

**ZONING BOARD OF APPEALS
TOWN OF CANADICE**

Canadice Town Hall

August 10, 2022

Present: Linda Moorhouse, Chairperson

Diane Horning

Ed Bott

Kris Singer

Guest: Kristy Wright

Tony Castronova

Diane Castronova

Sheila Chalifoux, Law

Jesse Hallett Absent

Chairperson, Linda Moorhouse called the meeting to order at 7:30 p.m.

L. Moorhouse explained to the attendants that the meeting would be an informational hearing, not a Public Hearing. This meeting is to collect additional information from Kristy Wright and Tony Castronova until the Public Hearing on September 14, 2022.

L. Moorhouse invited Kristy Wright to come and sit before the board.

K. Wright - I think everyone has the letter that was submitted with the initial concerns from our last meeting that we had, to go over the interpretation of the code, is what we had done at the last meeting in March. Since then, it seems there has been a little bit of a mix up of what has been happening. We were notified to come today to present it again officially as the complainant. As it is laid out in the letter, we have a few things that I was concerned about when we initially put it in at the beginning of it all.

L. Moorhouse - Excuse me, the letter that we are talking about is the July 30th date?

K. Wright - Yes, you got it. So, there are many things as far as...and it was brought to us that it was totally, there was no violation. And that is when we had the interpretation of the law, the code rather. To get the final understanding of what the codes are of this town. As a resident here, I found it was very informative myself. Because of my being new, it is nice to know that living in the lake district and yes, it's all protected. The view as well as other aspects within the code. So, we have things that are lined out within the letter. I am sure you have all had the opportunity to probably read it. We also brought a few extra pictures to show, it kind of gives you more of a visual of what the concern is.

L. Moorhouse - Now show me, this is from? (looking at the pictures)

K. Wright - This is from the road, looking at...

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L. Moorhouse - And, this is the barn here?

K. Wright - Yes, that's the barn.

K. Singer - It's actually from up on my deck. That particular one. That's my garage, that's Jim Keller's garage, this is the barn and that's Tony's house.

L. Moorhouse - Ok.

K. Wright - So, the comparison with the local neighbor houses as well as the local neighbor garages next to it as well.

K. Singer - That's a view of the lake up Pickerel Point along the road.

K. Wright - You have the other pictures that I had submitted originally.

L. Moorhouse - This is not West Lake Rd.?

K. Singer - This is Pickerel Point looking south. And then you have the pictures from Kristy's living room, from March.

L. Moorhouse - Right.

E. Bott - Ok, so I have a question. I wasn't here in the March meeting when you asked for a determination, interpretation of the law and it was granted. So, why are you here now?

K. Wright - We were told to come back, because it's officially, because within that interpretation as it was discussed and evaluated as far as what the codes were, we brought up about the structure that's Tony's structure. And then we were notified that we needed to officially voice our complaint.

K. Singer - Sheila contacted the Code Enforcement Officer that his response that there were no violations was supposed to be filed with the Town Clerk.

E. Bott - Ok.

K. Singer - So, it didn't get filed with the Town Clerk until July, June 28th, somewhere around there. So, that basically started the clock all over again for it to be addressed for Kristy to appeal the decision that there were no violations.

E. Bott - So, are we doing what you guys did in March?

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K. Singer - To an extent, yes. But, the request in March was because there was a difference of opinion from the Code Enforcement Officer and our review of the code as to how it was being interpreted. So, we asked for an interpretation. Based on the interpretation, Steve issued the Stop Work Order and Order to Remedy, when Sheila reviewed it and it came about she notified the Town that we had to file a different procedure to make sure everything is in line with the filing with the Town Clerk, the window opening and an actual notice of appeal being presented to the Town and appeal the decision that there were no violations.

E. Bott - So, I'm just trying to get the timeline here. So, you came in for the interpretation of the law, you got the interpretation of the law. Was the no violations letter after that?

K. Singer - No, it was before.

E. Bott - Before.

K. Singer - But, it wasn't filed with the Town Clerk.

E. Bott - Ok, so now you are saying that the interpretation that was given is now null and void because the proper paper wasn't filed with the Town?

K. Singer - Sheila?

S. Chalifoux - The problem is, that you went ahead and did an interpretation, even though, I think if you look at the papers from Kristy's attorney, there was an appeal, they wanted to appeal it, but they didn't. Kris went ahead and filed an interpretation instead of an appeal. So, when I looked at the whole file, after having both conflicting, both attorneys submitting information. It looked to me like you were putting the cart before the horse, because the original interpretation hadn't even been filed yet. So, all I did was tell them, you need to file this and after it's filed, Kristy filed a notice of appeal, which is the correct procedural way that we are supposed to deal with if there is a problem with the Code Enforcement Officer's determination. So, that's where we are at right now. We are having a hearing on whether the Code Enforcement Officer's determination, dated February 8th determination was correct or not. We need to not have a ZBA opinion on that.

E. Bott - Ok, so the interpretation of the law stands, because that's a separate issue. So, now you are talking about two different issues. One is an appeal of the Code Enforcement Officer's letter, saying there were no violations and the other one is just a simple interpretation of the law, correct?

S. Chalifoux - 100% correct.

L. Moorhouse - Thank you, Sheila.

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E. Bott - So, you are presenting information about, in response to the Code Enforcement Officer's letter, saying there was no violations?

K. Wright - Correct.

K. Singer - And, citing sections of the code, that we feel aren't accurate.

E. Bott - Gotcha ya.

L. Moorhouse - And during that first meeting, is when we determined that the information on the building permit was incorrect. Which is what we addressed at that time. And then these other items came into play.

E. Bott - That's why I was going over what she was appealing, because we could give an interpretation and then there is an appeal. That's two different things. So, now I have to get caught up with the pictures.

K. Singer - Do you have any of the original ones, Ed?

E. Bott - I think that is what these are. I wasn't here, I was in Florida when you guys did this the first time. So, where is, what's the garage? That's the garage? (Looking at the pictures)

L. Moorhouse - Yes. 5905 is Mr. Castronova's house.

K. Singer - That was before the barn was built. Those are overhead views.

E. Bott - These are before it got built?

K. Singer - Before it was built.

L. Moorhouse - That is the neighbor, here is the house. This is the back.

E. Bott - Ok, this is the back.

L. Moorhouse - This is where the barn is built.

E. Bott - So, this is where the barn was built, where that tree is right there.

L. Moorhouse - And this is the view out Kristy's window.

E. Bott - So, this would be? That's your place there?

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K. Singer - That's my garage at the end of my driveway.

K. Wright - There is another picture that has a side view.

K. Singer - Those are all just street views.

S. Chalifoux - Kris, can I interrupt here for a second? Even though I was a little late getting on, I just want to be clear on this, you are involved in this that you have recused yourself pursuant to the personal interest section.

K. Singer - I won't be voting on anything.

S. Chalifoux - But, you are more than welcome to be a witness for input, obviously. I just want everyone to be aware that you won't be voting on this, because of your proximity and friendship.

K. Singer - Linde informed me of that when she came in, of your discussion this afternoon.

S. Chalifoux - Ok, perfect.

E. Bott - So, who's? (Pointing to a picture)

K. Singer - That is Kristy's house.

E. Bott - So, this one here, is a picture from your place?

K. Singer - That's from my deck. That roof in front is my garage and then the garage across the street.

E. Bott - Ok, just trying to get all the references.

K. Singer - When they first started there, I questioned the lot coverage before any construction went up, when they were back filling. Steve said he measured everything and it didn't exceed the 30% lot coverage. I still question that. When he was back filling to do the garage, we didn't have any issue with the garage going up, assuming it was going to be similar to the other garages, as far as in height. Until we came home one night and the second story had been put on.

E. Bott - I can see the other garages in the neighborhood are all consistent with each other. One of the things that we have to do, if there is a change in the neighborhood. That's one of our criteria. That's why we compare what things look like. All right, just trying to get caught up here.

K. Singer - One thing I want to clarify in the code, the code refers to view. It does not say lake

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view, it just says view. So, in consideration of a view as opposed to looking at trees and whatever and looking at the back side of a barn is considerably different.

K. Wright - I actually did have a view, prior to it. Trees, I like watching the birds. There was also some other of the criteria that lacked coverage too, as to whether or not it actually exceeds it.

D. Horning - By putting a second story on, it also increases the square footage.

E. Bott - By a lot. So, if the square footage of the structure exceeds 800 ft., lists 528 in the thing. The second thing you had was the set back from the private roads.

L. Moorhouse - And that is supposed to be?

K. Singer - It's supposed to be 20, isn't it, Steve?

S. Smith - I believe in the minutes the last time we were here, I did measure it and he did meet the set back.

E. Bott - The map here, plot survey map, set back from front line, 24ft., that's what is issued here. If I am reading this correctly.

K. Singer - I think that was submitted with the building permit.

S. Smith - Yes.

E. Bott - You said the set back is 20ft.? And this is listed as 24.

S. Smith - I did measure the set back.

K. Singer - Those were all what was listed in that letter, were all the items that were on the original.

E. Bott - Yes, I'm just going down one at a time here, so we got the structure exceeds 800 sq ft., set back from private roads. The next one you have listed is maximum building height. Height from the natural ground height at the lakeshore including back fill to the natural slope. So what is the?

K. Singer - The maximum height in the Lakeshore District is 39ft.

S. Smith - 35

K. Singer - 35? I gave him an extra 4. But, on that side of the road, it slopes down from the road,

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basically all the way to the lakeshore. They back filled, in the original packet from March, they back filled almost 6ft., 5 something.

T. Castronova - No, that's not true. About 3 ½.

K. Singer - I was standing there, it's more than 3 ½, at the back end of it, by the house. Between now and the next meeting, consider having someone do some actual, physical measurements. As far as lot coverage, the size of the existing structures they have.

E. Bott - That would fall under the Code Enforcement Officer, I believe.

K. Singer - Well, since we have had questions on the interpretation of that, is there some way to get an independent person to do it?

K. Wright - A third party, neutral?

E. Bott - I think that is what his job is, to measure everything. That's up to the Town, if they want to do that. So, the height, from the natural ground height at the lakeshore, including the back fill. That's what you are claiming. What's the code read on that? On height?

S. Smith - 35ft. and I measured the fill, right? They had put in the stone wall already. I measured that and the building and it was under the 35ft.

K. Singer - From that ground, or is it from the lowest point, which is lakeshore front?

S. Smith - I was measuring the retaining wall.

K. Singer - That's the question. Because by measuring it from there, you see what the result is. Which is totally out of character for the neighborhood.

S. Smith - How do I determine that from the code, when it says building height 35ft.?

K. Singer - That's what we are looking for you to determine.

E. Bott - I'm asking what is the code, how is the code worded? The maximum height is 35ft.?

S. Smith - I think it is pretty cut and dry, what it says in the code. It just says that no building should be more than 35ft. without going before the Planning Board.

E. Bott - The Planning Board is clearly a separate issue.

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S. Smith - I'm pretty sure it is only like one sentence.

E. Bott - So, maximum lot coverage in the code, is that all the buildings? Every single one counts as something separately?

S. Smith - All buildings.

E. Bott - All buildings, that's what I thought.

S. Smith - 30%

E. Bott - Do you have anything in here, you're going to need before the next meeting. Is there anything in here about the lot square footage, this one we have.

S. Smith - Everything down there is different, the buildings, decks, sheds and barn.

E. Bott - So, we need to get them all tallied up.

S. Smith - Along with the total lot coverage.

E. Bott - Yes. It's straight math.

S. Smith - Well, you don't know exactly where all the property lot lines are, it's not as easy as you think it is.

E. Bott - I'm sure they have a deed as to how big the property is.

S. Smith - As far as the square footage?

K. Singer - The pins for both Tony's property and the same thing for the property across from me are across the road. The road is included in the deed, with a right of way. So, by taking that and taking the lot depth off of that, you have 20 some feet that is actually the road width and 4 or 5ft. on the other side that belongs to those on the lakeshore side. I know where my pin is, I know exactly where it is and that's the corner of her property pin too.

E. Bott - If the code is written, so it says the lot...

S. Smith - There must be some type of a current survey when they purchased the place. An updated survey.

E. Bott - That is the kind of information we would need. So if the lot is described as being 171 by

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50, or whatever it is, that's where you would get your determination after deducting all the structures.

K. Singer - What about the roadway? How can the roadway be included in the lot coverage.

E. Bott - This is where it comes down to how the code is written. If the code doesn't say you deduct the roadway, or right of way then, I don't see how you actually could. As screwy as that sounds, we have to go by the way the code is written.

K. Singer - Ok.

E. Bott - The information we need, the square footage, get information on that. Set back from private roads, we have information on that. Maximum building height, we have information on that. We need the size of the lot and how much room is taken up from all the building structures, sheds, decks, everything. Structures shall minimize impacts on views from neighboring properties and require a site plan review over 800 square feet. Ok, so this is the site plan review thing again, over 800 square feet. So, the permit clearly says 24 by 22 by 10.

L. Moorhouse - Also, I have the code words addressing the placement of proposed structures shall minimize the impacts.

E. Bott - That's this one I was just reading. It would require a site plan review if over. The site plan review, that didn't take place, because it was claimed to be 528 square feet and it is clearly more than that.

L. Moorhouse - This is not information that we need from Kristy?

E. Bott - Well, if she wants to appeal the ruling from the Code Enforcement Officer, I think the Code Enforcement Officer can supply, we already have information on the square footage.

L. Moorhouse - Correct.

E. Bott - We need to have that. Set back from the private roads, we've got that. Maximum building height, there is information on that. If you want to get a second person, you can't go on their property, that would be something for the Town. Maximum lot coverage, that is a matter of getting all the buildings and add them all up and doing the math. The proposed structure minimizing the impact, we would take into consideration and review. And then, there is the part about the permit. So, there is one, two, three, four, five, basically six things you want us to consider in your appeal?

K. Wright - Yes.

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E. Bott - And we need more information before we can make a determination on that. That is why we had this meeting to start with.

L. Moorhouse - Now, as far as us obtaining that.

E. Bott - No one can go on their property without their permission, except the Code Enforcement Officer.

L. Moorhouse - Correct.

S. Smith - I can't go in and walk around anybody's property, without permission. I can go to the front door.

L. Moorhouse - And ask permission?

S. Smith - That's as far as I can go without anyone's permission, without the owner's consent, or their representative.

E. Bott - Well, that's pretty simple, if we don't have it, there's no chance of getting it.

D. Horning - Wouldn't that be in the Article of Assessments file?

E. Bott - If that is up to date and accurate.

D. Horning - It's accurate. The square footage should be in there.

E. Bott - They should have the square footage of the lot and the buildings. Or, they could let the Town Code Enforcement Officer measure things.

D. Horning - There are pictures, she has all kinds of stuff in those files.

E. Bott - Do you have a clear understanding of what is required by you before we have the next meeting?

K. Wright - What would you need from me?

E. Bott - You have six different things here. We have some of the information. We have the permit, the original filed permit. We have the set back information.

L. Moorhouse - Is that from the private road? The set back information.

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E. Bott - It's from the private road, right? It's got to be 20ft.?

L. Moorhouse - Yes.

E. Bott - Ok, so we have information on that.

D. Horning - The 30%.

E. Bott - Yes, the 30%. Building height and there is impact on the view. Steve, can you get the Assessor's information or get permission from them to measure the square footage down there? So, we can make that 30% determination. We are going to need to have numbers to do that, from somebody.

D. Horning - In the Assessor files, there is a piece of paper in there that shows a picture of the house. It shows the footage of where the house is.

K. Singer - As long as it has been updated since the renovations were done.

E. Bott - That is what my concern was.

D. Horning - Well take a look at it and see what it has on there. She just did a revaluation.

K. Singer - She is in the process of the revaluation. The revaluation is actually next year.

D. Horning - It's only been two years, it was all updated two years ago. The last revaluation she did.

L. Moorhouse - Regardless, that is the information that we need to get. Essentially, we have everything except the footage, correct. Everything else is here.

E. Bott - Pretty much looks like it.

L. Moorhouse - The last one, the proposed structure shall minimize impacts.

E. Bott - That is one of the conditions we have to review. We have pictures that show the neighborhood.

K. Wright - If you need more pictures, I can provide them.

E. Bott - You can bring in whatever information you want for the next meeting. We will have the Public Hearing and collect the final information then and decide if we have enough information to

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rule on it.

S. Chalifoux - I would like to talk, if I can have a second. Are you finished with your, are you completing?

L. Moorhouse - I do believe that we are. Just with Kristy, yes.

S. Chalifoux - Just a couple of clarifications. Is the Castronova's, are they there?

E. Bott - Yes.

L. Moorhouse - Yes, they are.

S. Chalifoux - I'm sure they would consent to having either members of the board or the Code Enforcement Officer come on their property. I don't have the provision, but certainly with this outstanding building permit, the Code Enforcement Officer should be able to go on their property. Surely their attorney would consent to inspection of the property. Is that correct?

D. Chaney - No.

L. Moorhouse - The attorney says no.

S. Chalifoux - We will deal with that separately then. After the meeting, I will talk to you about that and what your options are and what the Town's options are.

E. Bott - Ok.

S. Chalifoux - I just want to be clear, we are talking about the interpretation and we are talking about letters, can we make a very clear list and write down what the board has before it and what will be part of this record?

E. Bott - That's what I just did. As far as the conditions?

S. Chalifoux - No, no.

E. Bott - The six?

S. Chalifoux - The documents, as part of the record.

L. Moorhouse - What documents?

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S. Chalifoux - You have a letter, you have the Code Enforcement Officer's decision, pictures. I just want to be clear on what documents, because I am not there.

D. Horning - We have new pictures.

S. Chalifoux - Ok, this is a new record, so you have photos and how many photos are they numbered?

L. Moorhouse - They will be.

S. Chalifoux - Ok, number those. And what other documents do you have?

E. Bott - Her letter and then the other document I looked at was the original application for the permit. And the plot diagram and survey map.

S. Chalifoux - So, there are photos and a letter from Kristy, an application for the permit and a survey diagram.

L. Moorhouse - Correct. We will make sure we get those and number them accordingly.

S. Chalifoux - Thank you. Is there any response from the other side?

E. Bott - This isn't a Public Hearing yet, they are going to get their opportunity to speak when they get there.

S. Chalifoux - We are doing two separate Public Hearings. I know that they have a chance, now when you conclude this hearing to talk about their application, their appeal. I'm wondering if they have an opinion or anything they want to enter into the record, testimony or anything regarding Kristy's claim.

E. Bott - This isn't the Public Hearing, this is a review of the hearing for her information. That would be appropriate, they kind of overlap each other. That's why we have the Public Hearing, prior to the acceptance of the information for the variance and the appeal next time. Correct?

S. Chalifoux - This is a little different than a use variance or an area variance. You can do it whatever way you want. I don't want to tell you how to do it. Usually what happens on an appeal, you are hearing an appeal today, so you would hear all of Kristy's arguments and then you would hear any other arguments that there might be and then you keep the hearing record open. You hear all the testimony today, because everybody is here. But, if you don't want to do that, we can wait I guess. We can certainly hold it open and keep it open for another month.

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L. Moorhouse - That is what we are doing. We are talking with Kristy and getting the information that she has and then we will talk with Mr. Castronova and find out what he has to say. And then at our next meeting, in September they will each have a chance to add any additional, or add any information in between. Now and until the next hearing.

S. Chalifoux - Ok, all good.

L. Moorhouse - Ok?

S. Chalifoux - Yes, all good.

E. Bott - One thing I have here, I don't know who provided it, I think Kristy did. There is the property record.

L. Moorhouse - The property record card? There should be more than that.

E. Bott - It's 176 by 50, so we could do the square footage of that. This doesn't have anything about a deck or anything.

L. Moorhouse - There's the deck, the square footage for the deck.

E. Bott - So, this has actually got information.

L. Moorhouse - That we need here. According to this, 30% of this is that.

E. Bott figured the square footage from what was on the property card and came up with 23%.

E. Bott - It's 23%. It's under 30%.

L. Moorhouse - All the rest of the buildings and not the new one?

E. Bott - It's got the garage, house, because the square footage is floor footage for this calculation.

D. Horning - Is the square footage correct, with the second floor on there?

L. Moorhouse - We are talking the house, not the barn.

E. Bott - It's got the barn in there.

K. Singer - Lot area, horizontal area line between property lines defining a lot. The area of the lot, shall not include any public road or any area covered by any private right of way providing access

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to a public road for one or more adjacent lots.

E. Bott - That makes a big difference.

K. Singer - The roadway can't be included. So, that's going to reduce.

E. Bott - That's exactly why I brought that up. We have to go by how that is written.

L. Moorhouse - Right.

K. Singer - That is the definition in the law part itself, that says lot. That's what the definition is.

E. Bott - That's exactly why I brought it up. And, I believe it's just on the, it's not the total square footage for the building, multiple floors. I believe the 30% is just the footprint?

L. Moorhouse - Footprint, correct.

S. Smith - I have a permit for a 14ft. by 16ft. deck taken out by Mr. Castronova. I also have a application, building permit taken out in 1997 an addition, 16 by 8, 128 sq. ft. That was inspected and a certificate of occupancy was given out on that.

E. Bott - That was back in the 90's?

S. Smith - 97.

E. Bott - So, any current, if the measurements of the house and the assessment records are current, then you will have the square footage of the footprint.

S. Smith - There was also a remodel, alterations, looks like 1100 sq.ft. That was done in 2016.

L. Moorhouse - That is information that we do need to know, but I do believe we will be addressing that, when we talk with Mr. Castronova. And, we don't need to do that now.

S. Smith - I was doing it for the lot coverage.

E. Bott - Oh, I know.

K. Singer - You can add all those up and submit them at the next meeting.

S. Smith - The Assessor probably has all that information already.

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K. Singer - Just make sure that what she has matches what you have.

E. Bott - The next thing is, where is the line, versus the road? If the line is included and the road is not, how wide is that road?

L. Moorhouse - We need a survey.

E. Bott - There has to be something here that shows where that road is. It depends on when they put it in. The new right of ways are like 50ft., but way back when, they weren't 50ft.

L. Moorhouse - Exactly, and that's been there awhile.

E. Bott - 20 and 25ft. were real common.

L. Moorhouse - Right. Ok, well are there any more questions for Kristy? I do believe that we have all the information we need. We will see you back here on the 14th.

K. Wright - Ok, thank you.

L. Moorhouse - You are welcome.

Kristy Wright hearing concluded at 8:12 p.m.

L. Moorhouse invited the Castronova's and Mr. Cheney to come and sit before the board.

L. Moorhouse - You are Mr. and Mrs. Castronova and you sir?

D. Cheney - Don Cheney, Cheney Law Firm, Canandaigua.

L. Moorhouse - Pleased to meet you all.

D. Cheney - Pleased to meet you as well.

L. Moorhouse - So, we have several questions regarding the, as you well know, we had a complaint from Kristy Wright. We need to find out from you folks, first of all the size of the building and what was on the permit.

D. Cheney - Before we start, I'm just going to log a few objections here. My first objection is going to be, we have an existing Zoning Board member sitting here with the Zoning Board of Appeals, basically prosecuting the application for a resident. I find that's highly inappropriate and improper that the resident is not saying anything and the Zoning Board member is providing

influence on this board, so I am going to log that objection immediately on the record here right now.

L. Moorhouse - Duly noted sir. I would like to say, if you are referring to Kris Singer, she and Kristy Wright were instrumental in bringing the first information to this board. I have checked with the attorney and I am told that Kris can add information, however she will be recusing herself from any of the decisions that we make.

D. Cheney- She is sitting right up here with the board, like she is a board member.

L. Moorhouse - She is a board member.

D. Cheney - I'm lodging it for the record. I think it is highly inappropriate.

D. Horning - She will not vote, she will excuse herself from the vote.

K. Singer - When this was originally brought forward, I was not a board member.

D. Horning - She was not a board member.

D. Cheney - The second matter I had was, I'm hearing that somehow there wasn't any, we are hearing that there were appeals of something the Code Enforcement Officer hadn't made any determinations, or said there wasn't anything illegal on the property. My client has an Order to Remedy. There's an appeal tonight, saying that he is subject to site plan review, while he has already been cited for violating a statute that applies to site plan review. So, to say that there was only an interpretation and there haven't been any orders. He said there was no violations on the property. We have an Order to Remedy. One for a building permit and another one for violating the site plan review statute. When you did an appeal tonight that says, you're trying to determine if this even applies to a site plan review. So, you are so out of order, that it just doesn't make any sense. When you are hearing appeals for what my client already has an Order of Remedy for. And you are going to decide whether he actually requires a site plan review.

E. Bott - That's a foregone conclusion. Based on what...

D. Cheney - The Code Enforcement Officer didn't say that. He's saying there were no violations, now he issued a violation. They are appealing that there were no violations. We are all over the map.

E. Bott - I don't think the violation from the permit versus the requirement to have a site plan review, that wasn't caught because of the permit claim that it was 528 sq.ft., when it's very clear that it is much bigger than that. Because it is two stories.

And in one of your letters, somewhere in here asks if we actually counted both floors and that's a ridiculous position.

D. Cheney - I haven't looked at it, I don't know how you calculate gross area. But, I do know when the Code Enforcement Officer issues a permit, he is making certain determinations whether he knows it or not. But, he is making determinations, does this comply with lot coverage. Does this comply, do I need to go to site plan review? So, all those things are tied up in there and now we are trying to back the bus up and say, oh there are violations. You have 60 days to appeal my client's building permit. If you don't appeal in 60 days, then we are sort of stuck. He has already had substantial expenditures, construction. He's got a sitting building there. You issued violations for appeals that are happening tonight on whether there are violations on a site plan review. You are telling me that it is a foregone conclusion. The Code Enforcement Officer hasn't said that. If it was a foregone conclusion, he should probably require a site plan review at that point. Or, back in March, when this was discussed without my client present. There should have been something to say, you should go to site plan review.

L. Moorhouse - Granted, I will give you that. This has not gone smoothly, by any means. However, the original meeting revealed the inaccuracy of the information on the building permit. That was addressed, perhaps there may have been other things at that point that we should have said, now wait a minute, we need to do more. However, at that time also, the building was up, finished. He had not issued a, that it was finished. We were still in the midst of construction here. So, what was addressed was the misinformation on the building permit. All of this other information that has come up, and as far as the 60 day review and all that.

D. Cheney - I have lodged my objections for the record, so we can leave it at that. This is going to be a matter for the board to consider, or if there is further litigation to consider. I'm lodging the hearing, because I need to get it on the record. You and your attorney can deal with if there needs to be something done or changed, or remedied, we will go from there.

S. Chalifoux - I just want to add a comment, if I could. The original meeting, I assume that is Mr. Cheney talking.

D. Cheney - Yes, hi Sheila.

S. Chalifoux - Bottom line is, there was a complaint by your office, that you were not here and did not have an opportunity to be heard on these issues of whether the building permit was properly issued. And in fact the building permit, the determination of the Code Enforcement Officer had never been filed. When I looked at this and your complaint about not being heard, yes we are backing up the bus a little bit, because we want to get this right. We want to make sure that nothing is happening on this building since then. So, that you haven't built anything additional on this, so there's no additional improvements that you have made, because you got the stop work

order. My point is, what we are trying to do is get this record good. If you go for an Article 78, that's fine. We just want to make sure we have a clear record and one of the clearest things is when I look at this file the Code Enforcement Officer's original determination had not been filed. I advised all of you that I was having that filed. That's the town's obligation to do that, we did that. And now, anybody wanting to appeal that, they could, they did. Kristy did that. So, now we are have a hearing and this is part of the hearing, is to go ahead and make a determination, the ZBA needs to make a determination. They also need to make a determination on the second appeal, which is on for tonight, which is your application that this Order of Remedy, Stop Work Order were improperly issued. That's fine, we want to give you the opportunity to complain about that as well. The Town wants to get everything out, we want to give everybody the opportunity to be heard.

D. Cheney - Ok.

T. Castronova - Let me ask you one thing. Why were we never informed that there was a complaint, or that there was going to be a meeting the first time?

S. Chalifoux - The first time, as I understand it, was approached as an interpretation by the ZBA. They did not note this as a regular hearing, like they normally would.

T. Castronova - That's what determined the Stop Work Order, the issue to remedy. As a result of that meeting, I wasn't informed that there was a meeting and a complaint until the building was pretty much finished. The only thing that wasn't finished was the pouring of the floor.

D. Castronova - It is our understanding that the complaint went in on February 2nd, or around there.

T. Castronova - The whole thing could have been avoided.

D. Castronova - It was just a frame, when that complaint went in. So, had you put a sticker or Stop Work Order, it would have been a frame, but it continued to be built. Kris and Kristy both watched it being built, when they knew there was a complaint, they let us get right up to pouring the floor and then put a sticker on our door. We should have been informed as soon as that complaint went in.

E. Bott - Just for some clarification, I wasn't here, so I am going from all the records. When somebody comes in to get an interpretation of the law, that's not a complaint. They wanted to understand, just like we went over the book here, because that's how thick that is. People come in and it happens every few years, they want to know what this means. Either it's a ruling from the Code Enforcement Officer or a concerned citizen who wants to know what the rulings are so they know what the next steps they can take. And, that is what she asked for. Nobody really gets

notified of it, there's nothing going against you or anybody else, at that point in time. It's just information for her. In the course of that, they found out that several things, the permit didn't match what happened.

D. Castronova - But, we sent the pictures with that too. The diagram.

E. Bott - This is a document of evidence, ok. Didn't match. My understanding, that is what led to the stop to get this figured out.

T. Castronova - Let me just say this, those dimensions, I just wrote that, because that is what the builder wrote on his proposal. Not even thinking about that, the second floor was my only reason for building that was because I need storage space. It's unfinished attic space, so it will never be finished. It will never be anything but unfinished space, that is for storage. I didn't consider that part of the square footage, because most don't consider an attic. That was my interpretation. If I was wrong, it should have been pointed out by the Code guy. He had all the drawings.

E. Bott - That's why I was explaining what happened there. Somebody did not file a complaint against you, that's why you have been notified about everything that has gone on since then.

D. Cheney - The minutes from March 9, do not show that you are interpreting any single statute, it is a random smorgasbord of an attack on this application and this property. So, the fact that you are saying that it is an interpretation, I doubt it. I know what you are saying, but, read the minutes and tell me what statute you were interpreting, because it's not in there. I've lodged my objections. Mr. Castronova, you filed this permit right here, dated 8/31/21, correct?

T. Castronova - Yes.

D. Cheney - There has been an issue made that the project description, you put in 10ft., can you please explain to the board how that happened.

T. Castronova - I don't think you ever saw the original proposal. This is the contract.

D. Cheney - This is the proposal that his contractor provided him.

T. Castronova - That's how he wrote it, because I told him from day one that I want a loft for storage. I sold my shop, I sold the house in the back, which had a garage. I've got all this stuff in storage, and I've got no place to put it. I've been renting garages for five years now and I need some place to put my stuff.

D. Horning - Did you tell Steve when you were getting the building permit that? You never showed him the contract, right?

T. Castronova - No, because he didn't question it. I gave him all the drawings. And that was another thing that was mentioned in the notes from the other hearing.

D. Horning - Did you explain to him that you were going to build a second floor?

T. Castronova - He said he got the truss, engineer truss diagram later. And, that is just not true. I brought all the...

S. Smith - I got the truss diagrams after, well after you put in your application.

T. Castronova - I handed him all that paperwork, all together, I brought it to your office. You weren't there, in fact I never had any dealing with you at all, it was always with Rich. Every time I called, it was him I talked to, when I came up, it was him in the office. I don't know where you were at the time. I never even really saw you.

S. Smith - I'm only here 12 hours a week.

D. Cheney - Answer me this, on his application, could you actually build a 10ft. high...

T. Castronova - No, that would be a shed, right? Is there a garage that is built, that is 10ft. high?

E. Bott - They do.

D. Cheney - That would be physically impossible to build, right? You would never build that.

T. Castronova - With any kind of roof, it would be over 10ft.

D. Cheney - You have 10ft. walls, which is noted in the March 9th meeting minutes, there's 10ft. walls on the structure. You couldn't possibly have a roof that is 10ft. high? Could you get a building permit based on this document alone?

T. Castronova - No. I had to submit all the drawings that they asked for, and I did.

D. Cheney - Ok, so it's not even possible. I could not walk into Canadice and give someone this document and get a building permit? They would have to see some kind of engineered drawings.

L. Moorhouse - Yes, correct.

D. Cheney - So, the fact that he made an error shouldn't dictate the fact that there is engineered drawings sitting here that were submitted to the Code Office. My client's testimony is that you submitted this document to the Assistant Code Officer and you submitted the engineered drawings

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at the same time.

T. Castronova - Yes, I did.

D. Cheney - You couldn't get a permit without it. So, they had to have shown up.

S. Smith - That's not true.

D. Castronova - We had to get those drawings from the builder before we could, we put it all together, he dropped it off.

T. Castronova - I came up here and personally handed it to him, to make sure I had everything I needed.

D. Cheney - You submitted this building permit, dated August 31, 2020. What date did you actually get the permit?

T. Castronova - It wasn't until November 9th. They had plenty of time to look at it.

D. Cheney - Your testimony, you handed those to Rich and the next two plus months, they certainly had time to review these drawings.

L. Moorhouse - You are saying that you submitted that in August and did not get a response until when?

D. Cheney - The permit was issued 11/9/2020.

T. Castronova - That's what it says on the building permit.

D. Cheney - The actual building permit, itself, read that project description.

T. Castronova - It just says pole barn, 22 by 24.

D. Cheney - They didn't make an issue of any height?

T. Castronova - No.

D. Cheney - Was the Code Officer down there taking measurements and watching you build the structure?

T. Castronova - I believe they were out a couple times. Rich was out twice, actually I met with

him one time. That was right before they issued the Stop Work Order. That was maybe two weeks before. He said he had to look at the framing. He never mentioned there was a complaint. He came down, I happened to be home that day, so I went through the building with him, he made a list of a bunch of little things that he wanted corrected, he told me needed to be fixed. I told him no problem. I had the guys take care of it and they did. At no time did he ever say you might want to think about stopping, because we have a complaint.

D. Castronova - There were two inspections that had to be done. I work from home and the guys would say, we can't come back until they inspect it. So, while we were building it, they came out and passed the inspections.

T. Castronova - Well anyway, I went through the building with him, he gave me a list. We had everything corrected. It was St. Patrick's Day, the day that they came back and finished everything. Then they called the Code Office and said we fixed everything, if you want to come down and take a look. So, that's when they came down and put the Stop Work Order on.

D. Cheney - I just handed out some pictures, yours are in the same order as the boards.

T. Castronova - Ok, so the first picture is actually when it was listed, the house. The house that Kristy is in now.

L. Moorhouse - Ok.

T. Castronova - That was my house, that I lived in for a number of years. So that is a picture of the listing, looking out the front towards my home. So, basically you see the top of my roof and the trees. One of them being that big pine tree, which is in the next photo that we had to take down to put the barn up. You can see, that's a pretty sizable tree.

D. Cheney - That is the lake view, that's your neighbors garage?

T. Castronova - Yes, that's my next door neighbors garage.

L. Moorhouse - The one with the fence around it?

T. Castronova - Yes. Tree came down to build the pole barn, ok. Basically, the lake views have always been to either side of my property, because of the pine tree and I have a two story house and there is three gigantic oak trees in front of the house, which you can see in the next picture, where you can see the barn and my house. You can see the barn is not as wide as my house, it doesn't affect the view that she had of the lake. It's still the same lake view. Yes, she's looking at my barn when she looks out her window, that's not going to change, if I change the roof. She's still going to be looking at my barn. That house that she's in was originally built as a garage for

the house I am living in now. And that is why it is so close to the road. The only other houses on that side of the road, there's three, they all sit considerably far back from the road. Kris Singer's included. So, they are at a much higher elevation. Because everything slopes down from the main road, West Lake Rd. So, basically, even if we were to change the roof, the view is not going to change anything. She's still going to be looking at, I mean I can't help it. I have no other place to put this building. Everybody else's garages are where my garage is. If I could have built it somewhere else, I would have built it somewhere else. It's all I got to work with. I've got a 50ft. wide lot.

D. Castronova - The one you were looking at...

E. Bott - This one?

D. Castronova - I believe, they said that ours was the only...

T. Castronova - That's my neighbor's pole barn, down the street.

K. Singer - That's down and on my side of the road.

D. Castronova - It's on our road.

T. Castronova - It's almost an identical structure and it's bigger than mine.

K. Singer - But, it's not sitting 20ft. in front of somebody.

E. Bott - It's on the uphill side of the lake?

K. Singer - It's on the uphill side of County Rd. 36.

T. Castronova - Kris my main thing is, this is not going to change anything. I'm sorry she has to look at my garage.

K. Wright - I don't think you are.

L. Moorhouse - Stop, now.

E. Bott - Kristy, it is their time to talk about things.

T. Castronova - I have every right to build this.

D. Cheney - The Code Enforcement Officer has issued an Order to Remedy saying that we

violated a site plan review statute. That should be lifted automatically and tonight, it should be lifted immediately. If you are hearing an appeal on whether we are subject to site plan review, the Order to Remedy saying we violated. So, I would ask...

L. Moorhouse - We are not making any decisions tonight, sir.

D Cheney - I am going to ask the Code Officer. It makes zero logical sense. He doesn't need your permission to do it, he is the Code Officer. He operates on his own.

E. Bott - That is actually correct.

D. Cheney - I would ask him to remove that. As far as the permit, there was over two months between submitting the application and the actual issuance of the permit. My client's testimony is that he brought those to the Assistant Code Officer. I would like to have the Assistant Code Officer here, so we could actually ask him that question, because if they weren't delivered to Mr. Smith, they were delivered to someone else. It would be impossible to believe in the two plus months intervening that the engineer drawings were not there and the permit was issued, without engineer drawings. I'm just going to submit evidence for the record. I am going to submit the permit application and the engineer drawings. The building permit, itself. Submit the Order to Remedy and the March 9th minutes. As well as the photos. We've talked about as much as we can talk about.

L. Moorhouse - Like I said, we will not be making any determinations tonight. It will happen next month. I do have one question though. You are aware, how long have you lived down there?

T. Castronova - In the house we are in now?

L. Moorhouse - No.

T. Castronova - My whole life, since I was a baby. My dad bought that.j

L. Moorhouse - So, you originally lived in the house that Kristy owns now? You sold that to her?

T. Castronova - Yes.

L. Moorhouse - Ok, you must have been aware of the rulings that the Town makes, regarding the view.

T. Castronova - No.

L. Moorhouse - You did not know that you could not construct a house that will interfere with the

view of somebody else? That's all along the lake.

D. Castronova - But, she didn't have a view of the lake over our house.

K. Singer - One correction, it says view, not view of the lake. It says view, there's a difference in looking at nature and the backside of a barn. I said that at the beginning of the meeting, it says view, not lake view. It says view, so an obstruction of the view.

D. Cheney - Anyone that builds a house or a building is going to change the view. Is that a site plan review section?

L. Moorhouse - It's in our law.

D. Cheney - What you cited before was the site plan review section. That was in the Order to Remedy. You can't cite something that is in the site plan review section, if it was not subject to a site plan review. He can't be in violation for not doing something, he's not required to do it.

L. Moorhouse - Kris, do you still have that open.

K. Singer - Which one, the view.

L. Moorhouse - Yes.

K. Singer - I've got it open to E, dimension requirements.

L. Moorhouse - In the lake district?

E. Bott - The size of the building requires a site plan review.

D. Cheney - I think that would be a determination, that we will submit evidence, it may require it. That is one of the things you are being asked to do tonight. So, that may be an opinion, that may be your opinion, it may be the board's opinion.

S. Smith - If it's over 800 sq.ft., it has to go before a site plan review before the Planning Board. The application says 528.

E. Bott - We are going to need to see this. I just saw a picture, not a picture, but a drawing of the gambrel roof.

D. Cheney - Yes, that's part of the engineer drawings, we submitted with the building permit.

L. Moorhouse - Ok, what I was citing here was, it's under zoning, lake access. The design and placement of proposed structures shall minimize the impacts on views from neighboring properties. In this district, careful attention shall be made to minimizing the impact on lake views from adjacent buildings and properties. The setback from the lake, or new or expanded buildings shall comply or be similar to the setback of adjoining properties in order to lessen intrusion on the view of the lake from these adjacent properties. That goes a little farther than just affecting the view. That has been a major issue along that lake.

D. Castronova - When we submitted this, isn't that what we are counting on with the code people?

D. Cheney - Isn't that under the site plan review section?

L. Moorhouse - No, this is under zoning and under lake access.

K. Singer - But, it is under G, for site plan review. Look at the bottom of the page before.

L. Moorhouse - Ok, sorry.

D. Cheney - So, it is under the site plan review, so unless he is subject to it, he doesn't have to comply. You may not like it. I see things I don't like all the time, but I actually live with them because that's what the law says. If you say he is subject to a site plan review, then he may have to act accordingly.

E. Bott - Because we are the Appeal Board, I am just trying to get the layers here and what you are actually trying to appeal.

D. Cheney - We have an Order to Remedy and a Stop Work Order. I would like that lifted and the Order to Remedy, since there is another appeal in here.

E. Bott - Those two things took place over there, not here.

D. Cheney - They were the result of...

E. Bott - The result of it, but not, we have interpretation of the law.

D. Cheney - He could change that, it's up to him. He's got the ability to interpret the code and interpret where things are at and make his own determinations, subject to appeal by neighbors or anyone else that can come in here. A third party may not like something. It can be a thankless job to be a Code Officer.

K. Singer - Lifting the Remedy to Order, makes sense. Because there is no sense in him being

ordered to change the roof line because of the other issues that are pending. But, not lifting the Stop Work Order until all of this is resolved. There is no sense in allowing the completion of work, when there may be changes as to what needs to be done.

D. Cheney - He would like to pour the floor, so I think the floor itself wouldn't change anything. Maybe the roof line has to change. At least with the floor, he can store stuff in the building.

E. Bott - That's out of our review, that's over there.

K. Singer - Order to Remedy makes sense, because there is no reason to right now. The Stop Work Order should stay in place.

D. Cheney - The Code Officer issued it, he can withdraw it, if he wants.

E. Bott - I'm just trying to separate our role versus the rest of the roles. So, we gave an interpretation of the rules, but after that, the Code Enforcement Officer took up his job. You are requesting us to do something that we can't do.

D. Cheney - You can issue a decision to overturn the Code Officer. You're not going to do that. If he wants to change his mind on something because of what he has heard here, he is certainly allowed to do that. Right now, we are just waiting for a decision and then we will go ahead and submit other appeals and additional evidence of where we think that should go.

K. Singer - Can I just have a couple of clarifications? Number one the complaint is not against Diane and Tony, it's against the Code Enforcement decision that there were no violations. It's not against anyone personal or another resident, it is against the structure and how the code was enforced or not enforced. There have been a number of comments both here tonight and privately that we are attacking them. We are not attacking them.

D. Castronova - Nobody said that. That is not true. Nobody has done that.

K. Singer - I heard it right here tonight that we filed a complaint against you. We didn't file a complaint against you, we filed it against the Town.

E. Bott - First of all, there was no complaint filed. There was a request for a ruling.

K. Singer - A complaint was filed with the Code Enforcement Officer. The complaint by Kristy.

E. Bott - That's not us.

D. Cheney - We didn't cross examine the other application, so I would ask that any other

comments from the third parties be adjourned at this point in time. We didn't submit the application for comments. The rule was that we weren't going to do that until next time.

L. Moorhouse - Tonight we are not answering any questions or making any decisions, we are just trying to gather all the information we can and come up with a sane, reasonable decision next month.

D. Cheney - Ok.

L. Moorhouse - We want to make sure that we are legal, we want to make sure we do it right.

K. Singer - Sheila, do you have anything else to add?

S. Chalifoux - I just wanted the same list of provisions that you did for Kristy's application on the other application as well, so we have a list of all the documents that are important.

L. Moorhouse - We have them all.

S. Smith - I would like to take a look at that contract. Just to compare apples to apples.

E. Bott - You submitted the contract?

D. Cheney - I gave you the yellow one that I got.

E. Bott - That looks like the original.

T. Castronova - That is the original.

E. Bott - You don't want to give us the original.

D. Cheney - I have a pink one, I have a copy.

L. Moorhouse - This is a bad copy.

There was discussion of which copy was the best.

L. Moorhouse - Well, I think at this point we should, if you folks don't have any more questions for us, I think we have got the information we need. We will be back here on September 14th.

D. Cheney - Nice to meet everyone, thank you.

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L. Moorhouse - You too.

Castronova Hearing concluded at 8:43.

OLD BUSINESS

K. Singer made a motion to accept the minutes from the July 13, 2022 Public Hearing, seconded by L. Moorhouse, all in favor.

The Board discussed the budget.

K. Singer made a motion to adjourn, seconded by L. Moorhouse all in favor.

The meeting adjourned at 9:15 p.m.

Respectfully,

Stephanie Seeley, Secretary