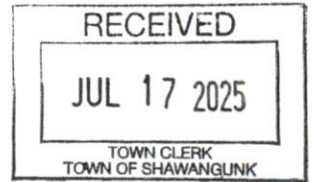


**Town of Shawangunk
Zoning Board of Appeals
April 9, 2025**



Minutes of a Public Hearing held by the Town of Shawangunk Zoning Board of Appeals on April 9, 2025, at 7:00 PM at the Town Hall, 14 Central Avenue, Wallkill, New York, County of Ulster for the following:

Present Were: Dennis Arluck, Chairperson, Susan Wiand, Robert Wallner, Sandy Damon and Chris Budney as Members, Rich Hoyt, Esq, Town Attorney, Julie Pawson, Zoning Board Secretary, Kathy Ebbrell, Court Clerk, Larry Marshall of M.N.T.M., and members of the public.

The meeting was called to order at 7:00 PM. Mr. Arluck led the Zoning Board in the pledge to the flag.

Approval of Minutes: A motion was made by Chris Budney and seconded by Sandy Damon to approve the minutes of March 19, 2025. **Vote:** All Aye's (Present; 5 / Absent; 0)

Continuation of Appeal of Building Inspectors Interpretation: NY USLE BRUYNSWICK RD I LLC / OWNER: CHRISTOPHER SPARACO/ APPLICANT: MICHAEL FINGAR; SBL: 99.2-6-10, Address: 2319 Brunswick Road, Wallkill, NY 12589, and Wallkill Central School District, R-Ag4. Large Scale Solar Energy System. +/-33.8 Gross Acreage.

Please see Transcription attached.

A motion was made by Mr. Arluck and seconded by Mr. Walner to continue this Appeal to the May 21, 2025, meeting. **Vote: (3:2) 3 Aye's: Mr. Budney, Mrs. Damon, Mr. Arluck / 2 Nay's Mrs. Wiand, Mr. Wallner.**

PUBLIC HEARING:

HUFCUT/BONIFACE: APPLICANT: ZACHARY HUFCUT OWNER: JASON BONIFACE, ENGINEER: MERCURIO, NORTON, TAROLLI & MARSHALL, SBL: 104.4-3-18 (21.16 acres), Address: 1290 Burlingham Road, Pine Bush.

Mr. Marshall of Mercurio, Norton, Tarolli and Marshall appeared on behalf of the applicant. He presented the proposed subdivision map and explained that the applicant was looking to subdivide one large parcel of land into two flag lots off Burlingham Road. He then explained that the parcels meet all zoning regulations except the fact that they are looking to create two flag lots and therefore they require a variance to do so. Mr. Marshall also explained that in creating these lots, the applicant was looking to add lot 1 to the easement access that already exists which serves lots 9 & 11, respectively. Mr. Arluck asked if the public had any questions or concerns. Mrs. Anne Gacek Steffens spoke, stating she owns the lot next to proposed lot 1 and is concerned about her property value and what lot 1 will be used for. She also said that she maintains the driveway in question, however it is owned by Mr. Boniface, she has maintained the driveway for years. She was curious about who would be responsible for maintaining it if the subdivision is approved. Mr. Marshall explained that the users of the driveway are responsible for maintenance and must discuss such and come to agreements regarding the maintenance of the common driveway easement. Mr. Marshall also explained that the proposed purpose for lot one would be to build a home on it. Mrs. Steffens then stated that Mr. Hufcut is already using proposed lot 1 and has a tree service called "Zacks Tree Care", and he is operating from proposed lot 1. She said she is concerned about that operation because it is right next to her home and large trucks are parked there. She does not mind the lot being used for a residential purpose but is concerned about a business operation. Mr. Marshall said he had not heard of this prior. Mr. Mark Watkins, who was present in the public, spoke and stated that he has seen the lot and can verify the trucks are

there currently. Mr. Arluck then suggested to Ms. Steffens that she go to the Building Inspector John Calaca and file a formal complaint regarding the illegal business next door to her property. He told her there was not much the Zoning Board could do about it, but it is up to Code Enforcement (Building Inspector) to investigate it and issue violations because just hearing of it is considered hearsay. Ms. Steffens said she would follow up with the Building Inspector on that issue. There was then discussion between Mr. Marshall and Mr. Arluck about the illegal business and whether a variance could be granted. They concluded that creating two flag lots were a separate issue from the possible illegal business happening on proposed site 1. Mr. Arluck then decided to cast a vote for the variance to allow or deny the creation of two flag lots, with his findings being: The lots would not change the character of the neighborhood, and the result would be less impactful due to one residence being built rather than a possible subdivision with multiple homes. There were no objections against this proposal by other surrounding neighbors besides Ms. Steffens. This is a Type II Exempt Action per the SEQRA regulations at 6 NYCRR 617.5 (16). Mr. Arluck called for a motion to create the 2-Flag lot subdivision and close the public hearing.

A motion was made by Mr. Arluck and seconded by Mr. Walner to GRANT THE VARIANCE TO CREATE TWO FLAG LOTS and close the Public Hearing . Vote: All Aye's (Present; 5 / Absent; 0)

PUBLIC HEARING

**SHEELEY SUBDIVISION: OWNER: WAYNE SHELEY JR, ENGINEER: MERCURIO, NORTON, TAROLLI & MARSHALL;
SBL: 106.4-2-21.1 (15.4 Acres) Address: 425 Plains Road, Wallkill. Variance request for Front Yard Setback**

Mr. Marshall of Mercurio, Norton, Tarolli & Marshall appeared on behalf of the applicant, requesting a variance for an 8.4ft front yard setback for a pre-existing, non-conforming dwelling located at 425 Plains Road. He presented the proposed Subdivision map to the members and the public and explained that the owner, Mr. Wayne Sheeley would like to create a two-family home from the pre-existing dwelling located on the site. He said no outside changes would be made to the home, only interior changes with the intent of creating an apartment upstairs and one downstairs in the home. He explained that due to the setback requirements he was referred to the ZBA from the Planning Board for the front yard variance. There were discussions regarding the structures that exist on the property and their uses as well as how the land would be divided between members of the public and Mr. Marshall. Some of those present came up and looked at the map to better understand the subdivision and Mr. Sheeley's intentions. Mr. Arluck found that this setback would not negatively affect the neighbors or the surrounding area. It would not cause any sort of disturbance. He found that there were no objections from the public. This is a Type II Exempt Action per the SEQRA regulations at 6 NYCRR 617.5 (16). Mr. Arluck called for motion to approve the front yard setback.

A motion was made by Mr. Arluck and seconded by Mr. Walner to GRANT THE 8.4ft VARIANCE FOR THE FRONT YARD SETBACK of the pre-existing home and close the Public Hearing . Vote: All Aye's (Present; 5 / Absent; 0)

Meeting Adjourned at 8:23 PM

Respectfully submitted,

**Julie Pawson
Zoning Board of Appeals Secretary**

ZONING BOARD OF APPEALS PUBLIC HEARING

ZONING CODE INTERPRETATION REQUEST

APPEAL BY U.S. LIGHT ENERGY and

NY USLE BRUYN SWICK ROAD 1, LLC

DATE: Wednesday, April 9, 2025

LOCATION: 14 Central Avenue
Wallkill, New York 12589

TIME: 7 p.m.

BOARD: Richard W. Hoyt, Esq.
Chris Budney
Sue Wiand
Sandy Damon
Robert Wallner
Dennis Arluck

BOARD SECRETARY: Julie Pawson
Kathy Ebbrell

BARCLAY DAMON, LLP: Corey A. Auerbach, Esq.

U.S. LIGHT ENERGY: Michael Fingar
Alex Burnett

PROPERTY OWNER: Chris Sparaco

1 {APRIL 9, 2025 WALLKILL}

2 MR. ARLUCK: Welcome. Let's all
3 stand for the pledge.

4 (Pledge of Allegiance)

5 MR. ARLUCK: At this time we are
6 going to vote -- you can read the agenda
7 first.

8 MS. EBBRELL: On tonight's agenda
9 we have a continuation of an
10 appeal/interpretation for New York US
11 Light Energy at 2319 Brunswick Road,
12 Wallkill, New York, 12589.

13 We also have a public hearing for
14 Hufcut/Boniface at 1290 Burlingham Road in
15 Pine Bush. And Wayne Sheeley at 425 Plains
16 Road in Walkill, New York.

17 MR. ARLUCK: Can we get a vote on
18 the minutes?

19 MR. BUDNEY: Aye.

20 MR. ARLUCK: Second?

21 MS. DAMON: Second.

22 MS. PAWSON: Chris Budney?

23 MR. BUDNEY: Aye.

24 MS. PAWSON: Sue Wiand?

1 {APRIL 9, 2025 WALLKILL}

2 MS. WIAND: Aye.

3 MS. PAWSON: Sandy Damon?

4 MS. DAMON: Aye.

5 MS. PAWSON: Robert Wallner?

6 MR. WALLNER: Abstain.

7 MR. PAWSON: Dennis Arluck?

8 MR. ARLUCK: Aye.

9 Okay, gentlemen. I'm going to give
10 the floor to Rich Hoyt.

11 MR. HOYT: Good evening. Rich
12 Hoyt, attorney for the board.

13 I would like to point out that
14 Board members have considered the entire
15 record, all the materials. There two
16 transcripts. Thank you applicants. It is
17 very helpful to read the word for word
18 transcripts.

19 Board members have seen several
20 drafts of a proposed resolution, had the
21 chance to get back to me with the
22 comments. I'm going to stress this is
23 only a draft. It is a guide. Board
24 members can modify it any way you wish.

{APRIL 9, 2025 WALLKILL}

You can do that orally and final edits can be made later. If Board members are not quite sure what they want to do, the matter could be held over. You have 62 days beginning March 20th. So we are well within that statutory time period.

First of all, do the Board members have any questions in addition to those that I've already fielded on the draft?

MR. ARLUCK: No.

MR. HOYT: I would like to give the applicant a couple of copies to follow along. This only got done in final form late today. And Cathy, the clerk, only received it about ten minutes ago. So I would like to go through it and then again, circle back for any questions, comments, what have you.

First of all, it is an appeal filed by US Light Energy for property at 2319 Brunswick Road. This is an appeal of the code official's August 8th, 2024 determination. The appeal was filed by US

{APRIL 9, 2025 WALLKILL}

Light as a presumed contract vendee or lessee for lands of Christopher Sparaco, the owner. The site is 33.8 acres, contains a single family house and associated outbuildings, and it is in the RAG-4 Zoning District. The balance of the site is populated by trees of different sizes and species, forming a formidable canopy as per the aerial views in the record.

The Appellant has filed an application with the Planning Board for the Special Use Permit and Site Plan Approval, but that application initially required several variances. But subsequent modifications to the plans have resulted in the resolution of most of the prior issues, as per the Appellant. It is noted that the other issues of not more than 50 percent lack of coverage and the required buffering are not before the Board on this appeal. The Applicant now proposes to clear 18.8 acres of trees to

1 {APRIL 9, 2025 WALLKILL}

2 install over 7900 solar panels.

3 The section of the Zoning Law at
4 issue here, I'll repeat it, but we have
5 seen it many times during this proceeding.
6 Clear cutting of mature trees shall be
7 limited to the panel array, the equipment
8 compound, the area of access roadways, and
9 the area for solar access, and in no case
10 more than ten acres per parcel. The
11 Appellant argues that the ten acre
12 clearing limitation only applies to mature
13 trees, and mature trees are those that are
14 economically viable for timber harvest or
15 are at least 16 inches in diameter. The
16 Code Official has determined a mature tree
17 is one that is old enough to produce a
18 flower or fruit. And that the law
19 concludes that in no case more than ten
20 acres per parcel may be cut. And we have
21 attached the determination right to the
22 resolution for ease of reference.

23 In its determination, the Code
24 Official also rendered an interpretation

{APRIL 9, 2025 WALLKILL}

regarding a commercial motor vehicle retail dealer use, which has been resolved and is not before the Board.

A Public Hearing was open on February 19th, 2025 and continued to March 19th, 2025, when it was closed. The Appellant submitted multiple oral comments and written materials, all of which have been reviewed by the Board. At the Public Hearing and in its pre and post-hearing submittals, the Appellant has set forth its arguments as to why it believes that this code official's determination was incorrect. In summary, the Appellant argues that this particular section is ambiguous as to the terms of a mature tree and clear cutting.

Member Robert Wallner was present at the opening of the hearing on March 19th, but was unable to attend -- I'm sorry. February 19th, but was unable to attend the March 19th Public Hearing. The record should reflect that Member Wallner has

{APRIL 9, 2025 WALLKILL}

reviewed the transcript of the proceedings and all related submittals and is fully informed as to the record.

So the following conclusions are reached. The Code Official selected a reasonable definition of a mature tree in the application of that term, of the term clear cutting in the context of a large scale solar facility. As noted by the Chairman at the March 19th Public Hearing, the USDA's definition of a mature forest is the entire stage of vegetative development from understory to old growth. As noted by Member Budney also on 3/19/25, there are a multitude of definitions for a mature tree. And per the New York State DEC, it is up to the municipality to determine which definition to use, and the Code Officials speaking for the municipality have so determined.

The Appellant points to other unrelated sections of the Zoning Law where trees are defined in other contexts, such

{APRIL 9, 2025 WALLKILL}

as for the desired guidelines and in the Wallkill Gateway Zoning District. The Board finds that the solar signing regulations under the REG in the context of the continuous tree clearing required for large scale solar facilities, and are very different from the typical design guidelines for commercial or residential site plan where landscaping is integrated with the other development. For any large scale solar array, no trees at all can be saved within the area of the facility. The Board does not accept the Appellant's premise that only economically viable trees are considered mature or that only trees of 16-inch diameter or greater at breast height are mature.

The Board finds that the common everyday meaning of the term clear cutting cannot be in dispute. Clear cutting means that all vegetation, be it large, medium or small, will be removed to prepare an 18.8 acre fully cleared site for the

{APRIL 9, 2025 WALLKILL}

installation of the array. The Board must analyze the Zoning Law provision and avoid rendering any of its language superfluous in this appeal. The section at issue concludes with the all important clause, and in no case more than ten acres per parcel.

The Board disagrees with the Applicant's position, and it can canvas the entire site selecting which trees it considers mature in calculating that it, therefore, only will remove 9.98 of the acres of such trees, which is just under the ten acre maximum.

The Board further finds that the section in question calls for a maximum of ten acres of clearing for any vegetation other than scrub growth or immature saplings. The record reflects that the process leading up to the 2018 adoption of this section at issue included the term wooded area, that was later replaced with the term mature tree. Under either term,

{APRIL 9, 2025 WALLKILL}

it is the Board's conclusion that the drafters of the law intended to prevent more than ten acres of clear cutting as set forth in the Code Official's determination.

This is a Type II exempt action, per the SEQR. GML 239 does not apply. Based upon the entire record, the Board affirms the August 8th determination and denies the appeal. And a copy of this decision shall be filed with the building department, the Town Clerk and a copy to US Light Energy and Christopher Sparaco, the owner.

Now, again, I want to repeat, you are not bound at all. That was just kind of a guide, and Board members are free to ask questions, tweak the resolution, anything you want to do, including putting it over.

Thank you.

MR. ARLUCK: Does anyone here on the Board have anymore questions or want

1 {APRIL 9, 2025 WALLKILL}

2 to add anything to this?

3 (No response.)

4 MR. HOYT: Call for a vote.

5 MR. AUERBACH: Mr. Chair, just a
6 point of order, if I may.

7 MR. ARLUCK: Sure.

8 MR. AUERBACH: Corey Auerbach from
9 the law firm of Barclay Damon. Good
10 evening. Thank you all for your time
11 tonight.

12 This is a literal and a figurative
13 coming home for me, as I traveled from
14 Buffalo. I'm originally from Ellenville,
15 New York. So it was very nice to travel
16 partially down Route 52 to be here. I
17 traveled through this lovely town.

18 I'm new to this file. My colleague,
19 Ari Goldberg, has been here representing
20 US LE throughout the process. But having
21 an opportunity to acquaint myself with the
22 materials and the documents, and just
23 handed this resolution now and hearing of
24 it for the first time as I get here.

{APRIL 9, 2025 WALLKILL}

But the particular point of order I wanted to raise relates to one of the last sentences in the proposed decision.

Specifically, paragraph ten, which says this is a Type II exempt action per the SEQR, I believe. And in most cases, an interpretation appeal is clearly a Type II action on the Type II list under the State Environmental Quality Review Act.

However, the action which is the development of this renewable energy facility, is actually a Type I action, and the Planning Board is the lead agency for purposes of a coordinated environmental review. And when you have a Type I action, no involved agency, which the Zoning Board is, can take an act to fund or approve an action unless or until a determination of significance has been made by the lead agency. So if we were merely handling an interpretation appeal, separate and apart from this Type I action for this renewable energy facility, it

LAURA A. COUCH
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{APRIL 9, 2025 WALLKILL}

absolutely would be Type II, and you could proceed without any further SEQR review. But this is part and parcel to a larger action, the development of the solar array. And the lead agency has already classified the action as Type I. And as a result, no action can be taken by any involved agency, including this Zoning Board in this interpretation appeal, unless and until the lead agency makes its determination of significance. So while you can hold Public Hearings, and you have, and while you can close Public Hearings, which you have, I didn't appreciate that the Board intended to take an action tonight, nor did I expect you to, because the lead agency has yet to make a determination of significance.

You can't have multiple classifications of the same action. In other words, we couldn't come here, for example, for a SEPT Act Variance for this project because the lead agency has not

LAURA A. COUCH
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{APRIL 9, 2025 WALLKILL}

yet made its determination of significance. That is what a coordinated review is. A lead agency handles the environmental review for all involved agencies and renders a determination.

MR. ARLUCK: Excuse me. I have felt that this is the cart before the horse. All right. That has been my personal feeling. So the point that you are about to make is that this is null and void?

MR. AUERBACH: Not that it is null and void. That you are not yet in a position to take action on this appeal. Once the lead agency makes its determination of significance, then, of course, you could take any action because the SEQR will have been completed at that point.

So while it is absolutely true, again, at the risk of beating a dead horse, that generally, an interpretation appeal is Type II, in the context of this

{APRIL 9, 2025 WALLKILL}

larger Type I action, it is just a little premature right now for you actually to adopt this or any resolution.

MR. HOYT: While it is an interesting argument, I frankly, didn't ever think of it because every appeal I have been involved in is clearly under the cited section, 37, I think it is, of 617.5. An interpretation simply is not subject to SEQR. It is exempt.

And I might point out that while the cart may be before the horse, I'm sure the planners would say the same thing, because how could they reach a SEQR determination if they don't have a plan in front of them that complies with Zoning. And the whole reason for this exercise here is to decide what are the Zoning rules for this project. And we have come, spent quite a bit of time, and the Planning Board, I don't believe, can act at all right now, nor could they act until they know whether or not Mr. Colacca's

{APRIL 9, 2025 WALLKILL}

ruling is being upheld or reversed. So that to me would be the counter, both legal and practical reasons why I would consider that the Board could put this matter to a vote, and the Applicant certainly has its remedies if it feels strongly about it.

MR. ARLUCK: I'll take your advice.

MR. AUERBACH: It is absolutely true that Type II actions do not require any further SEQR review. We have three types of actions in SEQR. We have Type I actions, and how do you know it is a Type I action, you look at the list, and if it is on the list, it is Type I. There is a list of Type II actions. How do you know it is Type II? You look at the list, and if it is on there it is Type II. And then, of course, we have unlisted actions, which are on neither list. Right. But they are all actions, right. They are still all actions.

No action can be taken by any

{APRIL 9, 2025 WALLKILL}

involved agency unless and until a determination of significance has been rendered. And you should take the advice from counsel, from your attorney. I just asked the question. He is hearing this argument for the first time, just like I'm seeing this proposed resolution for the first time. I don't know if there is a particular urgency considering this technical legal issue for you to actually proceed. Of course, it would be your prerogative to do that, and it would be our prerogative to ask a court to review that. I'm hoping that is not necessary. Because I think the law is absolutely clear that this is clearly an action, right, you had a Public Hearing, you are taking an action, making a determination, right. No action to fund or approve a project can be taken until the lead agency makes its determination of significance. As your attorney stated, he didn't consider my argument because he is usually handling

LAURA A. COUCH
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{APRIL 9, 2025 WALLKILL}

interpretation appeals separate and apart
from a larger action.

MR. HOYT: I --

MR. AUERBACH: Here, the lead
agency classified the action as Type I.

I'm sorry.

MR. HOYT: Actually, I meant to say
that I haven't seen the argument in the
context of any surrounding Planning Board
application. Usually that is how this
comes up. And I might point out that SEQR
prohibits actions that, and you said that
fund or approve a permit, a subdivision, a
site plan variances. This is none of the
above. This is an interpretation. It is
not a permit. It is not an approval of
any action. It is not a permit. So I
would say, again, arguments noted for the
record, but unless the Board has other
questions, we can call the question.

MR. AUERBACH: Respectfully,
Mr. Hoyt, the adoption of a local law, for
example, is not approving something.

1 {APRIL 9, 2025 WALLKILL}

2 Nevertheless, it is subject to SEQR.

3 Right. Entering into a contract isn't

4 approving something, but it is,

5 nevertheless, subject to SEQR. I

6 understand the Board's desire to move this

7 forward, and we are grateful for your

8 efforts, but what I'm suggesting is you

9 clearly under the -- under the Type I

10 action of this project, there is no SEQR

11 completed. There is no determination of

12 significance. You can't say this part of

13 the action is Type I and this part of the

14 action is Type II. That is not a thing.

15 MR. HOYT: How is the Planning

16 Board supposed to reach any conclusion not

17 knowing what the rules are?

18 MR. AUERBACH: The way that the

19 Planning Board renders its decision is by

20 identifying the potentially significant

21 environmental impacts, making a reasoned

22 elaboration on the facts --

23 MR. HOYT: I got that.

24 MR. AUERBACH: -- and issuing a

{APRIL 9, 2025 WALLKILL}

determination of significance. That is their role. Often, if you'll allow me. Often times a lead agency is required to make a determination of environmental significance before lots of other decisions are made. Well before they make a site plan approval or a Special Use Persist. And what I'm afraid of, my concern is we are going to get into an unnecessarily adversarial position over a very well settled area of law. I appreciate that your attorney may need to take some time to think about it, and I say that is okay. We are happy to come back next month once he has done that. I would just hate for us to launch into a process where we are going to have to be unnecessarily adversarial and engage the judicial system over what I believe to be a clear and settled black letter area of law.

MR. HOYT: And I respectfully disagree. So I think you have made your record.

1 {APRIL 9, 2025 WALLKILL}

2 MR. AUERBACH: I'm trying to do
3 more than make a record, respectfully.
4 I'm trying to create a relationship, a
5 partnership between this Applicant and
6 this Municipality, because that is what it
7 has been so far.

8 I urge you all, I am here not only
9 as an advocate, but I am here as an
10 academic. I spent -- I started my career
11 at the Association of Towns in the State
12 of New York teaching Zoning Boards how to
13 administer the Planning and Zoning function
14 of Town government. I am the chair of
15 Barclay Damon's land use and zoning
16 practice area. I eat sleep and breathe
17 this. And the road we are going down is
18 unnecessarily going to launch us into an
19 adversarial position, when what I'm
20 suggesting is let's just wait another
21 month. Last month you closed the Public
22 Hearing, we waited another month. The
23 Applicant will gladly consent to an
24 extension of the 62-day time period.

LAURA A. COUCH
(518) 495-3830

1 {APRIL 9, 2025 WALLKILL}

2 Although it is probably not necessary,
3 because again, this Board is not in a
4 position to act until the lead agency
5 makes its determination of significance.
6 So I'm imploring you, over the advice of
7 your counsel, to please consider taking a
8 break, taking a step back. Let's take
9 another 30 days and let's allow your
10 attorney and maybe myself to engage in
11 some additional conversation before we get
12 in an unnecessarily litigious and
13 adversarial position, which I hate for any
14 of us to be in.

15 MR. HOYT: What do you think will
16 be different a month from now?

17 MR. AUERBACH: I think that the
18 conclusion we will come to is that the
19 Planning Board needs to make a determination
20 of significance before we can proceed with
21 any determination of the Zoning Board.
22 And what I'm going to suggest is that the
23 Applicant, and again, being new to this,
24 what I'm going to suggest is that they

{APRIL 9, 2025 WALLKILL}

resubmit their application for a variance from this provision. So that before you at the same time next month, hopefully, if the Planning Board makes a determination of significance, or the month after, is you will have not only this interpretation appeal request, but in the alternative, a variance application from this requirement so that you can look at this holistically. Because if you adopt this resolution as written, that is potentially where this Applicant would be heading, leaving aside any adversarial proceeding. So what I would like to do is take that pause, take that break. Let's make sure that we are all in alignment before we unnecessarily get ourselves in a bad position. We can then reassess next month.

MR. ARLUCK: Nothing really changes the findings.

MR. AUERBACH: That may be so or maybe it does. Maybe the determination of significance from the Planning Board

1 {APRIL 9, 2025 WALLKILL}

2 fleshes out some other facts. That is the
3 very reason why SEQR must take place
4 before any determination of an involved
5 agency occurs. So I'm saying what is the
6 harm of taking another 30 days to look at
7 this?

8 MR. ARLUCK: You know what the harm
9 is there. We would be setting a
10 precedent.

11 MR. AUERBACH: A precedent?

12 MR. ARLUCK: Yes. A precedent to
13 allow more than ten acres cleared.

14 MR. AUERBACH: Well, I'm just
15 saying to settle this issue of whether the
16 SEQR needs to take place before you make
17 your decision. Not anything as to the
18 facts here for your determination.

19 MR. HOYT: I might be able to cut
20 to the chase here.

21 At the last Pubic Hearing your
22 clients withdrew, without prejudice, all
23 their variance applications, which would
24 have been included in this issue. If this

1 {APRIL 9, 2025 WALLKILL}

2 resolution is adopted, you are absolutely
3 free to come back in and seek whatever
4 variance relief you might need. And this
5 resolution does not prevent you from doing
6 that. As a matter of fact, I'd submit to
7 you that you have to do that to exhaust
8 your administrative remedy before you can
9 bring this Board in on an Article 78.

10 MR. AUERBACH: I didn't follow
11 that, Mr. Hoyt.

12 MR. HOYT: You have another remedy.
13 If this resolution is adopted, you can
14 file for an area variance whenever you
15 would like to.

16 MR. AUERBACH: I understand.

17 Are you suggesting, Mr. Hoyt, that
18 before anyone can ask a court to review a
19 ZBA's interpretation decision, they must
20 first submit a variance application.

21 MR. HOYT: I would assume that you
22 would want to seek that relief, which is
23 different than the relief you are seeking
24 here.

1 {APRIL 9, 2025 WALLKILL}

2 MR. AUERBACH: Totally separate.
3 Separate and apart. Right.

4 MR. HOYT: And we never once said
5 to you that you are precluded. As a
6 matter of fact, when you withdrew a month
7 ago, we said without prejudice.

8 MR. AUERBACH: Understood.

9 MR. HOYT: And in fact, Ari Goldberg
10 sent a letter formally withdrawing and
11 highlighting what I had said, it is without
12 prejudice.

13 MR. AUERBACH: I understand. But
14 what we would have to do within 30 days
15 from when this decision tonight is filed
16 in the Town Clerk's Office is to commence
17 an Article 78 proceeding --

18 MR. HOYT: Okay. All right.

19 MR. AUERBACH: -- on the ground
20 that you made a decision before SEQR was
21 completed, and I'm trying to avoid that.

22 And I'm just asking, please, I'm
23 looking to each Board member. This can
24 wait 30 days so we don't have to be in a

1 {APRIL 9, 2025 WALLKILL}

2 lawsuit with the Town.

3 MR. HOYT: And the client can
4 certainly decide what it wants to do. I
5 said a half hour ago, they don't have to
6 act tonight.

7 MR. AUERBACH: I appreciate that.

8 MR. HOYT: But I don't think
9 anything is going to be different a month
10 from now.

11 Just let me finish.

12 To carry your theory out, you leave
13 this meeting tonight without a
14 determination, and then you go to the
15 Planning Board and ask them to analyze a
16 plan that doesn't meet Zoning, and then
17 adopt a MAG DEC before this Board can
18 decide what a mature tree is.

19 MR. AUERBACH: That is not accurate.
20 That is not accurate. If I may interrupt
21 for a moment.

22 MR. HOYT: By the way, this isn't a
23 hearing, so the chair is giving you a lot
24 of latitude.

1 {APRIL 9, 2025 WALLKILL}

2 MR. AUERBACH: And I asked for his
3 permission, and I appreciate his
4 discretion.

5 To your point, what the Planning
6 Board is going to make a determination of
7 significance on is the plan that is
8 pending and presented before them.

9 MR. HOYT: Which doesn't meet
10 zoning.

11 MR. AUERBACH: That is not the point.
12 You asked what they are supposed to make
13 their determination of significance upon.
14 We have a clearly presented action before
15 them. We are asking them to make a
16 determination of significance based upon
17 any potentially significant environmental
18 impacts from that proposal. Whether you
19 make this decision or not doesn't change
20 what we are proposing. Our proposal is
21 the same whether we have to get additional
22 relief from the ZBA is a question, but
23 that is not an environmental impact.

24 MR. HOYT: To cut this to the

{APRIL 9, 2025 WALLKILL}

chase, certainly, the Board can table this. I mean, there is just no question about it, and we will all come back either within the 62 days or by extension. But I'm going to submit to you that not much is going to have happened, and this thing may drag for, I don't know how the Planning Board would analyze a matter that doesn't meet Zoning. So I think it is up to the Board to decide.

MR. AUERBACH: The only thing that would happen is you will make a decision that complies with the law or right now that does not comply with the law.

MR. ARLUCK: I'm going to make a motion to canvas the Board. Do I have a second?

MR. WALLNER: I'll second.

MR. ARLUCK: The motion is to table this decision tonight and put it down the road to another meeting next month. They are going to need an extension. Or to resolve this tonight and let them do the

1 {APRIL 9, 2025 WALLKILL}
2 variances on another night.
3 Vote. Chris?
4 MR. WALLNER: Aye.
5 MR. ARLUCK: Sue?
6 MS. WIAND: What are we doing?
7 MR. ARLUCK: We are voting to make
8 a decision tonight or to table. If you
9 vote yes, that is tonight. If you vote
10 no, this is tabled.
11 MR. AUERBACH: No. He voted to
12 table on the end, he said. Right?
13 MR. HOYT: Let's just ask him.
14 Chris?
15 MR. WALLNER: I want to table it.
16 MR. ARLUCK: You do?
17 MR. WALLNER: Yes, I do.
18 MR. ARLUCK: Sue?
19 MS. WIAND: I want to decide
20 tonight.
21 MR. ARLUCK: Sandy?
22 MS. DAMON: Table it.
23 MR. ARLUCK: Robert?
24 MR. WALLNER: I would like to make

1 {APRIL 9, 2025 WALLKILL}

2 a decision. I'm ready to make a decision.

3 MR. ARLUCK: It is up to me.

4 MR. HOYT: If you are on the edge.

5 MR. ARLUCK: I am on the edge. We
6 will table. We will give you another
7 meeting plus whatever the extra ten days.

8 MR. HOYT: Just before we part, is
9 the Board meeting in May?

10 MR. ARLUCK: Yes. The next Board
11 meeting is --

12 MS. PAWSON: May 21st.

13 MR. HOYT: I don't have my calendar
14 in front of me. Assuming that is not --
15 assuming that is the 63rd day, is there an
16 extension to the May 21st meeting?

17 MR. AUERBACH: Yes. Applicant
18 agrees to extend the 62 days on the
19 record.

20 MR. ARLUCK: So be it.

21 All right, gentlemen.

22 MR. AUERBACH: Thank you very much.
23 We appreciate it, Mr. Chairman. Thank
24 you, Mr. Hoyt.

{APRIL 9, 2025 WALLKILL}

(Whereupon, the proceedings were
suspended.)

{APRIL 9, 2025 WALLKILL}

C E R T I F I C A T I O N

I, Laura A. Couch, a notary public and
shorthand reporter in and for the County of
Schenectady and State of New York, do hereby
certify that the foregoing transcript of the
proceedings is a true and correct transcript
of the proceedings at the time and place
specified hereinbefore.

LAURA A. COUCH
LAURA A. COUCH

4/15/25
DATE

LAURA A. COUCH
(518) 495-3830

1	9			B
1 [1] - 1:7 12589 [2] - 1:10, 2:12 1290 [1] - 2:14 14 [1] - 1:10 16 [1] - 6:15 16-inch [1] - 9:17 18.8 [2] - 5:24, 9:24 19th [6] - 7:6, 7:7, 7:20, 7:22, 7:23, 8:11	9 [1] - 1:9 9.98 [1] - 10:13			bad [1] - 24:18 balance [1] - 5:7 BARCLAY [1] - 1:17 Barclay [2] - 12:9, 22:15 based [2] - 11:9, 29:16 beating [1] - 15:22 beginning [1] - 4:6 believes [1] - 7:13 between [1] - 22:5 bit [1] - 16:21 black [1] - 21:21 board [34] - 3:12, 3:23, 4:3, 4:8, 5:13, 5:23, 7:4, 7:10, 9:4, 9:19, 10:9, 11:9, 11:24, 13:14, 14:10, 14:16, 16:22, 17:5, 19:20, 20:16, 20:19, 23:3, 23:19, 23:21, 24:24, 26:9, 28:15, 28:17, 29:6, 30:2, 30:9, 30:11, 32:9, 32:10 BOARD [3] - 1:2, 1:12, 1:16 Board [11] - 3:14, 3:19, 9:14, 10:2, 10:16, 11:18, 13:18, 19:10, 24:5, 27:23, 30:17 board's [2] - 11:2, 20:6 Boards [1] - 22:12 bound [1] - 11:17 break [2] - 23:8, 24:16 breast [1] - 9:18 breathe [1] - 22:16 bring [1] - 26:9 Brunswick [2] - 2:11, 4:22 BRUYNWICK [1] - 1:7 BUDNEY [2] - 2:19, 2:23 Budney [3] - 1:13, 2:22, 8:15 Buffalo [1] - 12:14 buffering [1] - 5:22 building [1] - 11:12 Burlingham [1] - 2:14 Burnett [1] - 1:19 bush [1] - 2:15 BY [1] - 1:6
2	A			
2018 [1] - 10:21 2024 [1] - 4:23 2025 [3] - 1:9, 7:6, 7:7 20th [1] - 4:6 21st [2] - 32:12, 32:16 2319 [2] - 2:11, 4:21 239 [1] - 11:8	able [1] - 25:19 absolutely [5] - 14:2, 15:21, 17:10, 18:16, 26:2 abstain [1] - 3:6 academic [1] - 22:10 accept [1] - 9:14 access [2] - 6:8, 6:9 accurate [2] - 28:19, 28:20 acquaint [1] - 12:21 acre [3] - 6:11, 9:24, 10:15 acres [9] - 5:4, 5:24, 6:10, 6:20, 10:7, 10:14, 10:18, 11:4, 25:13 act [6] - 13:10, 13:18, 16:22, 16:23, 23:4, 28:6 Act [1] - 14:23 action [28] - 11:7, 13:6, 13:9, 13:11, 13:13, 13:17, 13:19, 13:23, 14:5, 14:7, 14:8, 14:17, 14:21, 15:15, 15:18, 16:2, 17:15, 17:24, 18:17, 18:19, 18:20, 19:3, 19:6, 19:18, 20:10, 20:13, 20:14, 29:14 actions [8] - 17:11, 17:13, 17:14, 17:17, 17:20, 17:22, 17:23, 19:13 add [1] - 12:2 addition [1] - 4:9 additional [2] - 23:11, 29:21 administer [1] - 22:13 administrative [1] - 26:8 adopt [3] - 16:4, 24:11, 28:17 adopted [2] - 26:2, 26:13 adoption [2] - 10:21, 19:23 adversarial [5] - 21:11, 21:19, 22:19, 23:13, 24:14 advice [3] - 17:9, 18:4, 23:6	advocate [1] - 22:9 aerial [1] - 5:10 affirms [1] - 11:10 afraid [1] - 21:9 agencies [1] - 15:5 agency [16] - 13:14, 13:17, 13:21, 14:6, 14:9, 14:11, 14:18, 14:24, 15:4, 15:16, 18:2, 18:21, 19:6, 21:4, 23:4, 25:5 agenda [2] - 2:6, 2:8 ago [3] - 4:16, 27:7, 28:5 agrees [1] - 32:18 Alex [1] - 1:19 alignment [1] - 24:17 Allegiance [1] - 2:4 allow [3] - 21:3, 23:9, 25:13 alternative [1] - 24:8 ambiguous [1] - 7:17 analyze [3] - 10:3, 28:15, 30:9 apart [3] - 13:23, 19:2, 27:3 APPEAL [1] - 1:6 appeal [13] - 4:20, 4:22, 4:24, 5:23, 10:5, 11:11, 13:8, 13:22, 14:10, 15:15, 15:24, 16:7, 24:8 appeal/interpretation [1] - 2:10 appeals [1] - 19:2 APPEALS [1] - 1:2 Appellant [5] - 6:11, 7:8, 7:12, 7:15, 8:22 appellant [2] - 5:12, 5:19 Appellant's [1] - 9:14 applicant [2] - 4:13, 22:5 Applicant [6] - 5:23, 17:6, 22:23, 23:23, 24:13, 32:17 Applicants [1] - 10:10 applicants [1] - 3:16 application [7] - 5:13, 5:15, 8:8, 19:11, 24:2, 24:9, 26:20 applications [1] - 25:23 applies [1] - 6:12 apply [1] - 11:8 appreciate [5] - 14:16, 21:12, 28:7, 29:3, 32:23 Approval [1] - 5:15	approval [2] - 19:17, 21:8 approve [3] - 13:19, 18:20, 19:14 approving [2] - 19:24, 20:4 April [1] - 1:9 area [8] - 6:8, 6:9, 9:13, 10:23, 21:12, 21:21, 22:16, 26:14 argues [2] - 6:11, 7:16 argument [4] - 16:6, 18:7, 18:24, 19:9 arguments [2] - 7:13, 19:19 Ari [2] - 12:19, 27:9 ARLUCK [25] - 2:2, 2:5, 2:17, 2:20, 3:8, 4:11, 11:23, 12:7, 15:7, 17:9, 24:20, 25:8, 25:12, 30:16, 30:20, 31:5, 31:7, 31:16, 31:18, 31:21, 31:23, 32:3, 32:5, 32:10, 32:20 Arluck [2] - 1:15, 3:7 array [4] - 6:7, 9:12, 10:2, 14:6 article [2] - 26:9, 27:17 aside [1] - 24:13 associated [1] - 5:6 Association [1] - 22:11 assume [1] - 26:21 assuming [2] - 32:14, 32:15 attached [1] - 6:21 attend [2] - 7:21, 7:22 attorney [5] - 3:12, 18:5, 18:23, 21:13, 23:10 AUERBACH [27] - 12:5, 12:8, 15:13, 17:10, 19:5, 19:22, 20:18, 20:24, 22:2, 23:17, 24:22, 25:11, 25:14, 26:10, 26:16, 27:2, 27:8, 27:13, 27:19, 28:7, 28:19, 29:2, 29:11, 30:12, 31:11, 32:17, 32:22 Auerbach [2] - 1:17, 12:8 August [2] - 4:23, 11:10 Avenue [1] - 1:10 avoid [2] - 10:3, 27:21 Aye [6] - 2:19, 2:23, 3:2, 3:4, 3:8, 31:4	
3				
3/19/25 [1] - 8:15 30 [4] - 23:9, 25:6, 27:14, 27:24 33.8 [1] - 5:4 37 [1] - 16:9				
4				
4/15/25 [1] - 34:18 425 [1] - 2:15				
5				
50 [1] - 5:21 52 [1] - 12:16				
6				
617.5 [1] - 16:9 62 [3] - 4:5, 30:5, 32:18 62-day [1] - 22:24 63rd [1] - 32:15				
7				
7 [1] - 1:11 78 [2] - 26:9, 27:17 7900 [1] - 6:2				
8				
8th [2] - 4:23, 11:10				
C				
				calculating [1] - 10:12 calendar [1] - 32:13

cannot [1] - 9:21 canopy [1] - 5:10 canvas [2] - 10:10, 30:17 career [1] - 22:10 carry [1] - 28:12 cart [2] - 15:8, 16:13 case [3] - 6:9, 6:19, 10:7 cases [1] - 13:7 Cathy [1] - 4:15 Central [1] - 1:10 certainly [3] - 17:7, 28:4, 30:2 certify [1] - 34:10 chair [3] - 12:5, 22:14, 28:23 Chairman [1] - 32:23 chairman [1] - 8:11 chance [1] - 3:21 change [1] - 29:19 changes [1] - 24:20 chase [2] - 25:20, 30:2 Chris [5] - 1:13, 1:20, 2:22, 31:3, 31:14 Christopher [2] - 5:3, 11:14 circle [1] - 4:18 cited [1] - 16:8 classifications [1] - 14:21 classified [2] - 14:7, 19:6 clause [1] - 10:6 clear [9] - 5:24, 6:6, 7:18, 8:9, 9:20, 9:21, 11:4, 18:17, 21:20 cleared [2] - 9:24, 25:13 clearing [3] - 6:12, 9:6, 10:18 clearly [5] - 13:8, 16:8, 18:17, 20:9, 29:14 clerk [2] - 4:15, 11:13 clerk's [1] - 27:16 client [1] - 28:3 clients [1] - 25:22 close [1] - 14:14 closed [2] - 7:7, 22:21 code [6] - 4:23, 6:16, 6:23, 7:14, 8:6, 11:5 CODE [1] - 1:5 Code [1] - 8:20 Colacca's [1] - 16:24 colleague [1] - 12:18 coming [1] - 12:13 commence [1] - 27:16 comments [3] - 3:22, 4:19, 7:8	commercial [2] - 7:2, 9:9 common [1] - 9:19 completed [3] - 15:19, 20:11, 27:21 complies [2] - 16:17, 30:14 comply [1] - 30:15 compound [1] - 6:8 concern [1] - 21:9 concludes [2] - 6:19, 10:6 conclusion [3] - 11:2, 20:16, 23:18 conclusions [1] - 8:5 consent [1] - 22:23 consider [3] - 17:5, 18:23, 23:7 considered [2] - 3:14, 9:16 considering [1] - 18:10 considers [1] - 10:12 contains [1] - 5:5 context [4] - 8:9, 9:5, 15:24, 19:10 contexts [1] - 8:24 continuation [1] - 2:9 continued [1] - 7:6 continuous [1] - 9:6 contract [2] - 5:2, 20:3 conversation [1] - 23:11 coordinated [2] - 13:15, 15:3 copies [1] - 4:13 copy [2] - 11:11, 11:13 Corey [2] - 1:17, 12:8 correct [1] - 34:11 COUCH [2] - 34:18, 34:18 Couch [1] - 34:7 counsel [2] - 18:5, 23:7 counter [1] - 17:3 County [1] - 34:8 couple [1] - 4:13 course [3] - 15:18, 17:20, 18:12 court [2] - 18:14, 26:18 coverage [1] - 5:21 create [1] - 22:4 cut [3] - 6:20, 25:19, 29:24 cutting [6] - 6:6, 7:18, 8:9, 9:20, 9:21, 11:4	D Damon [3] - 1:14, 3:3, 12:9 DAMON [4] - 1:17, 2:21, 3:4, 31:22 Damon's [1] - 22:15 DATE [2] - 1:9, 34:18 days [8] - 4:6, 23:9, 25:6, 27:14, 27:24, 30:5, 32:7, 32:18 dead [1] - 15:22 dealer [1] - 7:3 DEC [2] - 8:18, 28:17 decide [5] - 16:19, 28:4, 28:18, 30:11, 31:19 decision [13] - 11:12, 13:4, 20:19, 25:17, 26:19, 27:15, 27:20, 29:19, 30:13, 30:21, 31:8, 32:2 decisions [1] - 21:6 defined [1] - 8:24 definition [3] - 8:7, 8:12, 8:19 definitions [1] - 8:16 denies [1] - 11:11 Dennis [2] - 1:15, 3:7 department [1] - 11:13 design [1] - 9:8 desire [1] - 20:6 desired [1] - 9:2 determination [30] - 4:24, 6:21, 6:23, 7:14, 11:6, 11:10, 13:20, 14:12, 14:19, 15:2, 15:6, 15:17, 16:16, 18:3, 18:19, 18:22, 20:11, 21:2, 21:5, 23:5, 23:19, 23:21, 24:5, 24:23, 25:4, 25:18, 28:14, 29:6, 29:13, 29:16 determine [1] - 8:19 determined [2] - 6:16, 8:21 development [4] - 8:14, 9:11, 13:12, 14:5 diameter [2] - 6:15, 9:17 different [5] - 5:8, 9:8, 23:16, 26:23, 28:9 disagree [1] - 21:23 disagrees [1] - 10:9 discretion [1] - 29:4 dispute [1] - 9:21 District [1] - 5:7 district [1] - 9:3	documents [1] - 12:22 done [2] - 4:14, 21:16 down [3] - 12:16, 22:17, 30:21 draft [2] - 3:23, 4:10 drafters [1] - 11:3 drafts [1] - 3:20 drag [1] - 30:8 during [1] - 6:5 E ease [1] - 6:22 eat [1] - 22:16 EBBRELL [1] - 2:8 Ebbrell [1] - 1:16 economically [2] - 6:14, 9:15 edge [2] - 32:4, 32:5 edits [1] - 4:2 efforts [1] - 20:8 either [2] - 10:24, 30:4 elaboration [1] - 20:22 Ellenville [1] - 12:14 end [1] - 31:12 ENERGY [2] - 1:6, 1:18 Energy [2] - 2:11, 11:14 energy [3] - 4:21, 13:12, 13:24 engage [2] - 21:19, 23:10 entering [1] - 20:3 entire [4] - 3:14, 8:13, 10:11, 11:9 environmental [7] - 13:10, 13:15, 15:4, 20:21, 21:5, 29:17, 29:23 equipment [1] - 6:7 Esq [2] - 1:12, 1:17 evening [2] - 3:11, 12:10 everyday [1] - 9:20 example [2] - 14:23, 19:24 Excuse [1] - 15:7 exempt [3] - 11:7, 13:6, 16:11 exercise [1] - 16:18 exhaust [1] - 26:7 expect [1] - 14:17 extend [1] - 32:18 extension [4] - 22:24, 30:5, 30:23, 32:16 extra [1] - 32:7	F facilities [1] - 9:7 facility [4] - 8:10, 9:13, 13:13, 13:24 fact [3] - 26:6, 27:6, 27:9 facts [3] - 20:22, 25:2, 25:18 family [1] - 5:5 far [1] - 22:7 February [2] - 7:6, 7:22 felt [1] - 15:8 fielded [1] - 4:10 figurative [1] - 12:12 file [2] - 12:18, 26:14 filed [5] - 4:20, 4:24, 5:12, 11:12, 27:15 final [2] - 4:2, 4:14 findings [1] - 24:21 Fingar [1] - 1:18 finish [1] - 28:11 firm [1] - 12:9 first [7] - 2:7, 4:8, 4:20, 12:24, 18:7, 18:9, 26:20 fleshes [1] - 25:2 floor [1] - 3:10 flower [1] - 6:18 follow [2] - 4:13, 26:10 following [1] - 8:5 foregoing [1] - 34:10 forest [1] - 8:12 form [1] - 4:14 formally [1] - 27:10 formidable [1] - 5:9 forming [1] - 5:9 forth [2] - 7:12, 11:5 forward [1] - 20:7 frankly [1] - 16:6 free [2] - 11:18, 26:3 front [2] - 16:17, 32:14 fruit [1] - 6:18 fully [2] - 8:3, 9:24 function [1] - 22:13 fund [3] - 13:18, 18:20, 19:14 G gateway [1] - 9:3 generally [1] - 15:23 gentlemen [2] - 3:9, 32:21 gladly [1] - 22:23 GML [1] - 11:8 Goldberg [2] - 12:19, 27:9
--	---	---	--	---

government ^[1] - 22:14	32:8, 32:13	L	M	21:22, 22:2, 23:15, 23:17, 24:20, 24:22, 25:8, 25:11, 25:12, 25:14, 25:19, 26:10, 26:12, 26:16, 26:21, 27:2, 27:4, 27:8, 27:9, 27:13, 27:18, 27:19, 28:3, 28:7, 28:8, 28:19, 28:22, 29:2, 29:9, 29:11, 29:24, 30:12, 30:16, 30:19, 30:20, 31:4, 31:5, 31:7, 31:11, 31:13, 31:15, 31:16, 31:17, 31:18, 31:21, 31:23, 31:24, 32:3, 32:4, 32:5, 32:8, 32:10, 32:13, 32:17, 32:20, 32:22
grateful ^[1] - 20:7	Hufcut/Boniface ^[1] - 2:14	lack ^[1] - 5:21	MAG ^[1] - 28:17	MS ^[12] - 2:8, 2:21, 2:22, 2:24, 3:2, 3:3, 3:4, 3:5, 31:6, 31:19, 31:22, 32:12
greater ^[1] - 9:17	I	land ^[1] - 22:15	March ^[5] - 4:6, 7:7, 7:20, 7:23, 8:11	multiple ^[2] - 7:8, 14:20
ground ^[1] - 27:19	identifying ^[1] - 20:20	lands ^[1] - 5:3	materials ^[3] - 3:15, 7:9, 12:22	multitude ^[1] - 8:16
growth ^[2] - 8:14, 10:19	II ^[11] - 11:7, 13:6, 13:8, 13:9, 14:2, 15:24, 17:11, 17:17, 17:18, 17:19, 20:14	landscaping ^[1] - 9:10	matter ^[5] - 4:5, 17:6, 26:6, 27:6, 30:9	municipality ^[3] - 8:18, 8:20, 22:6
guide ^[2] - 3:23, 11:18	immature ^[1] - 10:19	language ^[1] - 10:4	mature ^[13] - 6:6, 6:12, 6:13, 6:16, 7:17, 8:7, 8:12, 8:17, 9:16, 9:18, 10:12, 10:24, 28:18	must ^[3] - 10:2, 25:3, 26:19
guidelines ^[2] - 9:2, 9:9	impact ^[1] - 29:23	large ^[4] - 8:9, 9:7, 9:11, 9:22	maximum ^[2] - 10:15, 10:17	N
H	impacts ^[2] - 20:21, 29:18	larger ^[3] - 14:4, 16:2, 19:3	mean ^[1] - 30:3	necessary ^[2] - 18:15, 23:2
half ^[1] - 28:5	including ^[2] - 11:20, 14:9	last ^[3] - 13:3, 22:21, 25:21	meaning ^[1] - 9:20	need ^[3] - 21:13, 26:4, 30:23
handed ^[1] - 12:23	incorrect ^[1] - 7:15	late ^[1] - 4:15	means ^[1] - 9:21	needs ^[2] - 23:19, 25:16
handles ^[1] - 15:4	informed ^[1] - 8:4	latitude ^[1] - 28:24	meant ^[1] - 19:8	never ^[1] - 27:4
handling ^[2] - 13:22, 18:24	install ^[1] - 6:2	launch ^[2] - 21:17, 22:18	medium ^[1] - 9:22	nevertheless ^[2] - 20:2, 20:5
happy ^[1] - 21:15	installation ^[1] - 10:2	Laura ^[1] - 34:7	meet ^[3] - 28:16, 29:9, 30:10	New ^[8] - 1:10, 2:10, 2:12, 2:16, 8:17, 12:15, 22:12, 34:9
harm ^[2] - 25:6, 25:8	integrated ^[1] - 9:10	LAURA ^[2] - 34:18, 34:18	meeting ^[6] - 28:13, 30:22, 32:7, 32:9, 32:11, 32:16	new ^[2] - 12:18, 23:23
harvest ^[1] - 6:14	intended ^[2] - 11:3, 14:16	Law ^[1] - 8:23	member ^[4] - 7:19, 7:24, 8:15, 27:23	next ^[5] - 21:15, 24:4, 24:19, 30:22, 32:10
hate ^[2] - 21:16, 23:13	interesting ^[1] - 16:5	law ^[11] - 6:3, 6:18, 10:3, 11:3, 12:9, 18:16, 19:23, 21:12, 21:21, 30:14, 30:15	members ^[6] - 3:14, 3:19, 3:24, 4:3, 4:8, 11:18	nice ^[1] - 12:15
heading ^[1] - 24:13	INTERPRETATION ^[1] - 1:5	lawsuit ^[1] - 28:2	merely ^[1] - 13:22	night ^[1] - 31:2
HEARING ^[1] - 1:2	interpretation ^[10] - 6:24, 13:8, 13:22, 14:10, 15:23, 16:10, 19:2, 19:16, 24:7, 26:19	LE ^[1] - 12:20	Michael ^[1] - 1:18	none ^[1] - 19:15
hearing ^[11] - 2:13, 7:5, 7:11, 7:20, 7:23, 12:23, 18:6, 18:18, 25:21, 28:23	involved ^[6] - 13:17, 14:9, 15:5, 16:8, 18:2, 25:4	lead ^[12] - 13:14, 13:21, 14:6, 14:11, 14:18, 14:24, 15:4, 15:16, 18:21, 19:5, 21:4, 23:4	might ^[4] - 16:12, 19:12, 25:19, 26:4	notary ^[1] - 34:7
Hearing ^[2] - 8:11, 22:22	issue ^[6] - 6:4, 10:5, 10:22, 18:11, 25:15, 25:24	leading ^[1] - 10:21	minutes ^[2] - 2:18, 4:16	noted ^[4] - 5:20, 8:10, 8:15, 19:19
hearings ^[2] - 14:13, 14:15	issues ^[2] - 5:19, 5:20	least ^[1] - 6:15	modifications ^[1] - 5:17	nothing ^[1] - 24:20
height ^[1] - 9:18	issuing ^[1] - 20:24	leave ^[1] - 28:12	modify ^[1] - 3:24	null ^[2] - 15:11, 15:13
held ^[1] - 4:5	J	leaving ^[1] - 24:13	moment ^[1] - 28:21	NY ^[1] - 1:7
helpful ^[1] - 3:17	judicial ^[1] - 21:19	legal ^[2] - 17:4, 18:11	month ^[11] - 21:15, 22:21, 22:22, 23:16, 24:4, 24:6, 24:19, 27:6, 28:9, 30:22	
hereby ^[1] - 34:9	Julie ^[1] - 1:16	lessee ^[1] - 5:3	most ^[2] - 5:18, 13:7	
hereinbefore ^[1] - 34:13	K	letter ^[2] - 21:21, 27:10	motion ^[2] - 30:17, 30:20	
highlighting ^[1] - 27:11	Kathy ^[1] - 1:16	Light ^[4] - 2:11, 4:21, 5:2, 11:14	motor ^[1] - 7:2	
hold ^[1] - 14:13	kind ^[1] - 11:17	LIGHT ^[2] - 1:6, 1:18	move ^[1] - 20:6	
holistically ^[1] - 24:10	knowing ^[1] - 20:17	limitation ^[1] - 6:12	MR ^[86] - 2:2, 2:5, 2:17, 2:19, 2:20, 2:23, 3:6, 3:7, 3:8, 3:11, 4:11, 4:12, 11:23, 12:4, 12:5, 12:7, 12:8, 15:7, 15:13, 16:5, 17:9, 17:10, 19:4, 19:5, 19:8, 19:22, 20:15, 20:18, 20:23, 20:24,	
home ^[1] - 12:13		limited ^[1] - 6:7		
hopefully ^[1] - 24:4		list ^[6] - 13:9, 17:15, 17:16, 17:17, 17:18, 17:21		
hoping ^[1] - 18:15		literal ^[1] - 12:12		
horse ^[3] - 15:9, 15:23, 16:13		litigious ^[1] - 23:12		
hour ^[1] - 28:5		LLC ^[1] - 1:7		
house ^[1] - 5:5		LLP ^[1] - 1:17		
Hoyt ^[7] - 1:12, 3:10, 3:12, 19:23, 26:11, 26:17, 32:24		local ^[1] - 19:23		
HOYT ^[25] - 3:11, 4:12, 12:4, 16:5, 19:4, 19:8, 20:15, 20:23, 21:22, 23:15, 25:19, 26:12, 26:21, 27:4, 27:9, 27:18, 28:3, 28:8, 28:22, 29:9, 29:24, 31:13, 32:4,		LOCATION ^[1] - 1:10		
		look ^[4] - 17:15, 17:18, 24:10, 25:6		
		looking ^[1] - 27:23		
		lovely ^[1] - 12:17		

O occurs [1] - 25:5 OF [1] - 1:2 office [1] - 27:16 official [2] - 6:16, 8:6 Official [1] - 6:24 official's [3] - 4:23, 7:14, 11:5 officials [1] - 8:20 Often [2] - 21:3, 21:4 old [2] - 6:17, 8:14 once [3] - 15:16, 21:15, 27:4 one [2] - 6:17, 13:3 open [1] - 7:5 opening [1] - 7:20 opportunity [1] - 12:21 oral [1] - 7:8 orally [1] - 4:2 order [2] - 12:6, 13:2 originally [1] - 12:14 ourselves [1] - 24:18 outbuildings [1] - 5:6 owner [2] - 5:4, 11:15 OWNER [1] - 1:20	pine [1] - 2:15 place [3] - 25:3, 25:16, 34:12 Plains [1] - 2:15 plan [6] - 9:10, 16:16, 19:15, 21:8, 28:16, 29:7 Plan [1] - 5:14 planners [1] - 16:14 Planning [1] - 24:5 planning [12] - 5:13, 13:14, 16:22, 19:10, 20:15, 20:19, 22:13, 23:19, 24:24, 28:15, 29:5, 30:9 plans [1] - 5:17 pledge [1] - 2:3 Pledge [1] - 2:4 plus [1] - 32:7 point [9] - 3:13, 12:6, 13:2, 15:10, 15:20, 16:12, 19:12, 29:5, 29:11 points [1] - 8:22 populated [1] - 5:8 position [7] - 10:10, 15:15, 21:11, 22:19, 23:4, 23:13, 24:18 post [1] - 7:11 post-hearing [1] - 7:11 potentially [3] - 20:20, 24:12, 29:17 practical [1] - 17:4 practice [1] - 22:16 pre [1] - 7:11 precedent [3] - 25:10, 25:11, 25:12 precluded [1] - 27:5 prejudice [3] - 25:22, 27:7, 27:12 premature [1] - 16:3 premise [1] - 9:15 prepare [1] - 9:23 prerogative [2] - 18:13, 18:14 present [1] - 7:19 presented [2] - 29:8, 29:14 presumed [1] - 5:2 prevent [2] - 11:3, 26:5 proceed [3] - 14:3, 18:12, 23:20 proceeding [3] - 6:5, 24:14, 27:17 proceedings [4] - 8:2, 33:2, 34:11, 34:12 process [3] - 10:21, 12:20, 21:17	produce [1] - 6:17 prohibits [1] - 19:13 project [4] - 14:24, 16:20, 18:21, 20:10 property [1] - 4:21 PROPERTY [1] - 1:20 proposal [2] - 29:18, 29:20 proposed [3] - 3:20, 13:4, 18:8 proposes [1] - 5:24 proposing [1] - 29:20 provision [2] - 10:3, 24:3 public [1] - 25:21 Public [2] - 7:10, 22:21 public [8] - 2:13, 7:5, 7:23, 8:11, 14:13, 14:14, 18:18, 34:7 PUBLIC [1] - 1:2 purposes [1] - 13:15 put [2] - 17:5, 30:21 putting [1] - 11:20	related [1] - 8:3 relates [1] - 13:3 relationship [1] - 22:4 relief [4] - 26:4, 26:22, 26:23, 29:22 remedies [1] - 17:7 remedy [2] - 26:8, 26:12 remove [1] - 10:13 removed [1] - 9:23 rendered [2] - 6:24, 18:4 rendering [1] - 10:4 renders [2] - 15:6, 20:19 renewable [2] - 13:12, 13:24 repeat [2] - 6:4, 11:16 replaced [1] - 10:23 reporter [1] - 34:8 representing [1] - 12:19 REQUEST [1] - 1:5 request [1] - 24:8 require [1] - 17:11 required [4] - 5:16, 5:22, 9:6, 21:4 requirement [1] - 24:9 residential [1] - 9:9 resolution [1] - 3:20, 5:18, 6:22, 11:19, 12:23, 16:4, 18:8, 24:11, 26:2, 26:5, 26:13 resolve [1] - 30:24 resolved [1] - 7:3 respectfully [3] - 19:22, 21:22, 22:3 response [1] - 12:3 resubmit [1] - 24:2 result [1] - 14:8 resulted [1] - 5:18 retail [1] - 7:3 reversed [1] - 17:2 review [8] - 13:10, 13:16, 14:3, 15:3, 15:5, 17:12, 18:14, 26:18 reviewed [2] - 7:10, 8:2 Rich [2] - 3:10, 3:11 richard [1] - 1:12 risk [1] - 15:22 ROAD [1] - 1:7 Road [2] - 2:11, 2:14 road [4] - 2:16, 4:22, 22:17, 30:22 roadways [1] - 6:8 Robert [4] - 1:14, 3:5,	7:19, 31:23 role [1] - 21:3 route [1] - 12:16 rules [2] - 16:20, 20:17 ruling [1] - 17:2
P p.m [1] - 1:11 panel [1] - 6:7 panels [1] - 6:2 paragraph [1] - 13:5 parcel [4] - 6:10, 6:20, 10:8, 14:4 part [4] - 14:4, 20:12, 20:13, 32:8 partially [1] - 12:16 particular [3] - 7:16, 13:2, 18:10 partnership [1] - 22:5 pause [1] - 24:15 Pawson [1] - 1:16 PAWSON [6] - 2:22, 2:24, 3:3, 3:5, 3:7, 32:12 pending [1] - 29:8 per [8] - 5:10, 5:19, 6:10, 6:20, 8:17, 10:7, 11:8, 13:6 percent [1] - 5:21 period [2] - 4:7, 22:24 permission [1] - 29:3 permit [3] - 19:14, 19:17, 19:18 Permit [1] - 5:14 persist [1] - 21:8 personal [1] - 15:10		Q quality [1] - 13:10 questions [5] - 4:9, 4:18, 11:19, 11:24, 19:21 quite [2] - 4:4, 16:21	R RAG-4 [1] - 5:7 raise [1] - 13:3 reach [2] - 16:15, 20:16 reached [1] - 8:6 read [2] - 2:6, 3:17 ready [1] - 32:2 really [1] - 24:20 reason [2] - 16:18, 25:3 reasonable [1] - 8:7 reasoned [1] - 20:21 reasons [1] - 17:4 reassess [1] - 24:19 received [1] - 4:16 record [10] - 3:15, 5:11, 7:23, 8:4, 10:20, 11:9, 19:20, 21:24, 22:3, 32:19 reference [1] - 6:22 reflect [1] - 7:24 reflects [1] - 10:20 REG [1] - 9:5 regarding [1] - 7:2 regulations [1] - 9:5	S Sandy [2] - 1:14, 3:3 sandy [1] - 31:21 saplings [1] - 10:20 saved [1] - 9:13 scale [3] - 8:10, 9:7, 9:12 Schenectady [1] - 34:9 scrub [1] - 10:19 Second [1] - 2:20 second [3] - 2:21, 30:18, 30:19 SECRETARY [1] - 1:16 section [6] - 6:3, 7:16, 10:5, 10:17, 10:22, 16:9 sections [1] - 8:23 seeing [1] - 18:8 seek [2] - 26:3, 26:22 seeking [1] - 26:23 selected [1] - 8:6 selecting [1] - 10:11 sent [1] - 27:10 sentences [1] - 13:4 separate [4] - 13:23, 19:2, 27:2, 27:3 SEPT [1] - 14:23 SEQR [15] - 11:8, 13:7, 14:3, 15:19, 16:11, 16:15, 17:12, 17:13, 19:12, 20:2, 20:5, 20:10, 25:3, 25:16, 27:20 set [2] - 7:12, 11:5 setting [1] - 25:9 settle [1] - 25:15 settled [2] - 21:12, 21:21 several [2] - 3:19, 5:16 shall [2] - 6:6, 11:12 Sheeley [1] - 2:15 shorthand [1] - 34:8 significance [17] - 13:20, 14:12, 14:19, 15:2, 15:17, 18:3, 18:22, 20:12, 21:2, 21:6, 23:5, 23:20, 24:6, 24:24, 29:7, 29:13, 29:16 significant [2] - 20:20,

29:17 signing [1] - 9:4 simply [1] - 16:10 single [1] - 5:5 site [8] - 5:4, 5:8, 5:14, 9:10, 9:24, 10:11, 19:15, 21:7 sizes [1] - 5:9 sleep [1] - 22:16 small [1] - 9:23 solar [7] - 6:2, 6:9, 8:10, 9:4, 9:7, 9:12, 14:5 sorry [2] - 7:21, 19:7 Sparaco [3] - 1:20, 5:3, 11:14 speaking [1] - 8:20 special [2] - 5:14, 21:8 species [1] - 5:9 specifically [1] - 13:5 specified [1] - 34:13 spent [2] - 16:21, 22:10 stage [1] - 8:13 stand [1] - 2:3 started [1] - 22:10 state [1] - 13:9 State [3] - 8:17, 22:11, 34:9 statutory [1] - 4:7 step [1] - 23:8 still [1] - 17:23 stress [1] - 3:22 strongly [1] - 17:8 subdivision [1] - 19:14 subject [3] - 16:10, 20:2, 20:5 submit [3] - 26:6, 26:20, 30:6 submittals [2] - 7:12, 8:3 submitted [1] - 7:8 subsequent [1] - 5:17 Sue [4] - 1:13, 2:24, 31:5, 31:18 suggest [2] - 23:22, 23:24 suggesting [3] - 20:8, 22:20, 26:17 summary [1] - 7:15 superfluous [1] - 10:4 supposed [2] - 20:16, 29:12 surrounding [1] - 19:10 suspended [1] - 33:3 system [1] - 21:19	T table [7] - 30:2, 30:20, 31:8, 31:12, 31:15, 31:22, 32:6 tabled [1] - 31:10 teaching [1] - 22:12 technical [1] - 18:11 ten [11] - 4:16, 6:10, 6:11, 6:19, 10:7, 10:15, 10:18, 11:4, 13:5, 25:13, 32:7 term [6] - 8:8, 9:20, 10:22, 10:24 terms [1] - 7:17 theory [1] - 28:12 therefore [1] - 10:13 three [1] - 17:12 throughout [1] - 12:20 timber [1] - 6:14 TIME [1] - 1:11 today [1] - 4:15 tonight [10] - 12:11, 14:17, 27:15, 28:6, 28:13, 30:21, 30:24, 31:8, 31:9, 31:20 tonight's [1] - 2:8 totally [1] - 27:2 town [5] - 11:13, 12:17, 22:14, 27:16, 28:2 Towns [1] - 22:11 transcript [3] - 8:2, 34:10, 34:11 transcripts [2] - 3:16, 3:18 travel [1] - 12:15 traveled [2] - 12:13, 12:17 tree [7] - 6:16, 7:17, 8:7, 8:17, 9:6, 10:24, 28:18 trees [11] - 5:8, 5:24, 6:6, 6:13, 8:24, 9:12, 9:16, 9:17, 10:11, 10:14 true [3] - 15:21, 17:11, 34:11 trying [3] - 22:2, 22:4, 27:21 tweak [1] - 11:19 two [1] - 3:15 type [17] - 11:7, 13:6, 13:8, 13:13, 13:16, 14:2, 14:7, 16:2, 17:11, 17:13, 17:14, 17:16, 17:19, 19:6, 20:9, 20:13, 20:14 Type [5] - 13:9, 13:23, 15:24, 17:17, 17:18	types [1] - 17:13 typical [1] - 9:8 U U.S [2] - 1:6, 1:18 unable [2] - 7:21, 7:22 under [7] - 9:5, 10:14, 10:24, 13:9, 16:8, 20:9 understood [1] - 27:8 understory [1] - 8:14 unless [4] - 13:19, 14:11, 18:2, 19:20 unlisted [1] - 17:20 unnecessarily [5] - 21:10, 21:18, 22:18, 23:12, 24:17 unrelated [1] - 8:23 up [5] - 8:18, 10:21, 19:12, 30:10, 32:3 upheld [1] - 17:2 urge [1] - 22:8 urgency [1] - 18:10 US [5] - 2:10, 4:21, 4:24, 11:14, 12:20 USDA's [1] - 8:12 USLE [1] - 1:7 V variance [7] - 14:23, 24:2, 24:9, 25:23, 26:4, 26:14, 26:20 variances [3] - 5:16, 19:15, 31:2 vegetation [2] - 9:22, 10:18 vegetative [1] - 8:13 vehicle [1] - 7:2 vendee [1] - 5:2 viable [2] - 6:14, 9:15 views [1] - 5:10 void [2] - 15:12, 15:14 vote [7] - 2:6, 2:17, 12:4, 17:6, 31:3, 31:9 voted [1] - 31:11 voting [1] - 31:7 W wait [2] - 22:20, 27:24 waited [1] - 22:22 walkkill [1] - 2:16 Walkkill [3] - 1:10, 2:12, 9:3 WALLNER [6] - 3:6, 30:19, 31:4, 31:15, 31:17, 31:24	Wallner [4] - 1:14, 3:5, 7:19, 7:24 wants [1] - 28:4 Wayne [1] - 2:15 Wednesday [1] - 1:9 welcome [1] - 2:2 whole [1] - 16:18 wIAND [1] - 31:19 WIAND [2] - 3:2, 31:6 Wiand [2] - 1:13, 2:24 wish [1] - 3:24 withdrawing [1] - 27:10 withdrew [2] - 25:22, 27:6 wooded [1] - 10:23 word [2] - 3:17 words [1] - 14:22 written [2] - 7:9, 24:12 Y York [8] - 1:10, 2:10, 2:12, 2:16, 8:17, 12:15, 22:12, 34:9 Z ZBA [1] - 29:22 ZBA's [1] - 26:19 ZONING [2] - 1:2, 1:5 Zoning [5] - 5:7, 8:23, 10:3, 22:12, 30:10 zoning [11] - 6:3, 9:3, 13:18, 14:9, 16:17, 16:19, 22:13, 22:15, 23:21, 28:16, 29:10
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