

TOWN OF NEW WINDSOR

ZONING BOARD

March 28, 2016

MEMBERS PRESENT:      MICHAEL KANE, CHAIRMAN  
                             FRANCIS BEDETTI  
                             HENRY SCHEIBLE  
                             RICHARD HAMEL  
                             GREGORY BIASOTTI

ALSO PRESENT:      GEOFFREY CHANIN, ESQ.  
                             ZONING BOARD ATTORNEY

                             STEPHANIE RODRIGUEZ  
                             ZONING BOARD SECRETARY

ABSENT:      PATRICK TORPEY

MEETING AGENDA:

1.    Emergency One
2.    Stephen Jones
3.    Shop Rite
4.    Rachel Miller
5.    Anthony Fiorini
6.    Jointa Lime

**REGULAR MEETING:**

MR. KANE:    I'd like to call the Town of New Windsor Zoning Board of Appeals regular session for March 28, 2016 to order.

APPROVAL OF MINUTES DATED 3/14/16

MR. KANE:    Motion to accept the minutes of 3/14/16 as written and sent via e-mail on 3/22/16.

MR. BEDETTI:    So moved.

MR. HAMEL:    Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

PUBLIC HEARINGS:

EMERGENCY ONE (15-20)

MR. KANE: Public hearings, Emergency One. Variance is required to permit a second facade sign 22" x 96". Located at 306 Windsor Highway in an HC Zone. Same as the preliminary meeting, you want the state your name and address loud enough for this young lady over here to hear you and tell us exactly what you want to do.

MR. DEVITT: Jim Devitt, 306 Windsor Highway, New Windsor, New York. We'd like to put a north facing sign on the building itself that would be an illuminated sign, very similar to the one we have in the front.

MR. KANE: Interior illumination, non-flashing?

MR. DEVITT: Yes.

MR. KANE: Same with the sign on the front?

MR. DEVITT: Yup, and the pedestal sign on the street, you had asked for another picture.

MR. KANE: Yes.

MR. DEVITT: From the street view straight on to the north side, I don't know if that's what you were looking for.

MR. KANE: Yeah, I've driven by it a couple times.

MR. DEVITT: It's a small strip sign that's going up above the window.

MR. SCHEIBLE: So the sign is going to be seen from north and south?

MR. DEVITT: Going southbound on the north side of the building, yes.

MR. KANE: Yeah, and then the front of the building I don't think there's any real way to see it coming north.

MR. DEVITT: Right, there's too much, U-Haul and other little wooden signs that are just stuck up there, probably didn't come in front of this board.

MR. KANE: And the size of these signs?

MR. DEVITT: Which one, our sign?

MR. KANE: It's 22 by 96?

MR. DEVITT: Yeah.

MR. KANE: Twenty-two is the height?

MR. DEVITT: You can see, do you want to see the pictures?

MR. KANE: Just saying it for the record.

MR. SCHEIBLE: The building is only one reason and purpose only for medical situations?

MR. DEVITT: Yes.

MR. SCHEIBLE: Just want to make sure.

MR. DEVITT: We're not cooking food anymore.

MR. KANE: No anticipation of any other signs?

MR. DEVITT: No.

MR. KANE: At this point, I'm going to open it up to the public, see if there's anyone here? No? Seeing as there's not, we'll close the public portion of the meeting and ask Stephanie how many mailings?

MS. RODRIGUEZ: On the 23rd day of February 2016, I compared 26 addressed envelopes containing the notice of public hearing, sent it out and received no response.

MR. KANE: We'll bring it back to the board for further questions.

MR. BEDETTI: You're looking for a variance for one sign that's the one on the side?

MR. DEVITT: Correct, that's it.

MR. BEDETTI: You already have one on the front, just want to put one on the side now so the cars approaching from the north can see it?

MR. DEVITT: Exactly.

MR. BEDETTI: Not looking for another one for the front, just looking for just one?

MR. DEVITT: Just one for the north side.

MR. KANE: Two signs total.

MR. DEVITT: We won't be looking for one on the south because there's our entrance.

MR. KANE: Doesn't make any sense.

MR. DEVITT: Right.

MR. KANE: Further questions?

MR. BEDETTI: I just want to know what kind of prompted them to do this, put this other sign up there? I mean, is it because the other sign kind of blocks their view?

MR. DEVITT: There's part of that because that part of the sign definitely does, we came to the conclusion a lot of people are driving by us and going where are you, we're like, we're trying to explain. So if they're coming from, going southbound on 32 they were driving right by because you don't really see it until you're on it, especially in the summer, you know, once the trees fill in on the front there along 32 then it gets even, it's harder to see cause even our little pedestal sign at that point you can't really see very well.

MR. HAMEL: The building is set pretty far back from the road.

MR. DEVITT: Yes, correct.

MR. KANE: I know it's been up for years and years, I'll talk to Jen about it. Any further questions? If not, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we grant a variance for a second facade sign 22 by 96 located at 306 Windsor Highway in an HC Zone for Emergency One.

MR. HAMEL: I'll second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	NO
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: Motion passes four to one. Next steps, there's always paperwork.

MR. DEVITT: Of course.

MR. KANE: There you go, careful home. Any questions give Stephanie a call.

STEPHEN JONES (16-04)

MR. KANE: Tonight's next public hearing Stephen Jones. An area variance of 20 feet for rear yard setback is required for a proposed 16 x 24 rear deck as well as an area variance of 15 feet for front yard setback is required for proposed 12' x 14' front porch. Located at 81 Steele Road in an R-4 zone. Same as the preliminary meeting, name, address, speak loud enough so the young lady over there can here you and tell us exactly what you want to do.

MR. JONES: Stephen L. Jones, 81 Steele Road, New Windsor, New York. And I'm here for the variance for the two decks. I--

MR. CHANIN: Just--

MR. JONES: I would like to build a front deck or I'm replacing the deck that I tore down with a 12 x 14 foot deck, 12 foot coming out from the house. And also in the back replacing that deck and redesigning it a little bit coming 16 feet out from that house toward the rear and over 24 feet.

MR. KANE: On either one of the decks cutting down substantial vegetation or trees?

MR. JONES: No.

MR. KANE: Creating any water hazards or runoffs?

MR. JONES: No, sir.

MR. KANE: Any easements running through those particular areas?

MR. JONES: No, sir.

MR. KANE: In speaking to the front deck, the front porch coming in, suffice to say that it would be a safety hazard if there wasn't something there and you came out the front door?

MR. JONES: Correct, sir.

MR. KANE: The porch itself, does it extend closer to the street than other buildings on your street?

MR. JONES: No, sir, it actually opens up into an open field.

MR. KANE: Okay, the rear deck size similar in size and nature to other decks that are in your neighborhood?

MR. JONES: Yes, sir.

MR. KANE: Okay, further questions from the board?

MR. BEDETTI: I'm good.

MR. SCHEIBLE: When you go up Steele Road, I'm familiar with the neighborhood but I'm not familiar where your house is there, right, but is that the, in the back or towards the front of Steele Road when you go up off of 207 and keep on driving?

MR. JONES: I'm all the way up on the dead-end kind of diagonal.

MR. SCHEIBLE: So behind you is open fields then?

MR. JONES: No, behind me there's a subdivision but there's a barrier between my property and the property behind us with a small hill and rock divider.

MR. KANE: Further questions?

MR. BIASOTTI: The only question I had you said the front porch you tore off and you're replacing, what was the size of the front porch that was taken off?

MR. JONES: I believe it was six by eight originally, I never really measured it, it was just--

MR. BIASOTTI: But this is going to be substantially larger?

MR. JONES: Correct.

MR. KANE: Okay, at this time, I'll open it up to the public and ask if there's anybody here for this particular hearing? Seeing as there's not, we'll close the public portion of the meeting and ask Stephanie how any mailings we had.

MS. RODRIGUEZ: On the 15th day of March 2016, I compared 47 addressed envelopes containing the public hearings notice, sent it out and received no response.

MR. KANE: We'll bring it back to the board for further questions? No further questions then I'll accept a motion.

MR. HAMEL: I'll make a motion that we grant Stephen Jones the variance of 20 feet rear setback for their proposed 16 x 24 deck.

MR. CHANIN: And?

MR. HAMEL: And the area variance of 15 feet.

MR. CHANIN: For the front yard setback required for a proposed 12 x 14 foot front porch, is that correct?

MR. JONES: Yes, sir.

MR. CHANIN: Is that your motion?

MR. HAMEL: Yes.

MR. BEDETTI: I'll second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: Any questions give Stephanie a call.

SHOP RITE BHC BIG V LLC (16-05)

MR. KANE: Tonight's third and final public hearing is Shop Rite Big V.

MS. MANNING: Good evening, I'm Elizabeth Manning from Lewis Sign Company, 26 Fluorescent Drive, Slate Hill, New York.

MR. KANE: Same as the preliminary, tell us exactly what you want to do.

MS. MANNING: We're representing Shop Rite as our customer, they're renovating their store in Vails Gate, more or less removing all the signs that were existing except for two, replacing one large eight foot diameter logo and we're seeking a variance for the second eight foot logo. There will also be two small signs over each entrance saying entrance and those three that I'm not seeking a variance for we've already gotten sign permits for.

MR. KANE: The only thing you're here for is the one extra facade sign?

MS. MANNING: That's right.

MR. CHANIN: Can I just ask you a question? You said eight foot, is that the diameter of the circle?

MS. MANNING: Yes, that's right.

MR. KANE: Yeah, they have that right on the notice and all of the other existing for the bank, Jules Vision, all those other signs are gone?

MS. MANNING: No, the pharmacy sign will remain and the Jules Vision sign will remain. However, I inquired today of Shop Rite management and they said Jules Vision is an entity of itself, it's not really part of Shop Rite so we're not--

MR. KANE: So that sign doesn't come under our purview, separate business, okay. Gentlemen, questions? The sign itself is non-illuminated?

MS. MANNING: It's illuminated.

MR. KANE: Internally non-flashing?

MS. MANNING: Correct.

MR. KANE: Further questions?

MR. BIASOTTI: There's a second round sign in the front of Shop Rite though it's on the peak of the, of the roof over the greenhouse.

MS. MANNING: Didn't drive by tonight so you're probably looking at the old one, it was really large in diameter.

MR. BIASOTTI: There's one on each end, there's one over the greenhouse.

MS. MANNING: They'll both be removed and then these two equal ones will be installed.

MR. KANE: So you'll have one kind of centered over the new opening where the glass front runs down and one over the entrance down over here?

MS. MANNING: Yeah, I have a drawing, this is a rendering, it's from an angle.

MR. KANE: Yeah, that's what I thought, okay, over where the glass thing is and the new entrance here and one over the entrance further down the line.

MS. MANNING: Yeah, that's an old picture, I'm sorry, the one on the top is the rendering of the proposed look.

MR. KANE: Okay, so if you would just show him down there?

MS. MANNING: This is the rendering, I'm showing the rendering of what the new look is proposed to look like here, that picture on the bottom is the existing sign, the one below that is really large in diameter, can't remember the dimension offhand.

MR. BIASOTTI: Just wondering because there are two signs there now.

MS. MANNING: They'll both be removed and two equal sized logos.

MR. KANE: We're only going to have two Shop Rite signs on the front of the building?

MS. MANNING: That's right.

MR. KANE: Further questions from the board? At this point then I'll open it up to the public, ask if anybody's here for this particular hearing? Seeing nobody in the audience, we'll close the public portion of the meeting and ask Stephanie how many mailings we had?

MS. RODRIGUEZ: On the 15th day of March 2016, I compared 136 addressed envelopes containing the public hearing notice, sent it out and received no response.

MR. KANE: Okay, open it up to the board for further questions? If not, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we grant to Big V LLC a variance as required to permit a second facade sign of 50.2 square feet located at 366 Windsor Highway in an HC Zone.

MR. SCHEIBLE: I'll second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: You're all set, your set of paperwork, any questions, give Stephanie a call.

MS. MANNING: Thank you very much.

MR. KANE: Have a great night, careful home.

FORMAL DECISION

1. Rachel Miller
2. Anthony Fiorini

MR. KANE: Formal decisions, two formal decisions to vote on, accept a motion if you want to take them both together?

MR. CHANIN: Unless one member of the board objects but if nobody objects then you're allowed to move to vote collectively on both the decisions.

MR. BEDETTI: Nobody's objected?

MR. BIASOTTI: No.

MR. KANE: Not for 20 years.

MR. BEDETTI: I'll make a motion we accept formal decisions for Rachel Miller identified as 16-01 and Anthony Fiorini identified as 16-02 as issued by e-mail.

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

## DISCUSSION

## JOINTA LIME (16-03)

MR. KANE: We have a discussion Jointa Lime. I'm going to give the floor to start off to Geoff, he has some information for us and we'll take it from there.

MR. CHANIN: Thank you, Mr. Chairman. I did do homework on this matter and I did refer in writing to questions that the members of this board posed at our last meeting on March 14. And I can share with you the fruits of my labor, both in terms of giving you specific answers to the specific questions that were asked and I can also share with you the result of my legal research that can give you some idea of the criteria that the board can use in deciding number one whether or not to consider granting the interpretation and number two if the board decides that it does want to grant the interpretation what criteria the board can use in order to make its determination. So first we'll start with the specific answers to some of the specific questions that the board raised at the meeting on March 14. Okay, who owns the property upon which Jointa Lime proposes to operate? The answer is Town of New Windsor. Is such property being discussed as subject to a possible sale from the town to Jointa or to any other party? Answer, no. Next question, to what extent and by what means are any structures and equipment now or permanently or temporarily affixed to the land or to some other building or structure? Now the answer I was given to this question is that at the moment, none of the materials that we're being asked to interpret are permanently affixed to the land or to some other structure. In other words, I've been told that this material and equipment whatever it is is movable if it has to be. What consequences or damage if any may be predicted or anticipated if such structures or equipment are to be moved and how, when and to where is it proposed that same might be moved? Answer, it is not anticipated that if this material were to be moved that it would cause any damage. However, the contract between the town and Jointa Lime requires that if the material were to be moved and if any damage were to occur to the town's property that the contract requires that Jointa Lime repair all such damage. Now that's not really a criteria that this board needs to take into consideration, that's a point of information for you. The reason why that answer is

relevant to your considerations is because if something would cause damage if it were moved that tends to suggest that it's more securely attached and anchored than something which can be moved without causing damage. And your concern is not whether Jointa has to repair any damage they did that's the town board's worry, not yours. Your concern is how permanently or not permanently this material is affixed to the land or to some other structure. And we'll get more into that as we go along. Okay, next, the rest of the questions that I asked in my letter were as follows. What property or equipment is the subject of this application for an interpretation? What are the descriptions, dimensions components, uses, images and details of this material? What if any SEQRA proceedings, S-E-Q-R-A, our famous environmental law, what if any proceedings have been or may be undertaken with respect to the subject applications pending before the planning and zoning boards? Can this board, the zoning board, be provided with any SEQRA documents, engineering reports, descriptions of the materials, et cetera? Can the zoning board please be provided with copies of any written agreements, leases or other contracts concerning the interpretation of the application? These contracts being those between Jointa and the Town of New Windsor. Now, here's the last question and this is a good segway, if you will, from the first part of the discussion during which I provided you with some specific answers to the second part of the discussion which is a discussion of the legal criteria that apply in determining your decision. The next question is is there in the town code or in any other applicable rule, regulations or law any definitions either as codified or as applied in any other legal cases which would provide any insight into the town's definition and use and interpretation of the term structure as opposed to the term equipment? That's kind of a definitional question. Okay, here's the second half of the discussion. First of all, for your information, and you're not bound by this, but it may be helpful for you to be aware of it and that is that the assessor of the Town of New Windsor, Mr. Todd Wiley, as far as his function is concerned, now remember his function is not the same as yours, his function is to determine the nature and kind of property for the purpose of assessing taxes, that's what the tax assessor does. And he has determined in his own capacity both as a town official and as an arm of the state government because you should know that all town assessors, even though they're local officials

appointed and paid for by the town actually under the law of the State of New York are state officials because tax assessment and real property tax assessment is a state function, not a local function. So with all that having been said, Mr. Wiley in his interpretation of the situation has determined that all of this is personal property, not real property. And he has determined that under his interpretation this is not subject to property tax. Now, again, that's just a point of your information that doesn't bind your decision, his decision is based on a different purpose than yours. And his criteria may be different than yours. But I just want you to know as a point of information he's determined that this material is not considered by him to be real property. Now, so that leads to the next wonderful and last part of my discussion with you tonight about this and that is what are the legal criteria that go into the evaluation of what kind of property this is and whether it is or is not subject to the zoning ordinance, if you were to determine that it is real property, real estate property, meaning either land or improvements upon land? And here are the criteria. And just so you know, the source of my information where I got these legal criteria include but are not limited to three opinions of the legal counsel's office who works for the State Board of Equalization and Assessment. Now some of you may know that we have in the State of New York an office of the Attorney General and the Attorney General has a branch, a bureau, I used to be friends with the guy who ran it, he's retired long ago, he was a good guy, he was very helpful to me over the years and the Attorney General's Office has a small branch which issues opinions, municipal attorneys have the right to write letters to the Attorney General and request a legal opinion. Now, the Attorney General's opinion does not have the same legal binding power of law that a judicial decision has when a judge writes a decision and makes a precedent setting decision in a legal case. These are just one attorney's office's opinion. But they're published and they're referred as sources of authority in their role's opinion so you can get those opinions from the Attorney General's Office, you can get those opinions from the attorneys who work in the State Controllers Office, you can get opinions from the attorneys who work in the Office of the Taxation and Finance and you can get opinions from the counsel's office who work for the State Board of Equalization and Assessment and that's where these come from. So opinion number 118 of the counsel of SBEA

says that, and here's something you probably already know, but now you can share your opinion with that of the counsel's office. The taxable status of an asphalt plant equipment it must be decided on a case-by-case basis. Now, that's not terribly helpful to you, except that it should give you confidence that just because somebody somewhere else made a decision in another case that doesn't bind you, you make your decision in this case based on the facts of this case, not some other, okay, that's good. Alright, now, I also have consulted the opinion of counsels number 30 of March of 1979 number 118 and also the one I just mentioned, I also consulted a precedent setting case which is still good law in the State of New York, even though it was decided by the Court of Appeals in 1939 that is the Town of Kingsley case and that concerned asphalt plant equipment. Now here are the criteria. Is the material you're talking about permanently affixed and attached to the land? If the answer is yes, then it tends to be categorized as real property subject to your zoning ordinance. If the answer is no, then that tends to indicate that it is not real property and not subject to the zoning ordinance. Now, this is why cases like this have to be decided on a case-by-case basis because in this case as I understand it, this material is not securely and permanently affixed to the land. However, the other two tests are is this material adapted, adapted to the specific land on which it is found? And the answer to that question in this case is yes. The third test is is this material or equipment whatever you want to call it intended to be permanent or is it intended to be temporary and movable? Now, as I understand it and correct me if I'm wrong, but the intention here is that it should be permanent as that word is generally used, in other words, there are no plans to move it in the future. So the first question in which we find that it is not permanently affixed or annexed to the land we tend to indicate that it is not real property. However, the answer to the other two questions is that it is adapted to the use of that specific parcel of land and there are no plans to move it. So those two answers would tend to suggest that it should be treated as real property. Now, wait, there's five more criteria and I will share them with you very, very quickly. And the source for these criteria are the Town of Kingsley case, the real property tax law Section 102, which defines real property and excludes from the definition of real property the definition of machinery and equipment. And here are those five criteria. Can the material be moved for use elsewhere?

Hypothetically, the answer in this case is yes. Is the material essential to support structurally any building or land to which it is attached? Now, I don't know the answer to that question. My understanding is not but I don't really know. The third question is can it be removed or moved without damage? The answer in this case is yes. Four, is the material in question used for some sort of manufacturing or trade or some sort of business? The answer is yes. And lastly, and I assume the answer to this question is yes, and that is is Jointa Lime what is referred to in the law as an Article 9a Corporation, 9a specifically referring to such operations as asphalt plants. So I think the answer to that question is yes. Now, that would mean that if you applied those five criteria, again, you have a mix, you have one answer that is no, meaning that it is not real property, but the answer to several of the others is yes, meaning it is real property. So here's the big conclusion, here's the big finish. Two points, the first point is and perhaps the most important point is that this case should be decided on its own merits. It's decided on a case-by-case basis. And the specifics of this matter may differ from other decisions that other zoning boards have made so you need to know the specifics about what you're talking about, you need to know the size, the dimension, the purposes, the structure, the materials of which it is made concerning this stuff. And I don't know the answer to that question, I don't have that information. The second point that I'm going to make and the last point is this, and this falls into the category of advice from your lawyer. You decide, it's your decision, not mine, you decide on whatever basis criteria you think are appropriate. In my experience, in my experience where a situation can be looked at in more than one way where you may have some basis for deciding yes, it is real property subject to the zoning ordinance requires us to render an interpretation or you could find the criteria that says it's not real property, it's merely equipment and it is not subject to the zoning ordinance and we don't have to render an interpretation. Where you have criteria that fall on both sides of the question and I'm sorry to sound like a lawyer but to be defensive to cover yourself from any future claim, you might want to give some consideration to the idea that you are more likely to be sued if you rule that it is not subject to your oversight and approval then you are likely to be sued if you decide that it is not. In other words, deciding that it is not and saying it's just equipment, it's not real

property, we don't have to make a ruling, end of story, somebody might be more unhappy with that decision than if you decided it was subject to your approval and it is subject to the zoning ordinance. But whether it actually is or not and your final decision is in your discretion based on your application of these criteria to the facts and what we do not have before us, at least I don't have it before me, are the specific facts of this particular case which I think you need before you can make a decision. And that's my presentation for the night.

MR. KANE: Overall, my opinion here, you guys can disagree, I don't feel we need to make a decision tonight. I think there's a lot of information that's coming to you that you need to do some research on. I looked into the EPA with asphalt plants and their definitions of it and they come up with three definitions of, you know, a permanent structure and a movable structure. And that, and basically it's the same structure, what they do is they put sleds on the bottom of it just as high as the ones that are permanent. So to me, it's kind of a work around, I don't consider, it's not wheels, it's sleds, steel sleds. The other thing I want to say is the definition of structure, the Town of New Windsor, their definition of material that form a construction site that is safe and stable includes stadium platforms, storage bins, display signs, fences, rock walls, retaining walls, stairways, landscaping, trees, poles, containers, clothes lines, to me, this is still a structure going in there, it's a combination of materials that makes a platform that they're using just for an opinion of what a structure is. It's not all equipment, I understand it's equipment, to me it's still a structure, it's big enough, you know, and I know we can't get into the safety part of this stuff and the smell and all that other stuff.

MR. SCHEIBLE: You said a structure but in this structure, there's no such, correct me if I'm a hundred percent wrong, is there, how much of a foundation structure is usually--

MR. KANE: The definition says, you know, combination of those materials that make it safe and sturdy.

MR. SCHEIBLE: And the real estate, is that going to be leased, who is the lessee, who is the lessor?

MR. KANE: The Town of New Windsor.

MR. SCHEIBLE: I'm coming into this late.

MR. KANE: Town of New Windsor's leasing the property to Jointa Lime, according to the planning board notes, the town is looking for a long term lease. So this is not a short six months and out type thing which to me changes a lot of things.

MR. BEDETTI: Has the time been determined?

MR. KANE: No, because there's no lease because they're still going back and forth, they point out that they've got to get approval by the U.S. Army of Engineers, a bunch of other things, so they're 10 months out from doing anything.

MR. CHANIN: They also want to--

MR. KANE: They're waiting to see what we come back with.

MR. SCHEIBLE: For instance, if it all goes through.

MR. CHANIN: Just--

MR. KANE: Right, if it all goes through 10 months, it doesn't say how long the lease is, that's not information available. All they said was long term. To me, long term is five or ten years or longer.

MR. CHANIN: Just to illustrate Mr. Bedetti's point which is very well taken, in this Town of Kingsley case the court specifically ruled that the concrete foundation, the piers, the pillars, the beams were part of the real property, that things that were not affixed to the pillars, the beams, the piers, the court ruled was equipment not subject to real property law. So again, it illustrates the point something solid, something concrete, something that's a platform, a foundation, something to which other things are attached, something that provides structural integrity, those things are considered to be real property. Things that don't fall into that category that are movable, that are temporary, that are detachable without causing too much damage, those things are equipment, they're not considered to be real property. So to me, your decision is, rests on the facts of the case and I don't know the answer to that.

MR. KANE: If you do a search, my search on Google was asphalt plants zoning and it came up in about the fourth one down was a PDF document from the EPA and they had all the pictures of these type of plants in there. So I would suggest take a look at that too, drive by it, look at what they have if that equipment is still out in there. And let's take some time and make a good decision on it because everybody is going to be looking at this too.

MR. BEDETTI: The question as to what is the nature of the variance itself, is it, so far that I can understand, is that, we're supposedly looking at a height?

MR. KANE: Basically, it's going to be the height variance of the bin, which is the tall tower that, you know, the stuff goes in this, comes up a ramp, it goes up into this big tall bin tower, comes down and loads out into the trucks so it's the distance from the road that that bin tower is.

MR. CHANIN: But procedurally, the answer to your question is that it would be a two step process. The first step would be if the board determines that some, part of this material is subject to the zoning ordinance. If you determine that there's part of this, whatever it might be that's subject to the zoning ordinance, if that's your interpretation then that would require the applicant to apply for a variance if the dimensions don't comply with the town code so it would be a two step process.

MR. BEDETTI: Understand, and the applicant in this case is the town?

MR. CHANIN: No, Jointa Lime because it's their material.

MR. BEDETTI: Yeah, but I was always led to believe that the variance if granted is a variance that goes with the property and property owner.

MR. KANE: But the owner I think as long as they give permission to the applicant to come before us they're allowed I think.

MR. CHANIN: The town in this case wants this board and so does Jointa because as the chairman correctly said a

moment ago there are other things that flow. So number one, both the town and Jointa came here because they wanted to know in the first place are they going, is this board going to rule that they're subject to the zoning law and do they need variances. And then second of all if you decide that they are then they have to apply for those variances and you can decide whether or not to grant them.

MR. CHANIN: It's up to them to tell us what they want.

MR. BEDETTI: That's what I was interested in knowing have they identified the nature of the violation if we do say it's got to--

MR. KANE: It's the height of the building from the road, that's the only one we're really--

MR. CHANIN: Those are the kinds of details that you guys need to make the decision on.

MR. HAMEL: I drove passed there today and my first comment was that the main structure is very close to the road, it's just off the road. I mean, it's, I didn't measure it but from trying to remember I bet it's not more than 10 feet from the road itself. That to me is, you know, would be a problem right off the top. And it really looks like a construction area, I mean, there's no fencing, there's nothing around it, everything's wide open.

MR. KANE: That itself would all go back to the planning board because there are requirements for EPA for the bins that keep the materials in there. So there are laws and they're specifically talking about them building things to keep that stuff back but they don't want to proceed until they hear an answer from the Army Corps of Engineers.

MR. SCHEIBLE: Mr. Attorney, since this property will be leased by the Town of New Windsor--

MR. CHANIN: Yes.

MR. SCHEIBLE: If everything goes through just out of curiosity now the town is the owner?

MR. CHANIN: Yes, sir.

MR. SCHEIBLE: Is it a rent situation?

MR. CHANIN: Yeah, it's a lease.

MR. SCHEIBLE: And the lease, alright, you know, the property taxes are being paid by whom?

MR. CHANIN: That would depend on the agreement between the town and Jointa and I don't have a copy of that agreement.

MR. SCHEIBLE: That's my question.

MR. CHANIN: Let me make this suggestion to the board two things if it's your pleasure, if this is how you decide tonight anyway. Number one, you might request from the town officials the information specifically that you need about these materials, the dimensions and size and nature and use and so forth and how they're attached. I think you need to ask for that information. And the second point is if it's your pleasure to put this on your next agenda for further discussion--

MR. KANE: Yes, my opinion, I'm not the only one but absolutely we need way more than that to vote on this than we got going tonight.

MR. BEDETTI: Yeah, sure, I mean, almost he seems as though we should be approving this in two steps. First determine whether we're going to hold them to a variance. And then if we collectively agree that we, that they do have to come in and ask for a variance that they come in like everybody else comes in and present--

MR. KANE: They'll be, if that's the case when it comes down to it we're going to vote, give that interpretation, nobody will be here just like what's going on right now, we'll take our vote that goes, then they have to file like any other applicant, there's no special, I don't--

MR. CHANIN: In my view, I'm not you guys, it's up to you, but in my view, you can't as Mr. Kane your chairman I think quite properly said, you want to make your decision with the best basis of information so that people who ask you can defend what your decision was. So in my view, I think at this moment as a board you're not even ready to decide whether or not you should give the interpretation unless you get more

information.

MR. KANE: Yeah, I mean, there's nothing--

MR. BEDETTI: I believe that interpretation should follow the same rules that we've done interpretations in the past, you know, you have them come, somebody has to come here, present us with the facts, we decide that, you know, on phase one whether they're going to be subject to a variance or not. And then if we make that decision that they're going to be subject to a variance that they come back.

MR. KANE: It will be the same thing, preliminary hearing where we get all the information down, request whatever and you come back to the public which will be a lot of fun. I think I'll go on vacation that week.

MR. SCHEIBLE: Who is the public?

MR. CHANIN: Well, everybody. Is it your pleasure?

MR. SCHEIBLE: Which is who?

MR. KANE: If they didn't have to, if they weren't subject to the zoning and the laws we had when we were first discussing this whole thing way back why aren't they, why aren't they subject to it now when they still own the property? I think they're covering their backsides which makes it interesting.

MR. BEDETTI: Three years down the road they've already been operating for three years.

MR. CHANIN: Now they want to make it permanent according to the newspaper article there's still something in court and reading those papers it was like cover your butt.

MR. CHANIN: It pleases my pedantic little heart to hear you guys discussing this with such knowledge. Alright, so if I understand you correctly, first of all, you'd like this to appear on your agenda for the April 11 meeting for further discussion. And in the meantime, you're asking the building department and all others who may be able to access the information, maybe the planning board, whoever, to provide you with the specific information you need about this particular equipment and material.

MR. KANE: Yeah, for instance, the equipment itself, is it all attached together? I mean if you go over there you'll see the line of the stuff going in, is it all one piece or are these separate pieces that are attached together?

MR. CHANIN: What is it made of?

MR. HAMEL: Would it be advisable to have some--

MR. KANE: They say movable, they're on these big sleds, that's not movable down the street, to me, that's movable onto a trailer and going.

MR. HAMEL: What I know of the equipment it's manufactured as a portable type function.

MR. SCHEIBLE: That could be broken down in two days.

MR. HAMEL: Once it's mounted permanently with a 10 year lease, not knowing what the lease requirements are, how it's written, once you enter into that lease and that equipment's there, it's permanent in my mind.

MR. KANE: I agree with you, absolutely.

MR. CHANIN: Mr. Hamel is legally correct in another way and that is that, and some of you may know this if you've ever had any experience in real estate or as a landlord, it's possible for an item, whatever it is, to be movable, to be a piece of equipment and when you permanently attach it, it becomes a fixture and becomes real estate. So the same item can be either or depending on other circumstances.

MR. BEDETTI: It's my understanding that they're going to be taking over the salt storage barn as well?

MR. KANE: On 300?

MR. BEDETTI: No, just up the road there's the salt storage which belongs to the town which probably violates the same height requirements that we're contemplating judging this piece of equipment. So there may be more than one violation there, if there is.

MR. KANE: That's another piece of property so we may end up seeing that.

MR. BEDETTI: I think it's all part of one property.

MR. SCHEIBLE: Question still remains who is taxed?

MR. KANE: Nobody, we eat it.

MR. SCHEIBLE: Now I'm talking about not the salt, the whole situation that we were just discussing here this evening, where do the moneys come from and who receives the money? The town deserves the money, right but as a rental or as a, I mean, a permanent fixture.

MR. CHANIN: Good questions all, just remember that when you make your decision you have to stick to the criteria that apply here, not to the town board.

MR. SCHEIBLE: Understood.

MR. KANE: Alright, guys, do your homework. Motion to adjourn?

MR. BEDETTI: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth  
Stenographer