

# ZONING BOARD OF APPEALS

January 29, 2007

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 29, 2007, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Robert Dee	-	Member
	Paula Clair	-	Member
	Adam Rodd	-	Counsel
<b>ABSENT:</b>	Bill Flaherty	-	Member

**Vincent Cestone** - The first item we are going to do tonight is Jules Bass Appeal 811. Is the applicant here? Applicant Bass? Okay. Then we are going to on to the continuation of

**Kim Shewmaker** - Do you want me to put Bass on for the next meeting? When will that be?

**Vincent Cestone** - That's the question. We will put him on for the next meeting but I am not sure when the next meeting will be.

**Kim Shewmaker** - Okay

**Vincent Cestone** - We were supposed to be on for the 5<sup>th</sup>, but we may not. Okay continuation of the public hearing of David Weinpahl

**Robert Gaudio** - Hi

**Vincent Cestone** - You're on.

**Robert Gaudio** - I'm on. Good evening Mr. Chairman and members of the board. For the record Robert Gaudio with the law firm of Snyder and Snyder. We submitted a number of materials last month and I hope you have had an opportunity to take a look at it. I did submit earlier copies of those materials, additional copies as requested for the record and we submitted a couple of

additional maps that were discussed at the meeting that I didn't have copies of the night of the last meeting. We did receive the Village's legal opinion showing access over the old road with deeds. We also did since that last meeting receive a letter from the Board of Assessors, I am not sure if all the board members have a copy of that

**Vincent Cestone** - I saw it

**Robert Gaudio** - Basically stating that the old road was not owned previously and that there were no taxes were being paid on it. Which points to the fact that it was an old right of way and it was not \_\_\_\_\_ create a lot area sufficient to have a four lot subdivision. I submitted a letter to summarize some of our thoughts including the fact that it was conceded that there was an old road, somehow somehow by some magic it was relinquished and we were never told how. But the opposition \_\_\_\_\_ but at least the record before you shows that the old road did exist and it should be the developer's burden to prove otherwise. And then just to summarize our final point was that the cottages had been previously moved, and it is my understanding they were moved again today. Again under the code moving a nonconforming structure any place on the lot requires site plan approval including a public hearing whether you move them or move them back. Any movement of them requires that and then finally the Chairman at the end of our last meeting we submitted a map showing that the original plan was for a right of way for that back lot across the middle of the flat club grounds. We believe the new subdivision shows that thereby triggering both variances and the subdivision approval. We are not asking the board to decide on the old road. We are not asking the board to even tackle the planning board issues of drainage and everything else, we are just simply asking that the permits be put on hold and this matter be referred to the planning board to do what they do for subdivisions and site plans. Thank you.

**Vincent Cestone** - Anyone wish to speak on this? Mr. Zutt

**Mr. Zutt** - Good evening

**Vincent Cestone** - Good evening.

**Mr. Zutt** - At the last meeting I was embarrassed because I showed up with too few copies of this memo so I brought a couple of extras with me. I don't know who wound up short, but I will leave them both with clerk and she can get them to whoever needs them. I am also embarrassed to acknowledge a typographical error so for that I am going to give you all a copy of the replacement page. I let that one get by and I apologize for that. At the last meeting I handed out the somewhat lengthy memorandum which I eluded to a moment ago and I hope you all had a chance to read it. I just wondered if there were any questions concerning the memorandum from counsel or from the board?

**Vincent Cestone** - Anyone from the board have any questions on this?

**Lenny Lim** - No

**Mr. Zutt** - Specifically the memo I handed out

**Adam Rodd** - Not specific to the memo but I have some questions

**Mr. Zutt** - Okay. And the other thing right after the meeting, towards the end of the meeting Mr. Gaudio mentioned that fact that we had not actually provided the deed from the Alaverty Society. I did send that in the next day. Hopefully you had a chance to get a copy of that. Also a complete copy of the title policy for the property including the endorsement with respect to the old road which included \_\_\_\_\_ insurance against the exercise of any third party rights across the old road. It remains our position of course that the issues before you tonight have to do with two building permits issued to two lots neither of which is actually affected by the old road. So while there has been a great deal of discussion and argument about the legality or illegality of certain boundary line changes and so forth, the only issue before you tonight at least as presented is the legality of these two building permits and we believe in that respect alone this application should be denied and maybe another application for another day if the building permit is issued on the other lots which are affected by the old road. But we don't believe that issue is \_\_\_\_\_ here. There was also some discussion during the last meeting about the old cabins that have been stockpiled along the back of the property. I am sure you have all been there by now. And it has been argued by the applicant that the cabins are inappropriately and illegally placed there. In point of fact that the section that is referred to is 175.41 of your zoning code and that section applies to uses and structures that are devoted to a nonconforming use. These structures were once dwellings as part of a camp. They are not dwellings today nor are they intended to be dwellings. In fact, they have been physically moved as recently as this morning away from the property line so as to make sure there is sufficient distance set back from the property line which would be the case for an accessory structure. So we made sure that that much was taken care of.

**Adam Rodd** - Which property line are you referring to?

**Mr. Zutt** - Referring to I think the line to which they were most proximate was the northern property line. I think that was the line there were about four or five little old bungalows that had been stacked in the back right parallel to the old stone wall that defines the northern boundary of the old road and I believe unless I am mistaken, Mr. DeVido, those cabins have been physically pulled away from that boundary line. I think the minimum distance is 40 feet. And that has been taken care of.

**Adam Rodd** - Is that referring to what has been described as lot 29?

**Mr. Zutt** - Yes. Yes. That is correct. That is correct.

**Adam Rodd** - So it has been moved closer to Foundry

**Mr. Zutt** - Yes. Yes. I think the requirement is that they be at least 40 feet distance from nearest property line. I don't have the code right here with me but I think the requisite setback is 40 feet for an accessory structure. I think. And that was

**Lenny Lim** - Originally where did you move them exactly

**Mr. Zutt** - Mr. DeVido could you step up here please if you wouldn't mind. Can you indicate to the board where those bungalows have been relocated to.

**Alfred DeVido** - Basically there are three cabins in the place that they always were

**Vincent Cestone** - These here

**Alfred DeVido** - Namely this is Foundry Pond Road. There's one here and we had them stored here because we have building permits right now for these two lots this and this. This house is under construction. The septic fields right here and most of the cabins that we are storing were storing there sat on here. And there were a few in here some of which I demolished. It was an original nonconforming structure here with a large concrete block. I demolished that about two years ago. That was very close to the road. And in here there are some that are still, right, well, actually they are here. These two are still there. Five others we moved back and they are currently lined up here. Lined up in here clear of the septic field that we have to dig.

**Lenny Lim** - So two you left, five you moved

**Alfred DeVido** - Well we left three, there are two here and one here up on the hill that doesn't, here it is, it shows right here. This is the one right here. Several of them were beyond repair and here are two that we just left and the other five were in the way of the septic fields that I have to dig and we moved those. We stored them temporarily in other parts of the road and Harold just put a sling around them and moved them. They are very light. 10 by 5. It is part of the past charm of this site the cabins, and it is my intent was to redistribute them as part of the houses that I plan to build here. Just as outbuildings.

**Adam Rodd** - So those nonconforming buildings were moved to different parts of the property that you own? Correct?

**Alfred DeVido** - Well. No.

**Adam Rodd** - They were either moved or they weren't moved. They were either moved or they weren't moved.

**Alfred DeVido** - As I said two remain where they were over here. One remains where it is over here. There were others that were in here, you can see

**Adam Rodd** - That is in the septic fields right. You have building permits for here and here

**Alfred DeVido** - Right

**Lenny Lim** - So you would have to move these in order to build, so you moved probably three here. You would have to move three

**Alfred DeVido** - We demolished two

**Lenny Lim** - Right

**Alfred DeVido** - And moved one other. And then over here there were four all lined up and that was in the way of the

**Lenny Lim** - Septic. It shows that the septic overlays, so you are looking at least three here. So there are six total that were moved.

**Alfred DeVido** - Five

**Lenny Lim** - Five were moved

**Alfred DeVido** - Five were moved

**Adam Rodd** - To a different part of your property correct?

**Alfred DeVido** - Harold moved them to the road here because that was convenient. He just hauled them over there and put them there. Stored them there. Because we had to dig these

**Lenny Lim** - And your intention was to when you finished the homes was to scatter these around the property

**Alfred DeVido** - Yes

**Mr. Zutt** - But not as homes

**Alfred DeVido** - Just as outbuildings

**Lenny Lim** - They were called cabins, bungalows, they have been called a lot of different things

**Alfred DeVido** - They are 10 by 15 approximately, 10 by 12, there is no plumbing

**Lenny Lim** - Anybody ever sleep in them?

**Alfred DeVido** - Oh yeah Alaverdy camp used to sleep in them. They had a workable building here that they used as camp. They ate there, it was their living room and they also had a swimming pool across the street.

**Lenny Lim** - Can you answer the lawyer directly for his questions. Do you have questions Adam?

**Adam Rodd** - I don't know if I got a clear, there were at least five structures that you referred to as cabins or bungalows that were moved from one part of the property that we are talking about to another. Is that correct?

**Alfred DeVido** - That's correct

**Adam Rodd** – okay

**Alfred DeVido** - There are three that remained in addition to the five, there are three that remained where they were. So there is a total of eight.

**Adam Rodd** - Five were moved, three stayed where they were

**Robert Dee** - How many were there originally?

**Alfred DeVido** - 14

**Robert Dee** - the plan shows 10

**Lenny Lim** - Here is 11, 12, 13 they are all over the place

**Robert Dee** - This is your plan

**Lenny Lim** - I see at least 13

**Alfred DeVido** - There was also a toilet building, I don't know if it shows it here because I demolished some buildings early in the game before this plan was drawn.

**Robert Dee** - Okay

**Alfred DeVido** - There was a toilet building here. There was a clubhouse here with a kitchen. And then there were cabins

**Robert Dee** - Okay

**Alfred DeVido** - Scattered around in here. I think there were 12 or 14, I am not sure. I mean some of them were ready to collapse so I just had them demolished and removed.

**Robert Dee** - Okay

**Vincent Cestone** - Thank you

**Mr. Zutt** - Just two other points Mr. Chairman. With us tonight is attorney Kenneth Gould from Title Guarantee in as much as the Village of Cold Spring has asserted its rights to the property, that constitutes a claim under Mr. DeVido's title policy and since this board may entertain that claim, Mr. Gould is here to address

**Vincent Cestone** - Is this letter from your organization?

**Mr. Zutt** - So Mr. Gould is here this evening and he will speak to those issues for two reasons. One it is the Title Company's job; two, I maintain a continuing though very small legal relationship to the Village of Cold Spring at this point it consequently to advocate a position first to the Village it would be an ethical problem for me. So I am going to defer to Mr. Gould on that score and then once he is completed whatever he has to say, I have Mr. John Delano here who is actually the preparer of the plot plans that you have before you in connection with the building permit application

**Vincent Cestone** - And the relevance

**Mr. Zutt** - I'm sorry

**Vincent Cestone** - The relevance of that

**Mr. Zutt** - Well the, I think it responsive to the concerns that were expressed by this applicant regarding adequacy of drainage and there were a number of questions by the board. There was a question raised with regard to a notice of violation from the DEC at it was all put on the record at the last meeting

**Vincent Cestone** - That is not what they are asking us to interpret

**Mr. Zutt** - Well if the board is willing to concede that the drainage or adequacy or inadequacy is irrelevant to issues before it then Mr. Delano doesn't need to put that in. The other side did

**Vincent Cestone** - Well, I am not going to concede anything. But that is not before us the drainage. That would be a planning issue.

**Lenny Lim** - But what he is saying is that we brought it up here as an issue

**Mr. Zutt** - As a matter of fact that is correct Mr. Lim. The board brought it up and I think there were also comments from Mr. Gaudio as well or a number of other speakers who, it might have been his client, I can't recall now exactly who it was but someone eluded to the fact that the DEC issued a letter, not sure if it was a violation letter but a letter of some kind concerning drainage. And that was all put on the record. And it seems to me that we have an obligation to our client to make sure that is adequately addressed from our perspective as well.

**Vincent Cestone** - If you keep it short

**Mr. Zutt** - Very good. Thank you very much

**Vincent Cestone** - Just introduce yourself for the record

**Kenneth Gould** - Yes. My name is Kenneth J. Gould, Marcus Gould Sussman LLP in White Plains. And I apologize to the board because I just literally found out about this case on Friday when I wrote the letter and I am just learning. Basically I am here to ask for additional time to submit some more information. But in the meantime, I do want to hand to the board members a letter dated today from Glen Watson of Badey and Watson the surveyors in Town who had studied the maps and deeds in connection with the assertion that the old road is somehow the road that was being used by and deeded to the village of Cold Spring. Mr. Watson has had tentatively concluded and it is somewhat complicated he quotes from the various deeds that Mr. Supple's letter, which I believe you all have seen, is based on some inaccuracies and he quotes in them what those inaccuracies are and he states that in his opinion the old road that is identified in some of these documents is in fact another old road. It is about 8,000 feet away. It has to do with one of the other reservoirs. You really have to read the letter in order to understand what I am saying and I am not going to be able to, it is a difficult construction of a whole series of old deeds and surveys that he has put together. He had tentatively concluded that Mr. Supple is incorrect and inaccurate in his conclusions. And we respectfully request additional time to submit additional information to this board to support this conclusion. Just let me read to you from the last, second to last paragraph of this letter based on the fourth owner that the change of title to parcel 6 in the village deed liber 124 page 469 cannot be the basis for any right of way over the old road that crosses the DeVido property. So based on that, we certainly think it is a substantial \_\_\_\_\_ that there is a big question here about whether the old road that everybody is talking about is in fact the old road that the village has a right to and we request



**Vincent Cestone** - Have you seen this document? This is the actual original deed.

**Kenneth Gould** - The deed does not, according to Mr. Watson clearly identifies, it may state that but it may be that the village never acquired title to it. And I apologize for not being able to go into detail. Mr. Watson had explained that in some detail in his letter

**Vincent Cestone** - All right

**Kenneth Gould** - And we request the opportunity to submit some further information to this board at its next meeting with some overlays and surveys to show you what we are really talking about.

**Vincent Cestone** - How much time are you asking for?

**Kenneth Gould** - I don't know what the schedule is. I would think several weeks

**Vincent Cestone** - Our next meeting is on the 5<sup>th</sup> of next month. Which is next week

**Kenneth Gould** - I think we need more time than that.

**Vincent Cestone** - Monday the 12<sup>th</sup>, Monday the 19<sup>th</sup> is President's Day. Monday, the 26<sup>th</sup>

**Kenneth Gould** - That would be fine

**Robert Gaudio** - I will actually be out of town that day chairman

**Vincent Cestone** - Well would you want to do it the first meeting in March. Which would be March 5<sup>th</sup>.

**Robert Gaudio** - Sure. Understanding that when they are done if I would just have an opportunity to comment on it

**Vincent Cestone** - Absolutely

**Robert Gaudio** - March 5<sup>th</sup>. After we finish tonight, we will continue it on to March 5<sup>th</sup> which is a Monday.

**Kenneth Gould** - Thank you and again I apologize for not being fully educated to this matter. In fact I misunderstood the application in my letter requesting adjournment. I thought it was a subdivision application. Next time I will be a little bit more knowledgeable about the whole content

**Vincent Cestone** - That's okay

**Kenneth Gould** - Thank you very much

**Vincent Cestone** - All right

**John Delano** - Good evening John Delano from Badey and Watson.

**Vincent Cestone** - Yes

**John Delano** - I am available to the board if there are any questions concerning matters of drainage. I was unavailable for the last meeting

**Vincent Cestone** - I don't have any questions. Does the board have any questions

**Lenny Lim** - I believe it was brought up that there was going to be a minor difference in drainage 1.2 to 1.3 or something like that

**John Delano** - There was an analysis performed on the four lots back in 2004 that there would be a minor increase in storm water flows from the property after it was developed into four residential lots

**Lenny Lim** - From what to what

**John Delano** - From its current condition

**Lenny Lim** - No

**John Delano** - As far as the numbers?

**Lenny Lim** - Yes. I believe there were numbers last week.

**Robert Gaudio** - Not to interrupt but I think the key point of that was that the board had asked had recommended drainage ponds which now

**Vincent Cestone** - The planning board

**Robert Gaudio** - Their own report recommended drainage ponds which was part of the planning board process. Once they pulled it back from the planning board they went without the planning board review, there were no drainage ponds

**John Delano** - The report presented an increase in flow. The plan also offered some mitigation, storm water mitigation measures in the way of storm water

retention ponds although none were technically required under the storm water regulations of the State of New York for a residential development with disturbance of less than 5 acres which is what that four lot subdivision would have been, there is no requirement to mitigate peak and storm water increase rate of flow off the property. There is a requirement to provide for erosion and sedimentation control. But there is no requirement to mitigate peak. That was an offering of the applicant to the town because of the current condition of Foundry Pond Road. It was not required and not necessitated by State regulation. That application was subsequently withdrawn, and I believe some boundary lines adjustments made and subsequently a subdivision application was filed with the health department and went through the SEQRA process, was reviewed, was approved and at some point down the road we had Board of Health permits on that and the applicant filed for building permits. Again that project was even smaller than the 5 acre limit but the potential to just be above 1 acre disturbance so it still needed an erosion and sediment control plan in accordance with the New York State DEC guidelines for storm water pollution prevention plans. But it required no mitigation of increase in peak. That is not required in the regulations.

**Paula Clair** - I wanted to ask if there is not a problem with drainage and erosion why did the DEC order a cease and desist on the building?

**John Delano** - The DEC I believe made an unannounced site inspection and found that even the most rudimentary of erosion and sediment control were not yet put in place although construction activity had started. Subsequent to that we were contacted by the applicant and we made arrangements that with his contractor we had silt erosion control fencing property installed in the appropriate places around the property and a stabilized construction entrance was also installed where the driveway will be all in accordance with the DEC standard guidelines

**Paula Clair** - When was that done

**John Delano** - Late December. It is a little more complicated than that

**Lenny Lim** - So you are saying that it was only done after the State showed up? You only did it after the State showed up?

**John Delano** - I believe that was the chain of events. It should have been installed before the land was disturbed. It was called for on the plans.

**Lenny Lim** - And it wasn't done

**John Delano** - It happens. It happens here in town and it happens in other towns. We've seen it happen.

**Paula Clair** - I also wanted to ask what if any other erosion control measures and drainage control measures will you be required to put in in order to attain the amount of erosion that you say you are going

**John Delano** - All that is required and all that is necessary for a project of this magnitude is basically erosion control fencing, silt fence, and stabilized construction entrances to keep the equipment from tracking mud onto the road.

**Paula Clair** - And what was the reference to the pond that you were

**John Delano** - That was an offering provided in the plan for a four lot subdivision to the town above and beyond what is required by law. It would have been a nice improvement. It was a gesture, it was something we recommended as environmentally conscious professionals and the owners took it under advisement and permitted us to propose it in connection with that original four lot subdivision. He thought it would be a benefit to his development, to the neighborhood and thought it would be well greeted. His experience was different.

**Paula Clair** - So they are not planning to do that at this time

**John Delano** - No. It is not required and it is not planned. Just the basic minimum that is required by State law is what is being implemented in the development of the two lots.

**Paula Clair** - What kind of improvements would have been had if the ponds were put in in terms of

**John Delano** - There was one small detention pond that was contemplated in the front of the lot that is currently under development. What we refer to subdivision lot 1. The purpose of that pond was to capture run off and regulate its discharge to the gutter further down the street to try and balance the, pick up some storm water and hold it back so the other storm water path this would be released slowly and the overall rate of flow from the property theoretically wouldn't exceed the predevelopment rate of flow that is before any housing was installed.

**Vincent Cestone** - Any other questions from the board? Thank you very much

**John Delano** - Your welcome

**Robert Gaudioso** - That was a rosy picture you just heard about storm water. They went to the planning board, the planning board immediately raised concerns about storm water. They came back with a drainage report that proposed retention ponds. The planning board never even got to review that proposal. They would have had a minimum to build a retention pond and I bet

you that they would have went way beyond that retention pond because it didn't treat the quality of the water. It only treated the speed of the water that would be released. Why is this a big concern. Well if you look at the road and I don't know if you have been up and down that road or not, but one of the residents did take some photographs. I guess it is at least worth looking at since we are talking about that. That is coming out of the property there, you come down the road, a couple of pictures coming down the road. You can see how steep it is and you can see how there is absolutely no drainage, catch basins or anything like that. So it just floods down to the base of the mountain. But here's what happened. He came to the meeting. They had already started the original meeting if you remember. They had already dug the foundation and we said to them please stop. Mr. Weinpahl actually wrote them a letter and would be happy to meet with you and they ignored it. Came to the meeting, the board properly had to hold a public hearing so we had to bring a law suit. In the law suit we specifically raised the fact that they needed this storm water prevention plan. There response was oh no we don't. We absolutely don't need it. They submitted affidavits saying they didn't need it. They submitted affidavits saying that it is below the minimum one acre size and that they didn't need it. And then lo and behold that was incorrect. The court relied on that. But it was incorrect because the DEC went out and said oh yes you did need it. So with that they had already started construction and had already raised, they already told the court they didn't need it and then they went out and did it. Only because of the cease and desist order. So they finally put up some of the fencing. They put in the construction entrance if you recall the DEC reported that they were tracking mud all over the place, out in to the road. I'll show you the construction entrance. This is part of it. But this is all after the damage was done with the construction entrance. They had already gone in and out of the property. That was all after the foundation was completely dug and we had a temporary restraining order. So that is the reason why drainage is so important here. But it is also important to consider the consequences of not going to the planning board. You just heard it. We did the minimum necessary. They did the minimum necessary under the State regulations. I wonder what the planning board would do. The planning board already had them at the stage of doing the retention ponds. Now what they have done is they have segmented the project. They said we only have two lots now. Well we all know they are angling for four lots. That's what the whole proposal is about. So they have done the minimum for the state but the state assumes that the planning board is going to take a look at these types of projects. Four lot subdivision on 6.67 acres. Not 5 acres. 6.67 acres. More than that if you count the old road which they are trying to do. So that is why drainage is important and I agree with the Chairman, it is probably not important to you making your decision but I think it is important to understand why it is important that this go to the planning board. The planning board has work to do here. So lets take a step backwards. There are two building permits in place. One has a restraining order on it and we will see for how long and the other one you can see from the pictures that I just submitted they are banging away right now. And the point of the code in Section 41 says that if you move a nonconforming structure and

these structures were nonconforming for two reasons. One their use was nonconforming but also on the plan they just showed you, once they divided up the property the structure was nonconforming with respect to the setbacks. So your code says okay if you want to demolish it fine. But if you want to move them, you have to go to the planning board. Why do you have to go to the planning board you would say? Well it says it right in the code. It says that the planning board is going to look at things like landscaping. They are going to say that adequate provision is made for landscaping in the area required for a building setback from a residence boundary line. So what they are saying is that you go to the planning board and have a public hearing before you start moving these cottages around to see if there is adequate landscaping. See that there is no increase in the nonconformity. That is another factor the planning board has to look at. So I think right now this evening we don't have to tackle the entire project. The third item that we have asked you to do is to look at Section 41. Say that they just conceded to. They moved these nonconforming structures. Send them to the planning board for site plan approval. They just conceded to tonight. They said the word that they were nonconforming and they agreed that they moved them. I think the board can do that tonight and put a stop to this and relieve the residences of their concern about this additional run off and at least get the planning board starting to work with them. The second thing is the right of way that they created on lots one and two which we discussed at the last meeting and the Chairman pointed out how will they get to lot 29? Their original plan was for a common driveway down the middle of lots one and two. Their new plan I think does the same thing. I think it shows the common driveway. They just didn't label it as such because if they had the subdivision regulations would have kicked in and it would have required that they go to the planning board under the subdivision regulations. So I don't think we even have to argue about the old road to get to those first two points. They moved the nonconforming structures, send them to the planning board. They created a right of way with that subdivision, send them to the planning board. We can come back in a month and argue about the right of way. We can argue about the old road. I don't think eventually this board is going to decide that issue. I think eventually they are going to go to court and bring a claim to quiet title. They have to otherwise they don't have enough lot acreage to do the four lot subdivision. But they are trying to shift the burden to the village. They are trying to shift the burden to the town. They are trying to shift the burden to the residents. And to make this board make that ultimate decision. They are saying hold on lets get some more time but we are going to bang away on that subdivision. They didn't say that weren't going to pull a building permit on one of those back lots. That's going to be the next thing that they are going to do. Guarantee it. So I have no objection if the board wants to hold it over for them so they can put some additional information in. I think that no matter what they put in it is a push. And I think in the case of a push you go with the way it was existing. You don't change the status quo. The status quo is the village has a right of way to go up that old road. So I don't care if you hold it over to March 5<sup>th</sup> that is the board's prerogative and we have no objections to that. But I think you

could take the other two first steps this evening or at least take a straw poll and at least head in that direction. That's all I have. Thank you.

**Vincent Cestone** - Anybody else.

**John Delano** - Can I just respond to that before I sit down? I totally disagree with counsel's objections to my statements on drainage. They are inaccurate. As far as the applicant having to move the cottages around, if he is out there conducting construction in the terms and conditions of his building permit and the building inspector to remedy that situation on the matter that need come before this board and this two lot subdivision that this applicant did, there were no right of ways created. They're two separate free standing conforming lots. Thank you

**Robert Gaudioso** - We wrote to the building inspector about the illegal, those cottages and the fact that they were right on the property line so they were even more illegal, because they weren't in the setback requirements. We wrote to him two months ago and no violation was ever issued. Not surprising, the building inspector is in accordance with their plan because he is on their side in the litigation. So it doesn't surprise me that they wouldn't back peddle off their position. That is why we had to bring it to the zoning board. The second point about not creating a right of way, this is the old road. You think they are going to access lot 29 over that? They knew they couldn't in the first place. Their own plan shows it as class 2 slopes, possibly some spots were class 3, I can be corrected on that, at least class 2 though. They are not going to go up the old road. They are going to go right down the middle. Their original plan showed it. Their new plan shows the caddy-cornered of the septic fields. Why did they caddy-corner the septic fields? Why did they put a 20 foot wide swath right down the middle? Right where they basically had the original common driveway. Why did they do that?

**Adam Rodd** - I have a quick question about the setbacks on the nonconforming structures. And correct me if I am wrong, but what specifically in terms of the setbacks are you claiming not in compliance with the code?

**Robert Gaudioso** - Let me show you the plan. Okay, here you go perfect example, see that cottage. Here is the zoning setback line, that cottage right is in the setback line. So that cottage number one, it is not a dwelling. You just heard their own testimony said there was no plumbing or anything in it. It is not a dwelling. It is a nonconforming cottage for a nonconforming camp. Plus it is nonconforming with respect to the setback. This cottage right here is right on the property line. So those are two just glancing at it I can see are nonconforming. Here's another one that is nonconforming.

**John Delano** - I must advise the board that counsel here is working from a non-existing plan. These property lines are not the property lines that exist.

**Robert Gaudio** - Well lets take out the other plan. Lets pull out the other plans. Lets get the current plan. At the end of the day whether it's, again, I just submitted the photographs and there was just a concession by Mr. DeVido himself that he pushed, he put the cottages in the old road. I think he used that exact term. So he moved it into the old road. So whether they were existing nonconforming and I will take out that plan and we will take a look. They moved them into an even more nonconforming location and now today they moved them back. Why today? Tonight's the meeting. This has been, it is on one of the prior ones I submitted, actually it is this one right here. You see the cottages in the background, the little white cottages? That's after they were moved. And as Mr. DeVido conceded he moved them back into the old road and on their own plan you can see the old road there is no room for a cottage to be there because it is not the width of the setback.

**John Delano** - At any rate the cottages seem to be a forever moving item and I think the applicant already conceded that they have been illegal and conforming and nonconforming locations

**Vincent Cestone** - The issue is at the movement

**John Delano** - I believe I saw Mr. Monroe here this evening perhaps the Board would care to hear him speak on the matter since it is under his jurisdiction

**Lenny Lim** - No. You moved them. We've got it on record you moved them.

**Robert Gaudio** - I am just curious more than anything. There. There they are. This is the current plan. Take a look you will see the cottages all along the setbacks

**Adam Rodd** - What is the date of that for the record

**Robert Gaudio** - That's the plan, that is the subdivision plan for lots 1 and 2. And again moving them back doesn't cure, that's the whole point of section 41. Lets let the planning board decide where they should be put and that there is screening for them, make sure that it is done properly. So that is nonconforming, that one and there is another one here and here, this one here, here is another one here, they are all nonconforming with respect to setback. They are also nonconforming with respect to use. And then he took all of them and moved them to what he called the old road before, they were back in this area here. So they became more nonconforming and Section 41 says you are supposed to make it less nonconforming.

**John Delano** - Can I point to the board's attention note 7 on that file map calls for all those structures to be removed and relocated to comply with zoning.

**Robert Gaudio** - And that is exactly our point. You can relocate them. But



you have to follow the law. Something that hasn't been done here over and over. You have to go to the planning board. Have a public hearing and let the planning board confirm that there is adequate landscaping, it is safe on the highway, it is safe for the site lines, that it is in a less nonconforming location. That's the whole point. \_\_\_\_\_ concedes that Section 41 was triggered.

**Vincent Cestone** - That's what the code says. Any questions from the board on this? Anyone from the audience wish to speak? Sir, stand up and introduce yourself.

**Richard Curals (?)** - Thank you. Richard Curals (?), 10 Foundry Pond Road. I live east of the property down the road from the developing property. Tonight as well as the last hearing, I have heard some amazing things and some amazing inconsistencies. Just to touch on a few things, the gentleman from Badey and Watson, I am sorry I didn't catch his name. He just spoke about the drainage set up. He described that they started construction, oops they made a mistake, they violated the law, they got caught by the DEC and they fixed it later. And you know sometimes developers violate the law and they get caught, these things happen, so you guys should just dismiss that. What really happened is at the hearing, at the meeting in November when it was first asked for the zoning board to consider this and the zoning board said no we have to hold a hearing we will push it over until January. And then when Mr. Weinpahl filed for a temporary restraining order, Mr. DeVido realized oh we better get going on this construction because if we have a hole in a ground, that will change the whole dialogue here with the zoning board and maybe it will change the whole dialogue with the Court. And if that, in the Court proceedings they made a big deal about the fact well we started construction and we have ordered \$400,000 worth of materials, which is a lot of bologna. But that is what they said. And we are in complete compliance with all legal requirements which turned out not to be true. And they didn't just make a mistake in starting construction without being violation of all the drainage requirements, they were in a rush to get the job done. To get the hole in the ground so it changes the dialogue. So it wasn't just an innocent oops sometimes developers violate the law, they get caught, these things happen so lets move on. It wasn't an innocent mistake. I also heard Mr. Zutt say last hearing just, about how the extinguishment of the village's right to the road, the old road, and the village doesn't have any easement, doesn't own that property, has no rights to the old road, tonight he said well I really can't talk about that because I have a conflict of interest because I do legal work for the village, so I am going to have another lawyer talk about this after he talked about it at length at the prior hearing and filed papers on it. And I will bring in another lawyer who, oh by the way I haven't done any work on this so can I have a delay so that I can figure out what we really own and don't own. That doesn't seem very, it just seems disingenuous and that they are playing games with the board. I then hear Mr. Zutt say the law says that we only have to worry about the movement of these bungalows if we are going to move it for another purpose. Now I didn't hear all of the dialogue but what I think I heard is that at one point there were

either ten or fourteen of these bungalows and now there are three that are in their original location and five that are migrating all around this property. They keep moving around and around. That means some of the bungalows were destroyed. And that is fine because the law doesn't seem to say that they need any planning board process if they are destroyed. We also heard at the last meeting when the Chairman asked Mr. Zutt well what are you going to do with those bungalows and he didn't have an answer. He said maybe we are going to use them and maybe we are not going to use them. But in the meantime they keep moving, some were destroyed, and the other and the others are being preserved and moving around. It seems to me that if you take Mr. Zutt's response the last time, maybe we will use them and maybe we won't use them and the fact that he keeps moving them around and destroyed some of them, that he is probably going to use them. So even if you accept his argument that the planning board review is only necessary if there is going to be a use, it seems to me that that there is going to be a use in those bungalows. And I don't even think that's what the law says. The law doesn't say move for use. The law just says if you move them. So I think to me, from what I am hearing, this is, either argument that you accept, this stuff is moving around and keeps moving around. And the next meeting we have they will move around again. And I don't know if there is any way that they can be moved to a complying use so he can undo the damage that's been done. I also don't understand as it was pointed out why we are months into this process, building permits were issued and we have a clear on its face violation of the law in terms of moving those bungalows. Why

**(turning tape over. May have lost some dialogue)**

... the big plan here is that there is going to be a right of way on lots numbered 1 and 2. And the Chairman asked some very insightful questions last time. Well Mr. Zutt what's going to happen with lot 29, the back lot, and are you really going to use that drive, that old road as your driveway and what if you don't get approval for it? And his answer was, we don't have to tell you. That's for another day and we will just figure that out at another time. Well in the meantime if you follow Mr. Zutt's, the way he is papering this, he says the village has no right to go up the old road, we have extinguished that, and we don't give them a right to go across lots 1 and 2 because we used to have a right of way there but we sort of erased it and so right now the village has no right. Now a month has passed since, a couple of weeks have passed since the last hearing and I assume that there have been no cracks in the dam and the village hasn't had to go up and so we have been lucky. Now we are going to have this go on for another month, hope there are no more cracks in the dam because everyday that passes according to Mr. DeVido the village has no access to that upper dam. And I think that is a very very dangerous thing and how long is this going to continue? So I think that what we need to have happen is as Mr. Gaudio pointed out is that there are some clear decisions that can be made right now while they figure out what they own and what they don't own as a new lawyer takes a look at this and it is, the bungalows have been moved, violation. We are

going to have a right of way, violation. In fact in the end of this whole story we started out with three lots, two of which were nonconforming. The planning board took a look at it, Mr. DeVido yanked the filing and redid the lots, we now have four lots and in the end of the four lots with the right of way that is going to be there, three lots will be nonconforming. So in fact when the whole story is done, if it is according to the DeVido plan it is going to be even worse. But he is hoping that he can pull the wool over the board's eyes. Thank you very much

**Vincent Cestone** - anyone else? Mr. Zutt?

**Mr. Zutt** - I will confess to being a little casual in some of my remarks at the last meeting, I didn't mean to be \_\_\_\_\_. I will go by whatever is in the minutes in terms of the old road, but I believe at the last meeting I told the board that in my view the old road was a legal issue that was beyond your prevue. I think that's the position I took. And I handed out the title report and the title policy and said this is what they say. It was during the course of that meeting I believe that a copy of the opinion letter from Mr. Supple was handed up. Which I in turn transmitted on to the title company and hence the arrival of Mr. Gould this evening. So because of that circumstance I am not here representing Mr. DeVido's interest with regard to the right of way to the extent that I told your board at the last meeting that in my view it was not an issue for you to look at. At the end of the day, it is not my business. In the end you are going to look at it whether I like it or not. So the title company is here to represent Mr. DeVido on that question. As far as the moving bungalows are concerned and this Section 141, it's a little bit, it seems like not even the tail wagging the dog, it is the tail wagging the cat because if you look at 175.41 it has to do with nonconforming uses. If this club ground property were still used as a club ground with 16, 14 or how ever many bungalows there were, it would have been a nonconforming use and if they wanted to move a bungalow from here to there or move the bath house from here to there, then in deed they would have had to go on to the planning board. But in this instance, the use is a single family residence, there is no intent or purpose to reuse those bungalows as a residence and as Mr. DeVido said, their intended use is as an accessory structure on, and I am assuming by that he means a garage or storage shed of some sort with regards to these homes that he is building.

**Vincent Cestone** - It doesn't say anything about a living dwelling

**Mr. Zutt** - No no. I think my point there Mr. Chairman is that, and I have spoken to the building inspector about this, 175.41 does indeed refer to site plan approval and site plan approval is not required for single family residences in Philipstown. So that unless you are proposing the use for which site plan approval is required, 175.41 does not come in to play. I don't ask that you take that on faith speak to your attorney about that. But that's our legal position if you will. Okay? It seems to me the principle argument that you are hearing here is that life would be better if the planning board looked at everything and blessed

everything. And maybe that's true. Maybe it would be great if every time you move a stick of wood the planning board has something to say about it. But ultimately it is the law makers that tell us what the planning board can and can't do. The Town Board. And I've given you what my analysis of the Town Code is and I believe that under the Town Code, the various boundary line changes that were made in this case, the division of the remaining acreage and the two lots were actions that did not require planning board approval. And we believe that that's a sound legal position. We believe it is the heart of the issue before the board. We think it is the one that is deserving of your attention. We hope you give it that. And the last, Mr. Curals said that in response to a question I responded by saying that we don't have to tell you. That's, I hope I really didn't say that. But if I did, I surely meant something other than that. I think I said something to the effect that that would be Mr. DeVido's problem. I think the question was yours Mr. Cestone that if he tries to build on lot 29 how will he get there? And I think I responded by saying that is going to be his problem. And indeed it will be his problem. But I certainly didn't mean to say to you I don't have to tell you.

**Vincent Cestone** - I have the minutes here

**Mr. Zutt** - If I did, I am sorry. But that would have been my answer had I thought of it at the time. That's what I have to say on that.

**Vincent Cestone** - Okay

**Mr. Zutt** - I think that is pretty much, I haven't seen the assessor's letter to which reference was made and I was wondering if we might get a copy of that. Not right now. If you can have the clerk fax it to us that would be great. I believe I will just reserve my remaining comments until the next session. Thank you very much.

**Vincent Cestone** - Just a statement to the person from the title insurance, we would want your decision at least a week before hand. Can you get it to Town Hall and it will be distributed to the board members. We don't want it to be presented the night of the meeting. We want to review it

**Kenneth Gould** - Okay

**Vincent Cestone** - Anyone else wish to speak on this? What do you think? Do you think we should go into Executive Session to talk with our attorney for about 10 minutes

**Lenny Lim** - Yeah. On this one yeah

**Vincent Cestone** - Okay. I make a motion to go into Executive Session

**Lenny Lim - Second**

**Vincent Cestone - All in favor**

**All Present Board Members - Aye**

**(Board Members in Executive Session with Counsel)**

**Vincent Cestone - I make a motion to come out of Executive Session and go into regular meeting. Do I have a second?**

**Lenny Lim - Second**

**Vincent Cestone - All in favor**

**All Present Board Members -- aye**

**Vincent Cestone - Is there any more submissions related to this issue before us, we are going to continue this public hearing open until March 5<sup>th</sup>. Does anyone wish to speak on this before we move on to the next piece of business? Sir?**

**Audience Member - I was just wondering if there was a miscalculation with the drainage. The damage to the properties on Foundry Pond Road, who is responsible for that?**

**Vincent Cestone - I tell you what happens in a case like that, you would be able to sue and you would have to present evidence in court that their drainage has damaged your property.**

**Audience Member - What about the town road?**

**Vincent Cestone - The town road would take the same type of legal action.**

**Audience Member - If they screw up somebody else has to pay for it to protect themselves**

**Vincent Cestone - If you win in court you would get your damages**

**Audience Member - And we have to pay for a lawyer**

**Vincent Cestone - You can ask for that to be part of your damages**

**Robert Gaudio - Could I just ask one question Chairman?**

**Vincent Cestone -- Sure**

**Robert Gaudio** - If it is my understanding that the Board that is going to hold over the whole matter until March 5<sup>th</sup>

**Vincent Cestone** - That's correct

**Robert Gaudio** - If it would be possible because we do have a temporary restraining order on lot 2, but the developer could try and challenge that or move forward with building permits on other lots, since the developer is asking for this adjournment would the board be inclined to ask the developer for a commitment not to move forward with additional building permits at this time including on that lot 2?

**Vincent Cestone** - Mr. Zutt would you be willing to agree to that condition?

**Mr. Zutt** - Let me just speak to Mr. DeVido on that

**Vincent Cestone** – sure. And both parties, any submissions you have I want it a week ahead of time. I don't want any submissions the night of the hearing because my plan is that at the next meeting to close the public hearing and maybe even make a decision that night.

**Robert Gaudio** - Great. Thank you

**Vincent Cestone** - While we are waiting. Let's just do the review of minutes for November 20<sup>th</sup>

**Kim Shewmaker** - They are not the November 20<sup>th</sup> minutes.

**Vincent Cestone** - What

**Kim Shewmaker** - It is the January 8<sup>th</sup> minutes. I didn't change the date when I cut and paste.

**Vincent Cestone** - Are there any additions, corrections or deletions to the minutes of January 8<sup>th</sup>? Does anyone have anything to add or change? I'll make a motion to accept the minutes as submitted. Do I have a second?

**Robert Dee** - I'll second

**Vincent Cestone** - All in favor?

**All Present Board Members** – aye

**Mr. Zutt** - Mr. Chairman, without conceding that we don't, without conceding that we don't have a right to proceed, it is agreed that no further construction will take place on any lot other than the one that is currently being built upon. That is

without prejudice to our right to assert the contrary at another time

**Vincent Cestone** - I am just asking for your consideration to the board. I am not asking to concede anything

**Mr. Zutt** - Understood. No construction will take place on any of the other lots prior to your next meeting

**Vincent Cestone** - With that, this matter is continued on to the 5<sup>th</sup>. Mr. Jules Bass has come here. Mr. Bass will approach

**Thomas Ptacek** - Hi. My name is Tom Ptacek. I am the contractor.

**Lenny Lim** - Late huh

**Thomas Ptacek** - Yes I was given information downstairs that it started at 8:00

**Kim Shewmaker** - It's been 7:30 for over a year. I am not going to be able to hear anything on the tape

**Vincent Cestone** - People...take it outside please. Session is in order. So just tell us what you are looking for

**Thomas Ptacek** - Okay. The house, it is an existing home that we renovating. We have a permit to more or less bring the house up a whole story. And we can pretty much stay on the original foundation

**Lenny Lim** - Didn't we make a decision on this before? Is this a pre-existing non-conforming house?

**Thomas Ptacek** - Maybe it is nonconforming in some respects it is between Indian Brook and Indian Brook Road.

**Lenny Lim** - When was the house built

**Thomas Ptacek** - In the 1970's

**Lenny Lim** - Then it wouldn't be pre-existing then

**Thomas Ptacek** - What we are trying to do, for aesthetic reasons, we wanted to \_\_\_\_\_ windows by about this much just so it is not a straight line coming across the foundation.

**Vincent Cestone** - So you have a wall structure, the structure is right up against **(I cannot hear the conversation with shuffling papers)** and what you want to do is

**Thomas Ptacek** - We want to bring it out

**Lenny Lim** - It is a bow window and an overhang over the door

**Thomas Ptacek** - Yeah both. But the door entrance goes further into the setback and our priority if there is anyway to separate them would be to go for the window extension first. That's this

**Lenny Lim** - Right. But I was reading you want an overhang over the door and a window together

**Thomas Ptacek** - Yes. This as well.

**Lenny Lim** - Okay

**Thomas Ptacek** - We want them both but this go further. And if we couldn't have that, we would at least like to do this to make it a better looking home.

**Vincent Cestone** - So what you are looking for is right here this area right here

**Adam Rodd** - It fronts the street

**Thomas Ptacek** - Right on the front. And it sits on the line, that little, there is already a brick stoop there, it just never had protection from the rain

**Lenny Lim** - Does that come out past the brick stoop?

**Thomas Ptacek** - The existing, yes, what we are asking for, we could redesign it if you say okay lets stay within what is existing. But we are trying to make something that looks nice and functional from the rain

**Vincent Cestone** - Now the stoop and the stairs that you have in the front, did you get a variance for that? At a previous time?

**Thomas Ptacek** - That was the existing condition that he bought the property with. The existing stoop. He just bought this property Jules did about a year ago and since then he has been trying to get approvals. And we thought we had everything drawn within the limits and then at the last minute Tom realized, Tom Monroe realized that this was in the setback.

**Lenny Lim** - The stoop was

**Thomas Ptacek** - No the stuff that, the parts, the window and the portico, the stoop if you want to call it that, that we want to build were in the setback. And we did bring this somewhat in the setback. Am I making myself clear



**Lenny Lim** – no

**Thomas Ptacek** - Existing entrance way

**Lenny Lim** - Did you need a variance for the steps first? Were the steps close to the property line? Before you build anything are the steps into the setback?

**Vincent Cestone** - I would assume yes

**Thomas Ptacek** - Yes

**Lenny Lim** - Then you would need a variance for the steps and the overhang and the window

**Thomas Ptacek** - Yeah. That's what we are asking

**Lenny Lim** - In the application did you just ask for the overhang and the steps

**Thomas Ptacek** - No we asked for it all. We are trying

**Lenny Lim** - To legal it all

**Vincent Cestone** - And it is all encompassed in this one little area

**Thomas Ptacek** - Yes just the one in front of the house

**Vincent Cestone** - Okay

**Thomas Ptacek** - A very good way to look at it, what we are asking is right here. This covers what would be in the setback. The house right now goes straight across like this

**Vincent Cestone** - And this is the window that you are talking about

**Thomas Ptacek** - This little extra part is what we want to add into the setback

**Vincent Cestone** - And how far does that protrude into the setback

**Thomas Ptacek** - 8 inches

**Vincent Cestone** - Okay. 8 inches on the window

**Adam Rodd** - Just so I am clear. The setback requirement, this is a front yard so the requirement is 40 feet and for the window you are proposing what setback?

**Robert Dee** - I think it was 14 inches, that's what I've read

**Vincent Cestone** - Because we have to be exact, if you go over an inch then you are back before us again. And you don't want to do that if you can avoid that.

**Thomas Ptacek** - Right

**Robert Dee** - I thought the windows were in now.

**Vincent Cestone** - Adam, it's 38.9 feet to the window

**Adam Rodd** - 38 feet 9 inches?

**Vincent Cestone** - 38.9 it says. So I don't know if it is 9 inches or 9/10ths of a foot

**Lenny Lim** - this has been a debate for years of what that is

**Adam Rodd** - it says 38.9

**Lenny Lim** - I don't understand it, is it 9/10ths of a foot or is it 9 inches

**Vincent Cestone** - And then for the portico it is 35.6. But it says 35.6 feet. So my guess is that it is 35.6 feet and the .6 is 6/10ths of a foot not 6 inches

**Robert Dee** - But there are little lines

**Vincent Cestone** - Okay it is inches. 35 feet 6 inches

**Adam Rodd** - For the portico

**Vincent Cestone** - And 38 feet 9 inches for the bay window

**Adam Rodd** - okay

**Lenny Lim** - Hold on. Where does the portico come out to? Which line?

**Thomas Ptacek** - It comes out to right here

**Lenny Lim** - This line

**Thomas Ptacek** - No that's a brick wall. Right here.

**Vincent Cestone** - So this is 35.6

**Lenny Lim** - That's the overhang you want for the door

**Thomas Ptacek** - Yes. And then the other part is right here 38.9

**Lenny Lim** - And how about the steps

**Thomas Ptacek** - There is no step. This is ground level

**Lenny Lim** - Okay. is the steps further

**Thomas Ptacek** - No it is all straight out. This is a brick \_\_\_\_\_ that is existing and it goes straight. The step would be the one step into the house.

**Vincent Cestone** - Any questions from the board on this?

**Robert Dee** - No

**Vincent Cestone** - Any questions from the audience on this? I'll make a motion to close the public hearing.

**Lenny Lim** - I'll second

**Vincent Cestone** - All in favor

**All Present Board Members** - Aye

**Vincent Cestone** - I'll make a motion for a straw poll. Do I have a second?

**Robert Dee** - I'll second.

**All Present Board Members** – aye

**Vincent Cestone** - Len?

**Lenny Lim** - I'll vote in favor of giving him his window and overhang

**Vincent Cestone** - And I'll vote in favor. Bob?

**Robert Dee** - I went and looked at the house. You are going to put that window in the front?

**Thomas Ptacek** - Yes. That's a temporary wall.

**Robert Dee** - It looked blank when I saw it and I hoped you were putting

something there

**Thomas Ptacek** - It is going to be all divided up glass

**Lenny Lim** - How far out is that overhang going to come that overhang?

**Thomas Ptacek** - It's right here.

**Vincent Cestone** - Well you make the assumption that since it is 35.6 that it is 4 feet 6 inches.

**Thomas Ptacek** - That's right

**Paula Clair** - I also vote in favor by the way

**Thomas Ptacek** - It will make a blank looking house have some

**Robert Dee** - There is a flat look in the front now

**Thomas Ptacek** - It could be, he is giving me a lot of leeway, I do a lot of traditional homes. I worked a lot in Bronxville and they're very nice old homes and I am going to try and push it towards that, that kind of detailing so it is not like generic looking.

**Adam Rodd** - Okay so we have 3 in favor

**Paula Clair** - 4 in favor

**Vincent Cestone** - old business?

**Kim Shewmaker** - When are we doing the resolution?

**Vincent Cestone** - When are we doing the resolution?

**Kim Shewmaker** - You are not going to hold off until March 5<sup>th</sup> unless you are holding off on all the February meetings

**Adam Rodd** - Resolution for this one

**Kim Shewmaker** - Yeah, they just voted in favor

**Vincent Cestone** - We have 62 days

**Kim Shewmaker** - Okay. I just want to know so I can put it on the calendar that's all.

**Vincent Cestone** - Let's talk about the issue that you brought up about wanting to have the meetings on the 2<sup>nd</sup> and 4<sup>th</sup> as opposed to the 1<sup>st</sup> and the 3<sup>rd</sup>

**Adam Rodd** - Yeah. My scheduling, actually the only traffic I run into is the 3<sup>rd</sup> Monday. So I know we did 2<sup>nd</sup> and 4<sup>th</sup>, actually it was 2<sup>nd</sup> and 5<sup>th</sup> and I was wondering how the board felt about keeping that going forward. If that is a problem?

**Lenny Lim** - So you want to change it to the 2<sup>nd</sup> and 4<sup>th</sup> instead of the 1<sup>st</sup> and 3<sup>rd</sup>?

**Adam Rodd** - If the board is okay with that

**Vincent Cestone** - I don't have a problem with that

**Lenny Lim** - I don't see a problem

**Vincent Cestone** - Starting after the March 5<sup>th</sup> meeting we will do the 2<sup>nd</sup> and 4<sup>th</sup> Mondays

**Adam Rodd** - Actually my next, I have, and I think February is the weird President's or something but I don't think that will be a problem because my commitment is February 20<sup>th</sup> which I think falls on a Tuesday. So that is not going to be a problem. And March 5<sup>th</sup> is fine.

**Vincent Cestone** - It doesn't make sense to have a meeting February 5<sup>th</sup> because there is really nothing. We could come in and say hi to each other and we'd go home. The only other issue that we have something pending so I don't really see any reason to meet in February. Our next meeting is March 5<sup>th</sup>. Is there any other old business? With that I'd entertain a motion to adjourn

**Lenny Lim** - I so move

**Vincent Cestone** - And I'll second. All in favor?

**All Present Board Members** – aye

**NOTE:** These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

**DATE APPROVED:** \_\_\_\_\_

Respectfully submitted,

Kim Shewmaker  
Secretary