

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF INSTRUCTIONAL/TRAINING MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: MAY 26, 2010

PLACE: CICERO TOWN HALL

TIME: 5:30 P.M.

The Instructional/Training Meeting of the Zoning Board of Appeals was held Wednesday May 26, 2010 at 5:30 P.M. at the Cicero Town Hall, 8236 South Main Street, Cicero, New York 13039.

Members Present:	Gary Natali:	Board Chairman
	Charles Stanton:	Board Member
	John Winters:	Board Member
	Mark Rabbia:	Board Member
	Robert Bach:	Board Member, AdHoc
Absent:	Gary Palladino:	Board Member
Others Present:	Terry Kirwan, Jr.	Attorney
	Nancy G. Morgan:	Secretary

In as much as there was a quorum present, the meeting opened at 5:45 P.M.

After the Pledge of Allegiance, Mr. Natali pointed out the exits of the Conference Room , where we were meeting and asked that cell phones and pagers be turned off.

The minutes of the May 3, 2010 ZBA meeting are scheduled to be approved at the regular June 7, 2010 meeting.

Everyone at the meeting "re-introduced" themselves

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Mr. Natali read the Town Board RESOLUTION ESTABLISHING MANDATORY TRAINING FOR THE PLANNING BOARD AND ZONING BOARD OF APPEALS.

Mr. Natali: I don't see any problems with the Board members meeting all the requirements. We will be keeping records for this. We'll be adopting a form for this at a later date.

The Planning Board adopted an attendance requirement at the same time they adopted the Resolution Establishing Mandatory Training. Basically, they can't miss more than two (2) meetings in eight (8) consecutive months. My position was and still is that, I would like to take everybody's case on an individual basis. For example, if you broke a leg, and you were out for 2 or 3 meetings, we have an AdHoc Board Member to fill in. We would not be out of business. Also, the Town has an investment in you. You get paid to go to training sessions and for meetings. Your experience level is such that I really wouldn't want to see someone replaced simply because they couldn't make a couple of meetings. This is a job, so if you work for someone that can pull you out without notice and send you away someplace, then you should consider if you should be on the Board. It hasn't been a problem in the past--never been a problem. The only time I remember is maybe when I first got on the Board 15 years ago, we had a couple of "snowbirds" that would take off January, February and March. It got to a point where we almost didn't have a quorum.

Mr. Natali: You've all signed the "Anti-Harassment" Form, which reads as follows:

I, Declaration of Policy

"The Town of Cicero (the "Town") is committed to the principles embodied in the Federal Civil Rights Act of 1964 and federal and state statues relating to discrimination. Harassment based upon sex, race, color, religion, national origin, age, disability and/or protected activity is strictly prohibited.

The Town can best deter, discourage and prohibit acts of harassment within the Town workforce by creating a mechanism to respond to, handle and resolve allegations of unlawfull harassment in the workplace".

ZBA Attorney Terry Kirwan, Jr. discussed ARTICLE 78:

Mr. Kirwan: I'm sure you all know what an ARTICLE 78 is but possibly all of you have not been involved in one. He asked if anyone has ever been involved in an ARTICLE 78. All Board members answered no. An ARTICLE 78 is a provision in Civil Law that allows, basically, a law suit or proceeding against the Municipality where they get petitioned to the Supreme Court. The Supreme Court Justice will hear what has occurred in an underlying proceeding. ARTICLE78 is a "broad sweeping brush". It can be used for all sorts of different things but I'll focus here on how it would impact you as members of the Zoning Board of Appeals. Basically, you go to the Supreme Court and argue that the Judgement, Order or Decision should be set aside because they failed to follow protocol, which is required by law or the decision by the ZBA is not supported by substantial evidence and should be overturned as being arbitrary and capricious.

Mr. Kirwan continued:

That's a pretty big standard to overcome. If you follow all the protocol in all your procedures, which, I'm going to hand you all a decision that was rendered by one of our Supreme Court Justices. A copy of the decision was given to each ZBA member to use as an example and for their files:

STATE OF NEW YORK
SUPREME COURT
WIXT-TV, INC.

COUNTY OF ONONDAGA
PETITIONER

VS

TOWN OF DEWITT ZONING BOARD OF APPEALS RESPONDENT

When I first came here , this Board is doing everything correctly. You'd be surprised at how some of the other municipalities don't . That's an overview of what an ARTICLE 78 proceeding is.

When you make the petition to the Supreme Court Justice for an ARTICLE 78, basically, what ends up happening is , even if you're successful, it comes right back to the same Board, with directions, "you didn't do this--you didn't do that--you didn't do right in making your decision". It's one of those things where "the operation was a success but the patient is dead". It could come back in front of the same Board. Most likely the Board had a reason for making the determination the way they did. You're going to follow the requisite protocol and make the same decision. Typically, that's the way it occurs. Then, theoretically, they could go back time and time again to the Supreme Court. He then discussed the Town of Dewitt decision that he handed out to the Board members. WIXT-TV was looking to get a larger sign because the FCC determined that WIXT was in the flight path or too near the flight path.

Mr. Rabbia to Mr. Kirwan: Was the ARTICLE 78 successful on the specifics of that?

Mr. Kirwan: Not that I know of. It just depends. If the grounds for it are arbitraitive and capricious, I would say the statistics are low. If the grounds for it are like this one, failure to follow protocol or Town Code Provisions, it's high. The reason I'm handing this out to you, in addition to the general overview of an ARTICLE 78, is this will guide you either in terms of confirming what we're doing--yes, we're correct or I didn't know that, because it goes thru all the requirements. In this case, they had a Public Hearing and nobody took minutes. I happened to be involved with the Town of Dewitt, in the last few years, when I was required to take minutes. I was writing things down--people were stopping me to answer questions--the Attorney has to be able to think--you can't think when you're writing minutes down. He then discussed page 2 of the packet he had given the Board Members. So, without the benefit of minutes of this meeting, they didn't have any proof that they went thru the 5 Factors. I'm sure you all know this and I honestly intended to provide you with a copy of 267A--I can e-mail you--to make sure if you feel like reading it. You know you're following the procedural guidelines.

Mr. Natali: Is it long ?

Mr. Kirwan: No, after the statutory provisions, there's a bunch of case loads. One of the other things they failed to do, at the top of page 3, they failed to render their decision within the 62 days after the Hearing. Your decision has to have findings and facts, which I believe yours do because you go thru the 5 criteria, you indicate "yes" that you have complied or "no" if it's not a determining factor. The next paragraph talks about the decision must be filed with the Clerk within 5 days after the date it's rendered. The filing with the Clerk "kicks -in" the time line for the ARTICLE 78 to be commenced.

Mr. Natali: I'll check on that. I wonder if our Town over-rides that because it's two (2) business weeks.

Ms. Morgan: I have to have my minutes in to the Town Clerk within 2 weeks.

Mr. Kirwan: I did this because, I could probably go to every Town in the County , if not in the State, and everybody's going to find something that they're doing differently. For the most part, the over-riding nature goes down , not up. The decision is contained within your meeting minutes. What they're saying here is, you can't hide behind that. Towards the bottom of page 3, they talk about Public Officer's Law, the minutes, resolutions, whatever. Again, we go back to the fact that there were no minutes from this proceeding. Don't get confused with the decision, which is in the minutes, which have to be filed with the Town Clerk within 2 weeks from the meeting. There's different requirements for everything.

Mr. Natali: So, if we complied with this part, we could get our decision over there right away and we approve the Variance and "such in such" in 5 days, then the Law gives us 2 weeks to get the minutes done.

Mr. Bach: You sign your forms that day and hand them back in. Isn't that technically when the decision's been made. Doesn't that go back to the Clerk when you're done with it ?

Mr. Natali: It goes back to Wayne.

Mr. Rabbia: My question is--is it getting into the hands of the Clerk in 5 days ?

Mr. Kirwan: Where you get into a situation of do we need a separate decision, do we not need a separate decision, when in fact the decision is rendered, do we have to go to Gary's house to get him to sign the decision because we only meet once a month. There are a bunch of questions brought up. I think what you're doing is fine as far as that goes. Your decisions are definitely filed within 62 days. When you approve your minutes, you have to get them to the Town Clerk within 5 days. Just like the SEQR-- you do a "blanket" motion that says "we hereby authorize Mr. Natali as Chairman, to sign any decisions resulting from our oral decisions tonight". That covers yourselves.

Mr. Stanton: When does that decision actually meet then, it's not when we do our oral findings, is it when we approve the minutes ?

Mr. Kirwan: Technically, you have to have something to file with the Town Clerk. It's the filing with the Clerk within 5 days that starts my 30 days to start an ARTICLE 78 proceeding. If for various reasons, you didn't have a meeting one month--you're going 60 days--you're "flying in the face" of the 62 days. It's a little more work and I don't think it's necessary all the time, but in exceptional circumstances you could have Gary sign the decision and give it to the Clerk the next day.

Mr. Natali: My understanding is, if both parties agree to an extension, you can go beyond the 62 days.

Mr. Kirwan: Right, but if you're in an ARTICLE 78 proceeding, one party is not going to agree with you.

Mr. Winters: Let me just understand something. Any decision that's made, according to this, has to be filed with the Clerk within 5 days. So, if you don't do that, then the decision is subject to challenge, according to this.

Mr. Kirwan: It's not so much the decision. It's your protocol for coming to the decision. that can be challenged. If you do everything else right, if you didn't file it in 5 days as required by law but it met every other criteria, you shouldn't have a problem.

Mr. Natali: So, are you advising us that Nancy has 5 days to get that over to the Town Clerk ?

Mr. Kirwan to Ms. Morgan: You've got 2 weeks to file the minutes if you're complying with the Open Meetings Law. It can't be the decision until the minutes are approved. When the minutes have been approved, then you have 5 days to file them with the Town Clerk.

Mr. Bach: Does it mean that customers couldn't do any work or anything until after the officially approved minutes ? Say someone needs a Variance, they're given that at the meeting, then they go ahead and do the work. Technically, it hasn't been approved ?

Supervisor Judy Boyke stopped into the meeting to say hello to the Board Members.

Mr. Stanton to Mr. Natali: You make the statement at the beginning of each meeting that actions taken at that meeting will not be official until the minutes are filed with the Town Clerk, which has a deadline, by law, of 2 calendar weeks.

Mr. Rabbia: Someone comes in, they get approval, we say "go see Wayne", what really happens ?

Mr. Natali: Wayne asked that we put that statement in the minutes every month. If there's 5 or 6 cases approved that evening, the next day he would be flooded with people coming in for Permits. The 2 week law gives him a "breather". Permits are his job.

Mr. Rabbia: He could decide to issue a permit, in light of the fact of the decision--he might have read the minutes of the meeting after 2 weeks.

Mr. Natali: He was there. Let's take a situation that looks like it's going to be challenged. He's not going to give somebody run of the land.

Mr. Kirwan: Remember, you're not going to get into an ARTICLE 78 when somebody gets what they asked for--it's when they don't get what they asked for. Then, they go thru the requirement that you engage in a balancing process, weighing the 5 factors, which this Board always does on the record.

It wasn't until after the WIXT case when the Town of Dewitt started doing that on the record. This talks about Executive Session, which brings up a whole separate meeting law. Page 7 & 8 talk about the meeting law where they were trying to be exempt but they were reading both cases so it really doesn't matter. Page 9 is what ended up happening. The Petition was granted, they vacated the Town's decision, remitted it back to the ZBA, with the instructions to make Findings of Fact and go thru all the criteria like they were supposed to from the beginning and as required by Town Law. As I said before, this is typically what happens.

Mr. Rabbia: What happened after that ?

Mr. Kirwan: As I said before, they got the same decision as they got before, except now they're going to comport with all the requirements. This is basically a road map. The deliberations were done during an open meeting, which this Board always does and it's being recorded. I'll provide copies of the "267" for all of you.

Mr. Winters: What was the "up-shot" after this decision ?

Mr. Kirwan: As I mentioned before, they went back in front of the Town. They made the same decision but they did it relying on all factors--did everything right-- they had it transcribed--everything was followed.

Mr. Natali: I heard the average ARTICLE78 is about 60 or 70 thousand dollars--is it more than that ?

Mr. Kirwan: No. For an Attorney ?

Mr. Natali: No, I'm talking about the whole thing--whether the Town is sued for not taking care of the drainage or the average law suit--not just Zoning Laws--like say a neighbor's shed flooded because the Town never cleaned out the sewers or what-ever--any Town that gets sued.

Mr. Kirwan: I'd say more like 5 or 10 thousand, if that. This probably cost them 10 or 20 thousand.

Mr. Natali: And nothing got changed ?

Mr. Kirwan: Nothing got changed.

Mr. Rabbia: It's amazing to me that people actually go thru it knowing that most of the time, people make the same decision. The higher courts are willing to overturn ZBA decisions.

Mr. Stanton: Is that where it gets into more of following all of the procedural portions of it, like the arbitraive, capricious portion ? I assume that's when they'd most likely overturn something instead of sending it back to the Town.

Mr. Kirwan: They're going to give plenty of latitude to the ZBA. If you answered all your criteria in the negative but then said 'we're going to do it anyway--.

Mr. Natali: The only case of the few I've looked at was a situation, for whatever reason, the ZBA wouldn't allow some information or somebody to speak and they definately cut it off, so it was arbitraive and capricious.

Mr. Rabbia: You don't have to allow the public to speak.

Mr. Kirwan: At a Public Hearing?

Mr. Rabbia: The Law gives the public the right to observe the performance of public officials and attend and listen to the deliberations and decisions they make. The silence is to respect the ability of those intending to speak or otherwise ---.

Mr. Kirwan: Once you open the Public Hearing--the whole purpose is to give the public and neighbors a chance to speak. This Board had a case--the man wouldn't be happy no matter what--he asked if he could have a couple of days-- by giving him that , you eliminated any complaint the guy could have, so Gary did the right thing as far as this goes. You know you're going to win that in the end because he didn't come back with anything new to say but you don't want to subject yourself to an ARTICLE 78 and have to go to a Supreme Court Judge to tell him why or what you did.

Mr. Rabbia: Let's go back to the Public Hearing--do you have to let the public speak--not the applicant, the public ?

Mr. Kirwan: In a Public Hearing, anyone has the right to voice their concerns.

Mr. Rabbia: Anybody ?

Mr. Kirwan: If you close the Public Hearing, then you can say "the Public Hearing is closed".

Mr. Natali: Back to the Hastings case. Because there were so many people we filled the room, and after a while, we weren't hearing anything new so I asked " anyone that wants to speak--do you have anything new to add"-- because they started repeating. A couple of things I read--proceedural wise, we can never be challenged as long as we're fair. So by me allowing some extra time or someone to say something after, the other side can't say you were extra lenient--proceedural-wise, we have a lot of flexibility. That's why when you're up there and you see something or you would like to bring something up--even though we've closed the public hearing. We're flexible about when we can speak.

Mr. Rabbia spoke about the Open Meetings Law and passed out material to the Board Members. There's 4 pages here--2 are for us--the second 2 are from the public perspective, which are kind of Open Meeting FAQ's. The first page is the Open Meetings Law. I think the key here for us is "any entity for which a quorum is required to conduct business". I think for us--if we're going out to visit property with peers, I think you have to be real careful. I personally don't do that . I don't like going with someone else because you could end up forming opinions and talking about the case. I'd rather just do it by myself then there's no conflict of interest. In the past, we had pre-agenda meetings, which we don't do anymore.

Mr. Kirwan: The key thing here in the Open Meeting Law is for the purpose of conducting Public business. Here, we're not conducting Public business--we're not dealing with or helping the public--so I can make the argument that this is not a Public meeting. because we're not conducting public business. You just touched on the pre-agenda meeting. There's only one purpose for what you can do in that and that is to conduct public business--to talk about what you're going to talk about when you open the Board meeting. It may be better to be cautious--the key words are "for the purpose of conducting Public business. "

Mr. Natali: If I saw something wrong and I wanted to call a meeting and I had a short notice, then I'd have to make sure it was in the paper--that's what you're saying ?

Mr. Kirwan: What kind of a meeting ?

Mr. Natali: It would just cover maybe some type of procedure.

Mr. Kirwan: Not dealing with anybody's file ?

Mr. Natali: Or names either.

Mr. Kirwan: The next provision here is--even if there's no intent to take action. Obviously, anybody that had one of these meetings before, even a pre-agenda meeting, said we're not going to take any minutes in there--you've formulated your opinion upon which you're going to take action.

Mr. Rabbia: I think eliminating the pre-agenda meetings eliminates discussion... I seem to recall, maybe an older law, someone exempted ZBA's from certain proceedings. It seems now they've gone to any governmental organization.

Mr. Kirwan: Now, the Boards are treated the same.

Mr. Rabbia discussed briefly meetings and training sessions.

Mr. Winters: There's some confusion on my part. Any meeting that has 2 members of the decision making body-- then under "meeting" , it says it has to be a quorum.

Mr. Kirwan: Any meeting where a quorum is required for business. Which page are you on--what is covered ?

Mr. Winters: The paragraph above it--yes, the second paragraph. Committees consisting of 2 or more members ...

Mr. Kirwan: You could have a committee of 2 people.

Mr. Rabbia: I think what he's saying John, is that the ZBA needs a quorum to take actions.

Mr. Winters: I understand that. It just seems inconsistent the way I'm reading it.

Mr. Kirwan: We could go thru this with a fine-tooth comb and you'd find a lot of distinctions. The Open Meetings Law--like you said the ZBA isn't covered-- well, in this decision, the Town of Dewitt said the ZBA is not covered. Then they said, "the law has been changed since 1983." Before, they determined that the ZBA was a quasi-judicial body, which would be the same thing as making it a Court of Appeals after deliberations were documented.

Mr. Rabbia: What's the special adjustments--I had to read it twice to make sure I got it ? Are you hung-up on the language that says " any entity requires a quorum to conduct Public business , which consists of 2 or more members and so forth ?

Mr. Winters: Yes.

Mr. Rabbia: Here's how I read it: Any entity, for which a quorum is required--that's the ZBA--and which consists of 2 or more members--that's us --so, we're squarely in that Open Meetings Law--we can get a quorum and we have more than 2 members, so it applies to us , right ?

Mr. Kirwan: Correct. But if you're reading it to say that you and Chuck could go out to Wicks' property and talk about it--that's not what this says.

Mr. Rabbia: Could they do that though--that's a good question?

Mr. Kirwan: Yes--you're not a quorum. The 2 of you could not make a decision--3 of you Board members could make a decision.

Mr. Rabbia: Oh-- this is where I got confused.

Mr. Winters: The question I have is: Chuck and I go out--is that in violation of the Open Meeting Law ?

Mr. Natali: I've gone out with new people. I'm very careful of opinion. I think you can discuss it as it relates to the Code but you can't give your opinion.

Mr. Kirwan: If you took the opposite position, I'd defend you all day long because I think you can. You can talk between the 2 of you all day long. When you get to the quorum, when there's 3 of you there, I don't go with that,

Mr. Natali: All right-- I go out with Chuck--I get him convinced to go my way--then I take Mark out and convince him--now...

Mr. Kirwan: How did you do that--out on the site or did you call on the phone ?

Mr. Natali: Or you do it right there in front of everybody.

Mr. Kirwan: You get really nervous about this but as long as you're conducting yourselves in the spirit, anytime you have a quorum, you CAN'T talk about the case. That's an absolute. But anytime you have less than a quorum, talk about it all day.

Mr. Natali: We had a situation with the Dunkin Donuts on the corner of Bear Rd. and Route 11 that we could only meet at 6 o'clock in the morning--the whole Board.

Mr. Rabbia: That's right--we wanted to do the traffic pattern.

Mr. Natali: Yes, the traffic pattern because they wanted to add a service window. They wanted to add bagels to their menu. They had to build to accomodate their changes.

Mr. Kirwan to Mr. Rabbia: The part where you have meeting "hi-lighted"--you have to have a meeting in order to violate the Open Meetings Law--constituting a majority or a quorum.

Mr. Rabbia: That was a good learning for me. It almost seemed like 2 could go out together to look at a case.

Mr. Kirwan: The thing is you can't discuss it--you can't say "I'm going to vote for this"--then if John shows up, all of a sudden the 3 of you have conspired to take action.

Mr. Natali: But I gave you the scenario where I take him out first---

Mr. Kirwan: That doesn't matter. You can't take action with either one.

Mr. Bach: If you get out there and then you've got a question. Let's say John went out--he might say " I'm not sure about this"--he could make a call to someone to clarify it ?

Mr. Rabbia: When I go out to look at the property, , I check to see if the person is there. I really let lthe application do all the "talking". If the data isn't there on the application to support the case. To go to the property--I get to see it--it should all be in the application, right ?

Mr. Kirwan: It never is.

Mr. Natali: If the survey really isn't up to date, we've had some surprises. I still think looking at the property is mandatory.

Mr. Rabbia: I'm just saying the application needs to tell the story as well.

Mr. Natali: If we have a vacant building that is going to be taken down, you can drive by-- you don't have to go look.

Mr. Rabbia: Just want to make sure I'm clear. Open Meeting Law--public participation. To break it down into laymen's terms, we allow the Public to speak.

Mr. Kirwan: You're required to have a Public Hearing (for each case). By doing that, you're required to let the public speak. The ZBA is different than the Town Board. They may not have a public portion in the meeting.

Mr. Rabbia: Basically, people can do recording as long as it's not making noise or disrupting the meeting. Every meeting must be proceeded by a notice of the time and place and given to the news media. Going into Executive Session was discussed. This Board has only done that once. No public money decisions can be made in Executive Session. Executive Session is usually for personnel matters. The ZBA's verbatim minutes were discussed. The Zoning Board of Appeals minutes do not have to be verbatim but this Board requires the Secretary to do the minutes verbatim.

Mr. Natali: Thank you, Mark. I'd just like to add--our Executive Session would probably be this type of organizational meeting like we did in January or a training session like this.

Mr. Stanton's presentation is "How I prepare for a ZBA meeting". He passed out his excellent packet titled "Zoning Board Member's Responsibilities in Technical Review of Variances". Mr. Stanton reviewed one of the cases that came before the Board. The request was for Area and Use Variances for a residence that is situated in a General Commercial Zone. Property in GC Zone does not permit residences. The residence was already there when it became GC. It was determined that the Use Variance was not needed. The Area Variance would permit a sign to be placed in the lawn of a home occupation. Always check the premise of the Area Variance.

Mr. Stanton Continued:

We need a current survey that shows everything on the property, including the addition to the existing building. The major focus is on items #2 thru #5 on page 2, which reads:

2. It is our responsibility to ensure that we are protecting both the Town and the Applicant from challenges to a granted variance, as well as keeping the Applicant from having to return later to clean up missed variances. We do this by ensuring that we address ALL non-conforming features when we are granting an Area Variance.

3. Don't forget the site visit !

4. Every Board Member needs to be prepared to take an application through to motion. Ideally this includes :

- a) Review the draft motion in the agenda.
- b) Edit or re-write the motion to include any review elements that you have discovered.
- c) Filling out the Area or Use Variance form prior to the meeting--do not need to address review factors at this point , but can.
- d) Make the motion, or provide suggestions or support to the Board Member making the motion.

5. Resources:

- a) Use and Area Variance forms--Chuck Stanton can provide electronic format via e-mail.
- b) Onondaga County Real Property-<http://ocfintax.ongov.net/imate/search.aspx>
 - 1) Can search for property by street, tax map, owner, etc.
 - 2) Provides link to PDF tax maps (printable)
 - 3) Provides links to pictometry (if available)--very good quality.

The Secretary asked the Board members that if they are going to change or add anything to a motion, it would be very helpful if they would give the Secretary a copy of the motion they made.

Mr. Stanton reminded the Board members about the great information and aerial maps that can be pulled up on the Onondaga County GIS and pictometry from the County Website. There is an example on page 3 of the packet he handed out.

Mr. Rabbia discussed how pictometry was produced and improved upon.

Mr. Winters: I am, I won't say amazed, I'm surprised at the effort you go thru for each case. This leads me to a question. Where does Wayne come into all this ? I was thinking a lot of the due diligence should be done by the Zoning Officer. From what I see, we're getting the ----- of the ----- .That doesn't do much for me.

Mr. Winters continued:

Now Terry, I have a question for you. I look at the ZBA as being a broker between the property owner and the Town. The property owner presents their case as they're expected to and I would think the Town should present their case. What I'm saying is, we have the Board presenting the case for the Town. Have we tried a_____.

Mr. Kirwan: No. I think the reason there isn't a separate prosecutor is because it's already been determined by the Codes. They come to you and say "this is what I asked for--this is what I said--here's why I think I should get it". The determination has already been made by the Code. I can tell you, in Dewitt for instance, the Code Officer is there to answer questions just like Wayne does here. North Syracuse and Clay the same thing. It's incumbent on the ZBA members to familiarize yourselves with what's going on and to be able to articulate your position based on _____.

Mr. Winters: It just seems there's a propensity of data that we get from the Town.

Mr. Kirwan: That's normal.

Mr. Winters: Is it the Board's responsibility to identify all Variances ?

Mr. Kirwan: No. Chuck does a lot. For what you went thru here is all great but probably 90% of the cases, those are all legal _____ and you don't have to address them but it doesn't hurt anything to clarify the record as it pertains to that property. But if you didn't do that, no one could fault you because you're a "Judge"--you're a quasi-judicial Board. A Judge doesn't say "did you want to give this or that or you asked me for 200 thousand--I'm going to give you 400 thousand." You only give what they're asking for. You're only required to give what they're asking for.

Mr. Winters: I'm not saying what you're doing isn't diligent and an advantage to the resident. I've had a great deal of difficulty putting this whole thing in context. That's one of the big ones. The other is trying to interpret the Zoning Laws.

Mr. Natali: John, could you give us a little example--like if Wayne were there--what could he do ?

Mr. Winters: I should think that Wayne should come up with a statement that says--here's what they're requesting--it doesn't conform because of this--here are other non-conforming considerations for this piece of property.

Mr. Natali: Part of his answer is right. Without "finger-pointing", the office did miss these because they should have been requesting the other Variance, when the Variance came in for the non-conforming use on the property--the sign was the trigger. He should have automatically looked at everything else. But he only asked for the one thing. It's rare that he misses any of it but it seems like there's 2 or 3 cases in the last 6 months--it may not have been Wayne--it could have been somebody else in the office--they should have asked for all of the Variances. What we're saying is that we make the property "whole".

Mr. Natali continued:

That is why I asked Chuck Stanton to put together one of our past cases where we pick up things that they (in the Zoning Office) don't. I'm going to be working on it with Wayne . That's one reason I wanted him at this particular meeting because it may not have been him.

Mr. Rabbia: In fairness to Wayne, you can take any Zoning Office and these kinds of things pop up---they go back years ago.

Mr. Natali: When John brought this up prior, I started reading some things. There is an adversary relationship between the Town and the customer. Wayne's only job is to explain the Code and say "I can't give you that--you need a Variance, and by the way you need one for this and one for my decision". But for \$200, you can appeal that. We're an Appeals Court so Wayne has already rendered his decision. We usually question Wayne but not very much.

Mr. Rabbia: We might ask --"Wayne, what did you see on the job--what are your thoughts"?

Mr. Natali: Like when the sign came up for Believer's Chapel and the road. Wayne was out there and said "there are other places to put the sign". This is an unusual case and what Chuck's trying to say is --you look at everything--even what Zone it is. John, I'll be glad if you give me some ideas. Wayne has to say the Law is this and you need a Variance. Then the property owner steps before us.

Mr. Winters: I understand. I'm not trying to pick on Wayne. I just think it would be helpful if it came from the Town instead of a ZBA Member . That's not to say you shouldn't do your due diligence so that you can make a decision. I'll tell you--I don't feel qualified to do what Chuck does and I wouldn't stand behind it because I'm not an Engineer. I have no intention of becoming a qualified Engineer and I find the Zoning Ordinances difficult to understand. And I think they're difficult for the Zoning Office to understand. He gave a quick example of his mother-in-law coming in here to put a shed up--she had to redraw the whole thing--was given 2 different setback figures. I came into the Zoning Office to check it out and found out there were 2 different Code Books. That's why I don't feel qualified to sit in judgement on something that I do not understand.

Mr. Rabbia: Do you think when you have more experience you will feel more comfortable ?

Mr. Winters: I feel very comfortable making decisions, I don't have a problem with that. But I don't feel comfortable interpreting something that in my opinion, probably because of my experience.

Mr. Natali: John, you were on the Planning Board prior to this Board ?

Mr. Winters: Yes.

Mr. Natali: First of all, the Town Board has to re-write the Code. We can make suggestions and we have over quite a few years wanted to re-define the non-conforming property--how that's written. I have a firm interpretation in my mind but for the average person it's very confusing.

Mr. Rabbia: The last Code change we did--we did some bizarre, something from the back--something from the side.

Mr. Stanton: I found it in 210.14 and 210.16. He read them over quickly.

Mr. Winters: What does that mean ? I tried to do a search on the Web--can't find anything--unusable. My point is --it's very difficult to participate in these things because I don't feel adequate. You guys have a lot of experience. You obviously understand the regulations.

Mr. Rabbia: I was just like you 13 years ago.

Mr. Natali: I think we all were, I spent a lot of time with the Book--not this Book--my old Book had so many tabs on it and markings that I could get to real quick in a meeting.

Mr. Winters: This is what draws me to my position. More definition needs to come from the Zoning Office. You said something about 210 whatever--he should be referencing that.

Mr. Natali: He expects us to know it.

Mr. Winters: That's not good enough for me, sorry.

Mr. Kirwan: He has to make a decision based on something--it could be 1,2 or 5 things. He's not going to deny an application based on something that's legal non-conforming.

The Board discussed definitions, decisions and the Code Book.

Mr. Natali: The only thing I can suggest, this Book is about half the size of the Code Book prior. They had a ton of definitions. When you try to do something that's common sense, you end up with a paragraph like that, it's very vague. I volunteered for many meetings to get it down to this. He discussed having a hand-out for decks, swimming pools, etc. John, I think what Mark is saying is that it takes a while for it to come together. Don't be so hard on yourself at this point.

Mr. Winters: I didn't enter into this thinking I would know everything. I'm looking for something I can fathom and I'm not finding it.

Mr. Natali: If you want to write up something on any given area, I'd be glad to ship it to Wayne. I know the non-conforming is very difficult. I think they want to get a few more things, then it has to be made Law. As far as Wayne, you can ask him anything you want.

Next, Mr. Natali went on to discuss the Inspection of Property Form. On the back is kind of a synopsis of the front. He discussed the form for the 5 factors to be considered for each case. Then, Conflict of Interest was discussed. Say your relative comes before the Board. If you think , in your mind, honestly that you can render this decision, you can be biased, but you feel you could make an unbiased decision, you don't have to recluse yourself. I had a past Allstate customer come before me, I reclused myself because they were a customer and I stated why. You don't have to state the reason but I think it's good if you do recluse yourself.

Mr. Natali thanked the Board for their attendance. You all will get 2 hours training credit since we did not take a break.

Motion was made by Mr. Natali, seconded by Mr. Stanton, unanimous approval to adjourn the meeting at 7:37 P.M.

I, Nancy G. Morgan, stenographer for the Zoning Board of Appeals of the Town of Cicero, Onondaga County, State of New York, and the person who attended a meeting of said Board of Appeals held May 26, 2010 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

June 7, 2010