you know, the need for these types of workers is vital to survival of that farm.

Now, the housing issue to me is a whole different animal where what you do with them while they're here. You can't control someone's morality. I don't care who you are. The big guy tried and he failed miserably. Unfortunately it's the fact of life. You cannot control how some people think and what they

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2 believe is fun and, you know, great activities for
3 them.

4 Now, I've had some difficulties. I mentioned
5 them before, with people and farm labor coming over to
6 my property, doing things that would be considered
7 immoral or indecent. And I have had fires built close
8 to my home, my barns, and so on and so forth, which is
9 very disturbing.

10 But on the other hand I still see the need
11 for that type of labor. I mean, I really respect
12 someone that works. You take an individual that can
13 tolerate this type of manual labor, to me that's
14 unbelievable. I see them in the fields for sixteen
15 hours. Yeah I know they get paid, but sixteen hours.
16 That's a lot of back-breaking work. So not to have a
17 proper house for them or a place for them to bed down
18 at night, a little bit of security I think is a
19 necessary part of this.

20 However, back to the morality issue again.
21 They have all kinds of things that happen. They have
22 dog fights. They have cock fights. They drink,
23 sometimes excessively. They do bonfires - or not
24 bonfires but they will often cook outside. They do
25 things that could create some serious problems. And in

1
2 some neighborhoods some people that I know have some
3 pretty vicious complaints about them.

4 So I have to go along with Marilyn on -- if
5 you could control the amount of them, pardon my way of
6 saying it, then therefore the need for law enforcement
7 is less. Therefore you don't have a problem with a lot
8 of people transversing through your property that you
9 don't know and disturbing your life as a surrounding
10 neighbor to the fields of the farmers. So I agree with
11 Marilyn. We have to control the amount that is there.
12 Since the code says six then I agree with the six.

13 MR. GRABOWSKI: Curt?

14 MR. STRICKLAND: Generally, I would agree
15 with Marilyn also. My comment would be that the
16 requested variance is substantial just based on eight
17 versus six.

18 MR. GRABOWSKI: Okay. And from my point of
19 view this is a weighted description that we're looking
20 at, the benefit provided to Mr. Kast versus the area,
21 the occupants. And again, I just want to remind
22 everybody that this goes with the land, so what
23 determination is made is there for a very long time.

24 This recently - the farm labor housing that
25 this section of the law was looked at by the town

1
2 relatively recently. I think it was 2011 when it was
3 adopted. So when they developed the occupancy
4 requirements for that - six for a single-wide and ten
5 for double-wide - I think they took into account the
6 public safety of the inhabitants.

7 We have issues with the applications of farm
8 labor housing before us and I -- correct me if I'm
9 wrong, and you can check me on the record, but I don't
10 believe any of them have ever come to us and said we're
11 going to put one person in this huge house. It's
12 always how many people can you cram in there. So the
13 fact that the single-wide may be larger in dimension
14 that accommodates eight people, but what our intent
15 behind the ordinance was six people in a trailer for
16 whatever time they spend in there after the long hours,
17 weekends or whatever. So I think we need to be
18 sensitive to the fact that - you know, I agree with
19 Marilyn that the more you put in an area the more
20 likelihood of something happening.

21 But I also look at it from a humane point of
22 view. Why would we want to put more people than -- I
23 mean, these are minimum requirements that we have in
24 place. You know they could be the opposite way, it
25 could be designed or the criteria larger with that in

1
2 mind. And I think this was a balance that says for the
3 single-wide trailer that six individuals is a fair
4 number in terms of density for a lot of reasons.

5 Towards the question of: Whether the benefit
6 sought could be achieved by some other method?

7 I do agree. The math just speaks for itself,
8 four units at six versus four units at six. There's a
9 lot of combinations including double-wides that have
10 less impact on the situation. Something that we really
11 can't comment to because it was never said to us
12 beforehand. We're dealing with it in our lap as it is
13 today.

14 Whether the requested area variance is
15 substantial?

16 I believe twenty-four to thirty-two is
17 substantial. I mean, we're talking four units. It
18 meets the criteria in terms of density per acre, but
19 not per unit. I mean, there's reasons that the
20 criteria had options. The ordinance had options within
21 that.

22 And again, I have to agree with everyone else
23 that this alleged difficulty was self-created. There
24 were other methods to alleviate or to maintain.
25 Thirty-two is the number, it's still ninety-three

1
2 acres, that's a lot of area to be able to put houses in
3 there whether they're single-wide or double-wide or a
4 combination there of.

5 Is there any further discussion?

6 MR. KAST: Mike, can I make a couple comments
7 before you vote?

8 MR. GRABOWSKI: Sure.

9 MR. KAST: I guess in our mind most of you
10 know we put a unit housing in the Town of Murray and
11 the Labor Department has already been out and inspected
12 it two or three times this year. The scale covers the
13 whole state. And we were commended for the fact that
14 she felt that we had the best quality labor housing
15 that she had ever been in. The town - the union and
16 town meetings could have been the same, but we were
17 told that there were some code requirements that we did
18 not have to meet in the Town of Murray that we would
19 have to meet in the Town of Gaines. The cost would
20 have been substantial so we looked at these
21 single-wides.

22 So the question became: Where do we put
23 this? And we had voted many scenarios from Transit
24 Road, Crandel Road, West Transit/Church Road, Latin
25 Road, wherever. We put it where we did because we,

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2 Cathy and I, are the closest house to that site and
3 next is my uncle and next is my dad. There is no other
4 neighbors within three quarters of a mile.

5 So going by what I see is going to happen
6 here it's going to leave us short of housing. And I
7 could tell you it's already cost me a lot of money this
8 fall based on lack of help. So we're going to make an
9 application to the town for an additional two trailers
10 somewhere.

11 So do you suggest that we put them next to
12 the four that we have approval for? Or do you suggest
13 that we move over on Transit Road or Crandel Road in a
14 straight location? And besides the fact I know what
15 the town ordinance says, I also know that every other
16 agency in the state or federal government has given us
17 approval to put eight people there, but I also favor
18 local rules. So I don't have a -- you make the
19 decision, whatever you feel is right. But somewhere
20 we're going to have to have more housing to meet our
21 labor needs.

22 MR. GRABOWSKI: Uhm-uhm.

23 MR. KAST: And the question is: Do we apply
24 to put two more next to the ones that are there or do
25 we apply to put them next to Marilyn's house, next to

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Doug Sicks house, next to who?

And we've invested or our going to invest thirty thousand dollars to get electric to the site because there is no electric to the site.

MR. GRABOWSKI: Uhm-uhm.

MR. KAST: Where if we went over to Transit Road or Crandel Road electric is there. And we also have to run water to the site. Which if we're on other sections of Densmore or Transit/Church or Transit or Latin we wouldn't have to do, but there is other residences closer by potential sites.

MR. VURRARO: So said another way, this isn't a question of whether or not we're able to legislate or zone out the existence of these farm laborers. You know, they're allowed in the district and the point Dave is making is these are laborers that he's going to need.

The application was efficiency while maintaining their safety, obtaining all of the oversight from the other regulating agencies and whether or not the additional two per unit makes that big leap such that it runs afoul of those area variance criteria, not whether or not having farm laborers there creates problems or not. That is an entirely separate

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2 issue and, you know, one that wouldn't be germane to
3 this particular application. It's a more vigorous
4 issue.

5 I think that's - I'm pretty sure that's what
6 Dave is saying, that these are laborers that are on the
7 way here regardless. And, you know, frankly our
8 position was this application represented the best
9 possible scenario to preserve the safety and oversight
10 that a conscientious employer would want to have.

11 MR. GRABOWSKI: That being I welcome that
12 discussion, but I wouldn't want to muddy this decision
13 and, I mean, we haven't even made a determination to
14 comment any further. So my preference would be to
15 continue this process and if you would like to come
16 back at the next ZBA meeting and ask our opinion or for
17 criteria -- I mean, obviously anything you do beyond
18 what you've submitted for a site plan you have to go
19 through site plan review and the entire process again.

20 What that criteria is, I mean, if we're
21 looking at an open look - a blank piece of land versus
22 something that is already existing, that is something
23 we have to consider at the time?

24 MR. KAST: I'm just trying to give you what
25 the future scenarios might be. I know you don't want

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2 to get into a situation that you have or however where
3 you don't have any control where houses have been
4 purchased by farmers and turned into migrant camps
5 because you don't have any choice and you have people
6 living on top of them.

7 MR. GRABOWSKI: Uhm-hum.

8 MR. KAST: We have two potential properties
9 within a mile from us that are for sale that we could
10 buy and not have a problem getting a permit for - to
11 make them into migrant camps because there really is no
12 reason that --

13 MR. GRABOWSKI: You have to meet the criteria
14 of Section 665.

15 MR. KAST: Oh, yes. I realize that, but
16 that's a no-brainer.

17 So I'm just trying to let you know that
18 somewhere we are going to have to have this housing and
19 we're trying to work with the town to put them in the
20 best location. And we have our thoughts and you have
21 yours. I respect your decision, but I want you to have
22 all the facts before you --

23 MR. GRABOWSKI: I appreciate that, Dave.

24 Is there any further discussion for the
25 Board?

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2 And again, I will - I mean, we talked to the
3 points of whether practical difficulty was self-created
4 or not, so I will ask this in simple forms.

5 Would you approve the application for eight
6 versus six?

7 MS. MILLER: Are we doing a roll call?

8 MR. GRABOWSKI: We'll do a roll call.

9 Marilyn?

10 MS. MILLER: I would not approve it.

11 MR. GRABOWSKI: Ray?

12 MR. BURKE: I would deny it.

13 MR. GRABOWSKI: I would also deny it.

14 MR. FLESMAN: I would deny.

15 MR. STRICKLAND: I would deny it.

16 MR. GRABOWSKI: Andrew?

17 MR. MEIER: Yes.

18 MR. GRABOWSKI: At this point is that the
19 final determination or do we need to make a motion to
20 deny based on the roll call vote?

21 MR. MEIER: I think we have determinations
22 expressed through roll call votes --

23 MR. GRABOWSKI: Okay.

24 MR. MEIER: -- on both applications. I think
25 we're okay.

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Now at this point the ZBA would need to draft the final determination and file it with the clerk and then assist from there.

MR. GRABOWSKI: Okay. Sounds good.

(End of application.)

2 COUNTY OF ORLEANS

3 TOWN OF GAINES

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6 Application of Mr. Lance Mark for a time
7 extension, in the Town of Gaines, Orleans County, New
8 York

9 PUBLIC HEARING

10 October 23, 2013

11
12 A transcript of the Public Hearing held at the
13 Gaines Town Hall, 14087 Ridge Road West, Albion,
14 New York 14411 at 7:00 P.M.

15 CHAIRMAN: Mike Grabowski

16 COUNCIL MEMBERS: Ray Burke
17 Marilynn Miller
18 Curtis Strickland
19 George Flesman

20 SECRETARY: Carol L. Claus

21 ZONING ENFORCEMENT
22 OFFICER: Roger Kopas

23 TOWN ATTORNEY: Andrew Meier

24 REPORTED BY:
25 CHAD L. SMITH, Court Reporter
EDITH FORBES COURT REPORTING SERVICES
21 Woodcrest Drive, Batavia, NY 14020
Main: (585)343-8612 | Fax: (585)345-6068.
E-mail: eforbesrochester.rr.com

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2 MR. GRABOWSKI: So we will go on to the next
3 order of business and that's the a time extension to
4 Mr. Lance Mark.

5 This is between the Lawyers of our Dan
6 Spitzer and Mr. Mark. They actually extended the
7 timeframe to consider the plot turbine application.
8 That was a mutual agreement and I'm just looking at a
9 motion that the ZBA officially grants that extension
10 that was determined by the lawyers.

11 MR. FLESMAN: Does that give us some more
12 time before we have to have a public meeting on this?

13 MR. GRABOWSKI: The next time we get together
14 is to make a determination.

15 Because we didn't receive the information
16 that we originally requested --

17 MR. FLESMAN: Okay.

18 MR. GRABOWSKI: -- this is an extension
19 initiated by Chris Watts' attorney, but agreed to by
20 our Town Attorney, Dan Spitzer.

21 I will accept a motion to grant the extension
22 of time to Mr. Lance Mark.

23 MR. BURKE: Do we know how long that is or is
24 that just --

25 MR. STRICKLAND: It would be open ended.

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2 MR. BURKE: Open ended until we get our
3 information, is that what we're saying?

4 MR. GRABOWSKI: As far as we know. I do not
5 have any more information other than they talked about
6 early on - from the time of our public hearing on this
7 we requested information within a I believe it was a
8 two or three week time frame and that was to meet our
9 sixty-two day criteria.

10 Mr. Mark was unable to provide all the
11 information that we requested so he asked for an
12 extension.

13 I believe it is our -- Dan Spitzer's position
14 that we really can not go forward until questions that
15 we have our answered or the attorney has an opportunity
16 to provide us information before we get together and
17 make a determination. So I believe it's not open
18 ended. I believe it's just an extension to extend the
19 time frame for Mr. Mark to provide information that we
20 originally requested.

21 MR. BURKE: I would make the motion providing
22 that we get the information that we requested.

23 MR. GRABOWSKI: All right. Motion made by
24 Ray.

25 MR. FLESMAN: I second.

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MR. GRABOWSKI: Seconded by George.

Any discussion?

MS. MILLER: Yes.

MR. GRABOWSKI: Marilyn?

MS. MILLER: I think we need to be a little bit more specific and put a limit on it, like a month. I mean thirty days and he can't get the information to us, we can't just be waiving out in the wind forever. That's one way of keeping the situation as it is and the problems that we've discussed are not changing.

MR. BURKE: That would seem reasonable. If he can't get it within thirty days then we'll just deny it.

MR. GRABOWSKI: Well, we'll get together and make a determination.

MR. BURKE: We'll make a determination regarding the information.

MR. GRABOWSKI: Ray, you made the original motion.

Do you want to amend that motion to provide the thirty day --

MR. BURKE: The thirty day time frame, sure.

MR. MARK: As of tonight?

MR. BURKE: Yes.

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MR. MARK: It would be effective tonight and then thirty days from today?

MR. BURKE: I would say yes.

MR. GRABOWSKI: The motion by Ray.

Do you re-second that?

MR. FLESMAN: I second.

MR. GRABOWSKI: Any further discussions?

THE ZONING BOARD: (No verbal response.)

MR. GRABOWSKI: All in favor?

THE ZONING BOARD: Aye.

MR. GRABOWSKI: Opposed?

THE ZONING BOARD: (No verbal response.)

MR. GRABOWSKI: None, so that's carried.

So based onto that point, not our motion, but we are requesting that the town appointed attorney requires from Mr. Lance Mark the remainder of the requested documentation from the August 5th, 2013 public hearing will be received.

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COUNTY OF ORLEANS
TOWN OF GAINES

Application of Francis Ciesielski and
Michael Ducharme for Subdivision, in the Town of
Gaines, Orleans County, New York

PUBLIC HEARING
October 23, 2013

A transcript of the Public Hearing held at the
Gaines Town Hall, 14087 Ridge Road West, Albion,
New York 14411 at 7:00 P.M.

CHAIRMAN: Mike Grabowski

COUNCIL MEMBERS: Ray Burke
Marilynn Miller
Curtis Strickland
George Flesman

SECRETARY: Carol L. Claus

ZONING ENFORCEMENT
OFFICER: Roger Kopas

TOWN ATTORNEY: Andrew Meier

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Main: (585)343-8612 | Fax: (585)345-6068.
E-mail: eforbesrochester.rr.com

2 MR. GRABOWSKI: The last order of business
3 that we have is the Francis Ciesielski and Michael
4 Ducharme subdivision application.

5 Back in July Mr. Shnow brought to us an
6 application that the applicants wanted to subdivide a
7 piece of land. At that time we forwarded it to the
8 county and it was returned to us with the stipulation
9 that they do not need to review subdivisions. However,
10 they did make a comment that the four - dividing the
11 parcel as requested four parcels would make a
12 non-conforming lot and they wanted us to consider that.
13 We shared with information with Mr. Shnow and I believe
14 since he has went to the applicants and they decided to
15 include that parcel as a flag lot.

16 So I kind of sense there would be three
17 conforming lots that they're going to propose on the
18 application; is that correct?

19 MR. SHNOW: Yes. David Shnow. So they're in
20 agreement to adding two hundred feet of road front to
21 the lot that Mr. Ducharme will be obtaining.

22 MR. GRABOWSKI: Okay. So am I correct in
23 saying that the original parcel map there was four
24 pieces of land and the problem was that this was land
25 locked so it was a non-conforming lot, and I believe

2 that one of the options was to just include that in one
3 of the other parcels?

4 MR. SHNOW: And that's what the owners are in
5 agreement to and I have a letter stipulating that.

6 MR. GRABOWSKI: Okay. Great.

7 MR. SHNOW: There should be a copy here, but
8 if you need this one?

9 MR. GRABOWSKI: We do have it?

10 MR. BURKE: We'll make -- she'll get you a
11 copy.

12 MR. KOPAS: I'll make a copy of that, if I
13 may?

14 MR. FLESMAN: So that means no flag lot?

15 MR. BURKE: No. Well, they have frontage.

16 MR. GRABOWSKI: They have the frontage so
17 it's not really - I mean it is a flag lot, but it has
18 the frontage which was the stickler.

19 MR. BURKE: A flag lot is what we consider to
20 be less than two hundred feet. They had a
21 hundred. That would be a flag lot.

22 MR. GRABOWSKI: So it's basically forming
23 three conforming parcels.

24 So we've done the SEQR. We've done the site
25 plan review on this application. With that change I'll

1 Ciesielski and Ducharme Subdivision Application 50
2 accept the motion to accept the application as three
3 conforming lots as indicated by the applicant.
4 MR. BURKE: I'll make the motion.
5 MR. GRABOWSKI: Motion made by Ray.
6 MS. MILLER: I second the motion.
7 MR. GRABOWSKI: Seconded by Marilyn.
8 Any further discussion?
9 THE ZONING BOARD: (No verbal response.)
10 MR. GRABOWSKI: We'll take a roll call vote
11 on that.
12 Marilyn?
13 MS. MILLER: I approve.
14 MR. BURKE: I approve.
15 MR. GRABOWSKI: I also approve.
16 George?
17 MR. FLESMAN: Yes, I approve.
18 MR. GRABOWSKI: And, Curt?
19 MR. STRICKLAND: I approve.
20 MR. FLESMAN: So that will be three tax
21 numbers?
22 MR. GRABOWSKI: Correct. The next step is
23 for that single tax parcel to be divided into three
24 parcels.
25 MR. SHNOW: Just a question: The seller's

2 attorney -- the property has to be resurveyed now --

3 MR. GRABOWSKI: Uhm-Hum.

4 MR. SHNOW: -- and probably one other survey
5 until I assume something in writing from the town --

6 MR. GRABOWSKI: Uhm-hum.

7 MR. SHNOW: -- approving the subdivision?

8 So is that something I could get from the
9 town?

10 MR. GRABOWSKI: Yeah, I believe --

11 MR. SHNOW: Something formal that I could
12 give to the seller's attorney?

13 MR. GRABOWSKI: Carol, you could prepare that
14 can't you?

15 MR. BURKE: It's been surveyed hasn't it?

16 MR. SHNOW: No, it was denied so there's no
17 sense surveying it.

18 MR. GRABOWSKI: Typically, Andrew, is that
19 something you review or is it a matter of formality?

20 MR. MEIER: Mr. Shnow is on basically some
21 kind of -- are you looking for some kind of proof --

22 MR. SHNOW: Mr. Church is the attorney for
23 the seller. It's kind of like similar with getting a
24 mortgage.

25 MR. MEIER: Sure.

2 MR. SHNOW: You know how you don't want to
3 order title work and a survey until?

4 So this is a contingency of the offer of the
5 town approval, which we have this evening.

6 MR. MEIER: Yeah, but I think as far as
7 demonstrating that approval's points we need a copy of
8 the minutes from this meeting would probably be
9 sufficient for Mr. Church's purposes.

10 MR. SHNOW: If that's okay with Mr. Church
11 that's fine with me.

12 MR. MEIER: Okay. And if he requires
13 anything else you can have him contact me directly I
14 can communicate with Mike. He can call me - whether
15 it's a letter -- and that's the official record of the
16 meeting. I think that should be sufficient.

17 Carol, when can we have the minutes - these
18 proposed set of minutes?

19 MR. GRABOWSKI: She's pretty good. No
20 pressure.

21 MS. CLAUS: Probably Friday.

22 MR. MEIER: There you have it. So by early
23 next week we'll have a good formal that you can pass
24 along. I expect their attorney to be satisfied with
25 that, but if not wait a little longer to get proof of

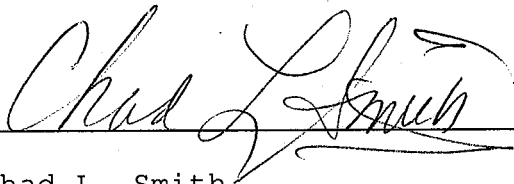
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REPORTER CERTIFICATE

I, Chad L. Smith, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

Further, that the foregoing transcript is a true and accurate transcription of my said stenographic notes taken at the time and place hereinbefore set forth.

Dated
At Rochester, New York


Chad L. Smith

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