

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

MEMBERS PRESENT

Joseph Malcarne, Chairman
John Calogero
Charles Canham

Arthur Weiland

Arlene Campbell, Board Clerk

MEMBERS ABSENT

Norma Dolan
Chris Juliano
Macy Sherow III

ALSO PRESENT

Eliot Werner, Liaison Officer
Michael Appolonia, ZA

Chairman Malcarne called the meeting to order at 7:38 pm.

Chairman Malcarne asked the board clerk if the application on the agenda was properly advertised and adjoining neighbors were notified.

Ms. Campbell responded positively.

Mr. Malcarne noted that the meeting was being recorded for record keeping purposes.

INTERPRETATION APPLICATION:

Punchar's Interpretation - for an application interpreting Sections 250-28 (B) and (J) the Town of Clinton Town Code.

The appellants are seeking a reversal of the Zoning Administrator's interpretation of Sections 250-28 (B) and (J) of the Town of the Clinton Code regarding a determination made by the Zoning Administrator dated October 2, 2018 for activities related to smoke, fumes and odors emanating and occurring at 92 Deer Ride Drive, Staatsburg NY 12580 Tax Grid No. 6368-00-289180.

§250-28-(B)

Smoke or particulate matter. Any emission of smoke or particulate matter, from any source, shall comply with all local, state and federal regulations.

§250-28-(J)

Odor. No person, firm or corporation, excluding farms and agricultural operations, shall permit the emission of any offensive odor at the property line of the lot from which the odor is emitted.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Other Relevant Sections of the Code:

§250-28 General Standards

The intent of these provisions is to protect the public health, safety, and welfare by limiting conditions which are obnoxious, offensive, or hazardous to neighboring property owners. Uses established or maintained shall conform with standards contained herein, unless excepted elsewhere in this chapter, for the continuance of any certificate of occupancy or special use permit. Nothing herein shall prevent a property owner from pursuing private nuisance remedies.

§250-28-(E)

Toxic or noxious matter. No land use or operation shall be permitted which permits or causes the escape of any toxic or noxious fumes, gases or other matter outside the building in which the use is conducted.

§Sec. 250-1 General Purpose

The zoning regulations and districts herein set forth and as outlined upon the map made a part of this chapter are made in accordance with a comprehensive plan for the purpose of promoting the public health, safety, convenience, order, prosperity and general welfare of the community. They have been made with reasonable consideration, among other things, as to the character of each district and its suitability for particular uses, and with a view toward conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

§ 250-2(A) Objectives.

To provide adequate light, air and privacy, to secure safety from fire, floods, and other dangers and to prevent overcrowding of the land and undue congestion of population.

§ 250-2(L)

To promote and protect the health, safety and welfare of the residents of the Town.

Keith and Kimberly Puchar along with their counsel, Allan Rappleyea appeared for their application. Also present are the Bishops and their counsel, Brian Kearney. The Town is represented by Shane Egan who is also in attendance.

Brian Kearney a member of Kearney and Kearney who is representing the Bishops introduced himself to the board. He made a motion on behalf of the Bishops seeking among other branches or provision, a disqualification/recusal of certain ZBA board members and dismissal of the (inaudible) of jurisdiction. Mr. Kearney stated that he had the opportunity to converse with the Town Attorney, Mr. Egan before to call the matter and they came to an agreement that they would

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

take their grandeur of their motion under advisement and that they would proceed without prejudice to their rights and go from there. He then asked Mr. Egan the accuracy of that statement.

Mr. Egan attested to that statement (inaudible).

Mr. Kearney added that they will proceed without prejudice based on the preservation of rights.

Kimberly Puchar started by saying “Hi” and (inaudible). She noted that they never had any prior issues with anybody in the town either. She characterized the Bishops (inaudible). The Bishops move into the neighborhood in May of 2013. It’s a single-family dwelling with a multi family situation. Basically, since they arrived, Ms. Puchar stated that they have been subjected to repeatedly toxic, offensive and noxious odors that emanates from the Bishops’ to their property. She made inaudible statement. She also describes the significant impact to their health such as headaches, burning eyes, sore throat, chest pain, lungs...(inaudible). Ms. Puchar submitted document to the board.

Mr. Egan acknowledged receipt of documents dated June 15, 2016 and Department of Health document.

Mr. Kearney vocalized his objection to the submission. He remarked that these documents should have been submitted and been reviewed prior to the meeting.

Mr. Rappleyea noted submission of documents at the public hearing is not unusual.

Mr. Kearney commented that he understands the process but...(inaudible).

Chairman Malcarne asked the legal counsels to hold their comments and move on.

Ms. Puchar reiterated the impacts of the repeated exposure from burning to herself, their pet, and her husband’s health such as headaches, chest pain, sore throat, breathing difficulties that could lead to lungs failure due to the poor air quality that their breathing. The smokes odors and fumes enter into their property (inaudible comments). She cited an instance where they’ve been sitting in their living room, watching TV, and enjoying popcorn then all of a sudden, their homes were filled with smoke odors. They went outside and investigate it. Ms. Puchar remarked, “You can certainly smell it, but you cannot hear it!” It’s kind of ridiculous that you can’t even sit outside and enjoy your property. You live in the country and you should enjoy your animals and your property. She made inaudible comments. Ms. Puchar also made comment about wood burning stove’ odors. She made inaudible comments. It basically prevents them from enjoying their property inside and outside. Ms. Puchar said that they bought this property to enjoy a healthy outdoor lifestyle and likes to be out in the woods and getting fresh air. (Inaudible statements) You never knew when they’re going to burn. Ms. Puchar added that the Bishops were using the burning as a weapon since they know that it bothers them.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Ms. Puchar sited an incident years ago when they asked them to stop the burning since it's bothering them. The Bishops turned around and told them, "You're ruining our fun. Leave us alone! Get out of here!"

Ms. Puchar stated that the Bishops literally rush to come home, go to their fire pit and light something up. She remarked, "It's funny but it's not!" (she laughed)

Ms. Puchar stated that unfortunately, they don't have alternative means to protect themselves and their home from the Bishops' smokes and odors' exposure other than pursue legally which is unfortunately what they're doing, which is through the town and a civil lawsuit.

Ms. Puchar, the complainant stated that the outdoor odors that affects them are coming from the Bishop's property specifically range from light to heavy. They go out there anywhere from 2 to 12 hours or more in time. Put in perspective --the thing is (inaudible statement) the Bishop lost them into smoke (Inaudible statements). She remarked, "It's how long the Bishops want to burn?" Then, they go inside after they had their fun and then the smoldering goes on for hours. The lingering odors would come over to their property and inside their house. She added that the Bishops are also burning pines which is actually, by the way (inaudible).

The complainant indicated the interpretation application that was submitted. She then circulated photos to the board that were acknowledged and verbalized by the Town Attorney, Shane Egan for the record acknowledge the submitted pictures. Mr. Egan also put into the record the submission of a document titled "What you should know about Fires? A document from the Department of Health.

Mr. Rappleyea stated that the purpose of the Department of Health document is to corroborate objectively smoke (inaudible statement). In other words, someone who say "smoke" and subjectively, the other one is greater than the other. Mr. Rappleyea said that somebody can download this document from the DOH and say that these are objective measures of odors and smokes. He thinks that goes without saying is (inaudible statement) I would start with that, he commented.

Mr. Kearney questioned the document submitted about "What should you know about Fires?" He stated that it talks about first responders. "It seems to me that it is not talking about anything other than fires and a house, am I right? He asked.

Chairman Malcarne refrained Mr. Kearney from making comments. He said that he will give Mr. Kearney a chance to speak later.

Mr. Kearney said that he just wants to know what the document is all about. Mr. Rappleyea gave the rationale of his statement. He stated that he was just explaining the document that was acknowledged by the Town Attorney for the record.

Mr. Egan expressed his apology to the board for the interruption. He just wants to know what they have for the record.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Ms. Punchar explained the documents that were submitted. She made an (inaudible statements). She stated that they provided the board documentations about visual evidence but not (inaudible statements) since odors can be off present without the visual component as well. We all have these situations when you're driving down the highway and you can't see fire off in the distance and we don't see any smoke or anything but man. Does the car look like is filled with smoke or (inaudible).

Ms. Punchar asked, "Think about how many times you go home on a regular basis throughout the year and how many times you smell burning smoke on your property. "Chances are", she paused. Ms. Punchar stated that she asked the general public out of curiosity about that question and some people said 3 or 4 times a year. Different responses from all different sources. She commented that she get that. Some people have to clean up, etc. That's totally understandable! 3 to 4 times a year is not unreasonable! She remarked, "This one burns 3,4, 5 times a week and still continue to do it. They even do it in front of their lawn. They want to let you know that they are going to burn, and light fires all night long. There's nothing you can do about it. (inaudible statements) The town is not taking further action even though they are repeatedly offensive.

Ms. Punchar stated that not only they cannot enjoy their property, it also devalues the property and the neighborhood, for that matter. Who would want to come into this neighborhood and have their house filled with someone else's burning smoke? I don't think anybody would want that! It's one thing if you're excluding yourself. You are choosing to do that!

Ms. Punchar remarked, "We are at their mercy!" Most of the town residents want to keep their quiet and distance. They don't want to be bothered by neighbors! And that's typical among the residents.

Ms. Punchar indicated the number of longtime town residents present at the meeting. "Hopefully they will speak," she uttered!

Chairman Malcarne stated that the public will have a chance to speak once the public hearing is open.

Ms. Punchar stated that there is a lot of hostility in this neighborhood that had risen to a dangerous level. She also indicated the two Cease and Desist letters that were issued and completely ignored by the Bishops. "They never stopped, never slowed down from day one!" Ms. Punchar exclaimed. Even on a court night, Ms. Punchar stated that the Bishops will race home and literally start fires. She also indicated the time when the Bishops' party submitted a documentation and the court was delayed for a month. As I said, she continued, the Bishops were taken into court.

Ms. Punchar stated that unfortunately, the prior Zoning Administrator (inaudible statement) the Cease and Desist order. She also indicated that the previous Zoning Administrator cited Sec. 250-28 E. She thinks that there is an accidental error on his part. He cited Sec. 250-28-E which is fortunately resulted into (inaudible word). Ms. Punchar opined that Sec. 250-28 E specifically indicates burning outside the building. That's more appropriate in affecting your neighbors. (inaudible statement). That would have been the most appropriate (inaudible word)

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

For reference: Sec. 250-28 E of the Town of Clinton Zoning Regulations states that Toxic or noxious matter. No land use or operation shall be permitted which permits or causes the escape of any toxic or noxious fumes, gases or other matter outside the building in which the use is conducted.

Ms. Puchar stated that neighbors have witnessed multiple burning locations and throughout the woods on the Bishops' property. At least that is what they told me. That is dangerous! We live in the pine woods (inaudible statements). Just like that fire in the Ulster County when somebody was burning out in the woods (inaudible statements). I don't anticipate what's going to happen, but it could happen, and I don't want my home, my animals and my neighborhood to be affected because of their carelessness.

Ms. Puchar stated that they were advised by the town and Mr. Egan, actually, to document everything, pictures, video, log sheet, of the burning activities and which they've done. Ms. Bishops as a matter of fact was caught in one of the photos looking at their driveway. Most recently they put up a live video camera (inaudible statements).

Ms. Puchar stated that the Bishops called the police and falsely reported that her husband was trying to take pictures of their daughter while playing in the yard. They falsely accused us of reporting on the Child Protective Services when there's numerous enemies throughout the whole neighborhood. And that's another neighbor, not us.

Mr. Canham tried to intervene and said, Can we (inaudible statements).

Mr. Weiland reacted and said, "I've heard all about this and I've really shared the agony of dealing with neighbors at times but (inaudible statements).

Ms. Puchar said the zoning districts protect the house and quality of life for the town citizens and that is all us! The whole purpose/intent of the zoning laws are to prevent adverse impacts from one citizens property from affecting/devaluing another citizen's property. Two Zoning Administrators have determined the noxious odor trespass is a violation of our code. The current Zoning Administrator determined that the current activity does not rise to a prosecutable offense and he also pertains directly to the 2017 court case which did not cite the most appropriate town code in error. He also repeatedly refuses to acknowledge and accepts video evidence of the violations that they had submitted. He (the ZA) said, "No, he is not going to accept it!

Ms. Puchar stated that the current Zoning Administrator submitted false report to the Town Board that the issue has been resolved in the August 2018 meeting and to include the reporting of multiple subsequent complaints for the same ongoing issue in which he by the way and all the Town Board members were copied on as well.

Ms. Puchar stated that current Zoning Administrator made a determination that two other issues in the Town did rise to the level of prosecutable offense which involves someone's unsightly yard and another resident who had too many unregistered vehicles on their property. She commented

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

that those are all against are zoning but none of those crosses over to the neighboring properties and neither of these two issues causes adverse health effects for neighboring residents. She said that she agreed that these issues devalue our properties and should be addressed as well, unlike the recurring inhalation exposure of hazardous air pollutants that they continued to be subjected to by the Bishops. She also noted that the Trusz family who are 300 feet from her were also affected by these fires. Odors and smokes have gone to their property and filled their house with smokes as well.

Ms. Puchar stated that they are tax paying citizens who deserve protection under the existing zoning laws. They were before the board asking to reverse the decision of the current Zoning Administrator and to be protected from further harassment from their neighbor. This is five years of our life and will never going to get it back. She commented that they don't want to be there, she is sure that the Bishops don't want to be in there, none of the neighbors want to be in here but they should. You're looking out for me; I am looking out for you. That is what neighborhood for. You don't have to compromise on a health. So, we have current zoning law in place, and we would like the town enforce this.

Mr. Rappleyea addressed the objection raised by Mr. Kearney about the earlier documents submission which everyone was copied including Mr. Kearney. If the board wants to be heard from either party in addition as you go down the road, they will be happy to. He remarked, "I am not going to submit anything, I am simply going to say, on that submission in terms of the technical issue, I don't agree that the town doesn't comply with and I certainly don't agree that there is basis of refusal from anyone of you. He note that the Refusal Statues are either Code of Ethics if you have one or General Municipal Law. Both concern yourselves primarily for financial conflict for theory that ---folks in the town will talk to each other, communicate with one another, -- does not rationally what happens, to the extent that exhibits supply which clearly going to make it determined something one way or another. That's a bit little different. Mr. Rappleyea opined that he doesn't think that is present at that meeting. There was a decision in the past. Respectfully, Mr. Kearney is incorrect on both of (inaudible statements) points.

As far as the substance of why where here, Mr. Rappleyea stated that Mr. Kearney letter that he submitted this evening admits these fires. No dispute on fires. He calls them occasional campfires. Mr. Rappleyea stated that they are not occasional campfires. Without occasional campfires, a photograph is (inaudible word) also a fire of record and demonstrate something far more (inaudible statements) than that. As the Puchars said earlier, Mr. Rappleyea stated that they were not frequent visitors of the Town Hall. It's not a coincidence that they became visitors since the Bishops' bonfires. It's a sad state of affairs but the zoning law has to dictate standards of decency. It's understandable that someone might have a fire once in a while but it is not understandable to see habitual fires. He commented that he thinks that he understands Mr. Appolonia's determination. He asked the board to think it more broadly that if the court issues a decision and says if a (inaudible) specific level of conduct is not an offense, when the conduct is strategic or more intense, or the fire is greater, or what burn is different, you're not precluded by prior filing from the court. You don't have a blank check! And that is essentially I think what's been found! Well, Judge Seelbach made a determination based on the proof that she heard that evening or perhaps is greater than that when I wasn't there. That behavior that occurred based on that proof

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

that is not a violation. We are not talking about that, Mr. Rappleyea said. We are talking about things that happened after that. That does not have preclusive effect, that's number one. Number two, it also does not have a preclusive effect because there's other forms of relief that the town can seek other than going to Justice Court. For example, the Town can file for injunction. There are other things that the Town can do, and the standards of proofs are very different. Justice Court versus the Supreme Court.

Mr. Rappalayea said that this is within the Bishops' hands. The Bishops can stop doing it and this will stop. Or they can continue to do it and it won't stop. But the Bishops concede there are fires. The counsel submitted a letter this evening that concede that. There's objective proof that were submitted this evening photographic and otherwise, it says that this is harmful. It also clearly passed the boundary. And if you have to gauge this property, I don't know what the geography is -- but I know that when there's something higher or something lower and there is prevailing wind then that is where it's going to go. That is what the topography here. So unpleasant as it is, we're sitting here talking about purely an intense neighbor's dispute. That's why we have zoning laws. Some people don't understand there's certain things you shouldn't do. That's why we have zoning laws. It puts the board on the spot, and I am sure -- you don't want to be in. And I understand!

Mr. Rappleyea stated that if you think of the facts, the Bishops are not up here screaming and yelling, "We don't have fires!" If they are falsely accused of that and it would be wrong! They haven't! No Dispute! There is no dispute that if the wind hits that direction, that's where they go. It appears to be no (inaudible) dispute that they are doing it. And lastly, I would say that I don't think that there is any dispute that whatever Judge Seelbach found does not have ongoing conclusive effect. If that would be the case, that would mean that there would be very small campfires on certain evenings and the court determined that the Bishops did not do anything wrong and they can set fires 5 times in terms of magnitude and heights, smoke and wind, and say "Hey, we can't be prosecuted again! Because she said once, two years ago that we did not violate the law."

Mr. Rappalayea asked the board to consider these issues. These are common sense issues. They are not terrible and difficult legal issues in fact they are not difficult legal issues at all. He thanked the board for their time.

Mr. Weiland asked about the letter of objection submitted by Mr. Kearney to the ZBA.

Mr. Egan apologized and said he should have noted that for the record earlier.

Mr. Egan indicated for the record a letter submitted by Mr. Kearney dated December 6, 2018 regarding various objections and a letter dated October 22, 2018 submitted by Kimberly and Keith Puchar.

Mr. Weiland asked about Sec. 250-98 (B) stating (inaudible statements) that should comply with the local and state regulations. The most significant information he had seen are state actions. He doesn't know or hasn't tried to research properly what are the current local regulations in relations to Sec. 250-98 (B).

Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018

Chairman Malcarne stated that the board will going to hear more information about the case. Maybe they can start there.

Mr. Weiland agreed. He said that the board is being to ask to respond to the Zoning Administrator's determination which should be based on the zoning laws.

Mr. Egan indicated the section of the code that the board is dealing with and the justice court is fought under is Sec. 250.28 General Performance Standards. There is a section about noise. He commented that they are not dealing with that. There are two sections in the case that brought us which is part of the application. This is about the fire pit.

Mr. Egan stated that there was a case that was submitted by the previous ZA, Donald Smith. That is format on (inaudible). He commented that he is not going to be involved with that case. The material that was submitted with the application to the ZBA was the first case that was submitted by ZA, Donald Smith. The second case that was adjudicated by Judge Seelbach involves three sections the information of complaint, 250.28 (E) and (J) and Sec. 250.102 (B) that deals with the violation of Cease and Desist Order by the Zoning Administrator.

The board exchanged opinions about the matter.

Mr. Canham noted that the board didn't have a copy of the last section.

Mr. Rappleyea noted that it was agreed that it wasn't "B".

Mr. Egan explained that Mr. Rappleyea meant that the case was not brought under Sec. 250.28 (B) of the Town Code.

Ms. Campbell asked, "So –there's only two sections then?"

Mr. Egan confirmed.

Mr. Weiland asked, "So, if it is not "B" then what are local regulations under "B.""

Mr. Egan responded that his argument with the Town Code, you're looking at them Sec. (inaudible).

Mr. Weiland said that it's tricky because people work very hard to have it as good as it could be but there could be so much difficulty down the road.

Mr. Weiland said that he understands why "E" and "J" are significant, but it is confusing to talk about smokes being a part of this problem – obviously when it was not a part of the problem at sometimes legal (inaudible word).

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Mr. Canham stated that he'd like to get a copy of that approved statement and if possible, Judge Seelbach's decision. He asked, "Do we have that?"

Mr. Egan explained the way this (inaudible word) of this section of "classified" in the Town Code in terms of the Bishops documents is that Mr. Butts came to an agreement that the proper interpretation that Judge Seelbach (inaudible word) against unclassified misdemeanor. There is a criminal violation. There is jail time, fines, and penalties. There is no formal document decision from the court. It is just guilty or not guilty. There is a finding under these sections (Sec. 250-28 (E), (J) and Sec. 250-102 of the Town Code. There is no written document.

Mr. Canham asked if there was sort of justification of the trial. With regards to the transcript of the trial.

Mr. Egan stated that he doesn't have a copy of it. He made a request, but he was told that there is none. It is a not guilty finding on all those charges.

Chairman Malcarne asked the Town Attorney if there is any summary that he wants to share with the board.

Mr. Rappleyea stated that to answer with the gentleman's inquiry, on the 8 page of the appeal of the Punchar's, the Punchar's referred to (inaudible word) which are incorporated by (inaudible word) provision of the rules and regulations which meant and directly he meant that it should not be litigated in court. This is also the reason why Sec. B is not part of it.

Mr. Egan stated that he's not sure whether Mr. Appolonia wants to stick with that point. What I could tell you was what the county did. The Town consulted with the DEC to see if the conduct was a violation of the DEC and they were told it was not a violation.

Mr. Weiland stated that he covered a little bit of information what he has on the state. He saw that coming back with the Town is consistent with the state. That was the issue of how you show consistency.

Mr. Egan said that there are arguably provisions of the DEC regulations that are applicable here but then again Town defer it with the DEC. The prior ZA defer it to DEC on the outset of 2016. To address Mr. Weiland's question why it wasn't brought under Sec. 250-250 (B) is (inaudible statement), the DEC.

Mr. Weiland asked Mr. Egan if he finds it appropriate that the State Law should inform our local law.

Mr. Egan responded, "Absolutely!"

Mr. Rappleyea added if the local law said to defer it to DEC in terms of enforcement then it should say that but that's not what it says. It incorporates by reference to the state law. He said that he understands that the DEC is a resource but when you read the state law, it seems to be a little

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

(inaudible word) of what happens. He guessed at the Town view; it seems to be a little helpful to hear what the DEC's view.

Mr. Egan stated that is reason why the case was not pursued to Sec. B. He stated that they were talking to the DEC and in their view on this question is not a (inaudible) violation. This is the reason why they use the other sections 250-28 - E and J which are more appropriate.

Mr. Weiland asked if the actions later will not be covered necessarily by DEC's decision in 2016.

Chairman Malcarne opined that this might also depend whether there is an increase or decrease in the number of times that the Bishops are burning.

Mr. Egan indicated the long list that was submitted by the Punchars about the days and times of the burning on the Bishops' property. He itemized the numerous dates and times the Bishops were burning that was even going back in 2015. He referenced the Information and Complaint in the prior Zoning Enforcement action.

The board asked Mr. Appolonia about what happened and his perspective and determination of the situation.

Mr. Appolonia, the ZA indicated the not guilty decision of Judge Seelbach. This sort of set the stage of the other thoughts. DEC regulations are not really specific but in general, they do not conflict with local, state and federal regulations. He opined that Sec. 250-28 E and J of the Town Code mention smoke in particular matter noxious and fumes. He commented that from the Town perspective, to have a law having to do with smokes would be very hard to enforce. He thinks that it is a bad precedence because people burn wood in either outdoor fire grill or bonfires. Smoke does travel, he understands the concern. There was a call about an active burn, and he noted that he did not witness any of these active burns and what they call their worst situations. The Deputy Sheriff and the Fire Commissioner were called in and they both concluded that the burning that they witnessed did not rise to a level of concern. This is the summary of what he concluded, and he welcomed any questions that the board might have.

Mr. Canham stated that he doesn't think that there is any question that smoke is a health risk. It's a most hotly debated air quality in a particulate matter. There's a National Air Quality Standards for it. It's always debated. It protects some people but not all. People have different in sensitivity. He reiterated that there's no question that smoke can be a health risk particularly if it is persistent.

Mr. Canham commented that the General Performance Standards that we have is a little vague. They provide: Sec. 250-28 (General Performance Standards) - Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I). The intent of these provisions is to protect the public health, safety, and welfare by limiting conditions which are obnoxious, offensive, or hazardous to neighboring property owners.

Mr. Canham stated that he's having a hard time on how to surmise and how to enforce that. The nice thing about our town website is you can actually easily search a code. He searched burn,

Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018

smoke (inaudible statements) everything. He noted that we almost have no local ordinance that relates to this. He agreed that burning is pretty common. We all periodically have a pile of brush after storm. People love to barbecue and a lot of people in the town have woodstove. They all generate smoke and that can be a health risk to ourselves and to our neighbors.

Mr. Canham stated that it is unfortunate that Sec. 250-28 (E) has provision about building which is huge. What is quite concerning to him is not much of the odor of smoke but the health effects of the smoke. He doesn't mind so much about the odor of smoke but then he's worried about what's he breathing. He feels that Sec. 250-28(J) is the only one that they can really act on. He stated that he wants to spend more time looking at this case. He does not feel that this will be concluded at this meeting. Based on his research from the DEC website, Mr. Canham agreed that there is not much info or provide little guidance about what is excessive level. DEC is concerned about forest fires and so there are seasonal restrictions. One of the rangers noted that a fire pit is exempt from seasonal restrictions which he did not even know. He learned something new.

Mr. Canham said that they discovered so many cases and Mr. Calogero who is a member and involved with the zoning revision and others have worked so hard for so many years to try to revise our zoning code because over the years, there are sort of holes. Mr. Canham opined that the General Performance Standards don't really give a kind of an importable standard. For him being asked to overrule the ZA determination is a difficult process. He noted that he hasn't been at the property to witness the activity though he's been to both of the properties. He has to rely on the list that only the Punchars can attest, but then it will go back and forth between the neighbors, was presented to the board, but then it puts it on them to try to judge on something or paper without really having personal experience. He stated that he is actually struggling on how to actually decide.

Mr. Canham commented that odors are very personal. The noxious is more compelling though they have this clause that says that it emanates from the building.

Mr. Rappleyea said that they can submit a list if this will be more helpful. He also stated as the ZA pointed out, "How would you know when something is a violation. He said that we all might have to apply our common sense when it comes to excessive fire. Which is why if you look at section (inaudible statements) which is incorporated by reference. It says, "Such quantity, character and duration which is injurious."

Mr. Rappleyea said that he lives in Millbrook and neighbors have fire pits all the time. Mr. Rappleyea said he loves the smell of the fire pit and they have one too. But if gets too smoky and the neighbor gets it then you don't do it again. It's hard to regulate a behavior but if you're neighbor came and say to you, "Look, that wood you use is really dry." Mr. Rappleyea said he did it once and he felt so terrible. He went to his neighbor and apologized.

Mr. Rappleyea stated that there is a foreign review to come up with a hard line standard. He made (inaudible statements) will supply of the (audible word) host acquittal is a criminal standard approved beyond reasonable doubt. It's very different from a civil violation. We all know when we see it. It's a knowledge.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Mr. Egan asked the Zoning Administrator, “In your interpretation of the code based on Sec. 250-28 (J), Do you view the smoke/odor as offensive?”

He stated that the letter indicates, “No” but Mr. Egan underscored that he doesn’t want to put words in the ZA’s mouth.

Mr. Appolonia responded that it can be offensive. He responded, “Yes”.

Mr. Weiland feels that the important problem is getting people to see the occurrences. He doesn’t know whether CAC would be willing to be on call. They’re all volunteer. But this is what CAC do, they like to step up and check the environment.

Ms. Puchar indicated when the Fire Department was called in. She said that she spoke with the Fire Chief who said he was going to do a drive by to see if he can smell it in the air. The Fire Chief called her back in ten minutes and affirmed the smell. He also told her that he was going to contact the Sheriff Department. She asked him why he contacted the police station and he responded that he needs to document the situation. The Sheriff asked the Fire Chief, whether he smelled it in the air and he responded, “Absolutely Yes!”

Ms. Puchar indicated when the police showed up. They pulled up and sat on the low part of her driveway. She described that her property goes down and goes up again where the house is. Due to the topography of her property and the lingering odor of the smoke, she asked the officer to come up and take a walk around her house. The officer refused and said “No, this is a town matter and you’re gonna have to take it to the Town Court or Civil Court.” And then he left, Ms. Puchar said.

Ms . Puchar said that her driveway is to the north side. There is a very large and steep bedrock wall located behind the Bishops’ home. The prevailing wind generally moves from the Bishops property to theirs. It’s probably towards the (inaudible statements) or behind south side of their house. None of them (inaudible word) would have been caught by the person who came in to my driveway and left and went to their driveway. When the officer went to the Bishops to investigate, the officer parked on their driveway on the north side of the house which is upgradient of the odor due to the prevailing winds that were blowing from the northeast. It’s not possible because of the topography in that area.

Ms. Puchar said, “You know what, there is a huge encounter smoke exposure, I’d like to (inaudible statements), when you’re driving down the road and as you get through, smell it and your car get filled with smoke, as you drive through, typical strength, so, imagine not to be able to get away from that. “We can’t get away with that”, she remarked! But it doesn’t even have to be like that, “It can be a low exposure or a light smell of wood. The fact is – if you’re smelling it, you are inhaling the (inaudible word) out of it, and inside and it gets to your lungs, and get to your blood stream. That in fact can be found at on the Department of Health website. So, nobody has

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

the right to affect my health. That is the thing with them smoking cigarettes for 14 years from 8 consecutive hours. She remarked, "It's not fair!"

Mr. Appolonia indicated his conversation with the County Sheriff along with Fire Department.

Mr. Weiland indicated the interesting article on the NY Times about personal air monitors. He shared a case about one family on the west who got the monitor. (Inaudible statements) Mr. Weiland stated that there is also an issue of verification of one individual data versus mass (inaudible word) data.

Ms. Punchar tried making a comment about Mr. Weiland's statement but her legal counsel stops her from getting into.

Mr. Egan asked about the Introductory Sec. 250-28. He is not sure if they want to address it. Mr. Egan read the section, to wit: Sec. 250-28 (General Performance Standards) --The intent of these provisions is to protect the public health, safety, and welfare by limiting conditions which are obnoxious, offensive, or hazardous to neighboring property owners. Uses established or maintained shall conform with standards contained herein, unless excepted elsewhere in this chapter, for the continuance of any certificate of occupancy or special use permit. Nothing herein shall prevent a property owner from pursuing private nuisance remedies.

Mr. Egan asked about the last statement. He asked the applicant about the last statement. He asked, what's your position on that?

Mr. Rappleyea responded that it's being pursued. Right now, there is a private nuisance claim being pursued.

Mr. Weiland asked if this is with the judge?

Mr. Rappleyea responded that he's not sure whether the case was already assigned to a judge.

Mr. Kearney said that the case is assigned to Judge Maria Rosa. He noted that they made a motion to dismiss the complaint with prejudice because of the charges of numerous grounds. Not to which of which the claims are precluded and barred by legal doctrines because Ms. Punchar has filed 10 smoke complaints with the town following the "not guilty" verdict which cited all the various appeal of the statute regulations which were denied by Mr. Appolonia in his well- reasoned comprehensive letters which were attached to their papers and by failing to appeal these decisions to the ZBA, and those decisions became final and they may not be reviewed by the court.

Mr. Egan said that they're look into that. He indicated his question "Why is this not a private nuisance between two neighbors?"

Mr. Rappleyea responded that the answer is(inaudible word) which is why the local law says this does not preclude you from doing that. It does not say that's all he wants to. With respect to Mr. Kearney's comment, Mr. Rappleyea stated that we have different use of what the court could find.

Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018

With respect to Mr. Kearney's confidence, he thinks that the motion of (inaudible word) will be denied and they will go down that path and those chips will fall where they fall. There is a civil standard of proof and it is a very different standard. Again, there is two people that control this, (inaudible statements).

Mr. Calogero said that obviously there is a lot of stuff that is going on. He is trying to zero in on cause of the matter – whether Mr. Appolonia's decision is appropriate to zoning or not. He gave his sense of decision based on several points which Mr. Calogero thinks that any Zoning Administrator has to use. Our town is not in possession of equipment to judge air quality to make the determination that scientist will have to make. Unfortunately, we have this term as an offensive odor. There is probably some basis that are ignored, for example some emanate from farm which they are exempt, people go crazy with all those kinds of things. Wood stove, you know, some people would be offended or sick, others maybe not.

Mr. Calogero thinks that the ZA's decision was subjective. He doesn't know how it could be anything but to a degree - subjective when we have terminology like any offensive odors which are not scientifically examined by our Town Laws. He underscored that the purpose of the board is not to rewrite the town laws. That's a whole different issue. Their purpose here is to determine whether the Zoning Administrator's decision is correct. He like to stick on that, he like to focus on that. If the board finds that the ZA's decision is correct, the affiant still has the right to appeal this to higher level. And if the board that the ZA is incorrect, then the Bishops has to (inaudible word). So, he summoned the panel to concentrate on the ZA's decision to come up with some determination. Mr. Calogero also addressed the public who surely wants to be heard.

Mr. Calogero said that this is what the optics in here. This is what we have to go by, what we have here, right this minute, not what we would like on another date, not what would serve the Town better, not what would be better for everyone's health. He stated that he is not happy with the Town Code, but he did not write it. So – let's core this discussion in this direction and let's hear what other people have to say. Let's try to focus on that.

Mr. Weiland said that this appeal (inaudible statements) within the last 60 days. There's so many (inaudible statements). He just wants to know which determination the board is dealing with. It seems that all the other determination/decision lost its rights to be challenged to the Zoning Board of Appeals beyond 60 days. The board is dealing with one specific determination at this point.

Mr. Egan stated that there is a term for this. This is something that keeps on repeating itself. It keeps on happening, It's continuous issue. He agreed that this is for one particular instance that was brought to the ZA attention, but the conduct is going on very similar conduct, based on his review.

Mr. Weiland made an (inaudible statement). He doesn't know what town (inaudible) whether it's his. (inaudible).

Mr. Egan responded that he doesn't know whether this is for the board's determined. The board's job on this appeal involves 3 sections of the Town Code, Sec. 250-28.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Mr. Weiland said, whatever is on that 60 day (inaudible statements).

Mr. Egan said, whatever is on Mr. Appolonia's letter.

He asked if it might not be "E" and "J".

Mr. Egan said that it was "E" and "J". He said that "B" might be in there as well, but he underscored that "B" was not litigated in the Justice Court proceedings.

Mr. Weiland exchanged opinions with the Town Attorney. He remarked, but that was last year, isn't it? Mr. Egan said that the proceedings was in 2017. Mr. Weiland said they are not talking about that proceedings. He's talking about when the 60 days activity happen. Mr. Egan gave the board a background of the case proceedings. Mr. Egan said that the court proceedings happened early of 2017.

Chairman Malcarne asked about the date of the determination letter made by ZA.

Response - October 2, 2018.

Mr. Weiland said that the board are being asked whether they will overturn the decision made on that letter. He said that he agrees that particulate matter gets in (inaudible). He said that he's happy that his neighbor stop burning plastic once a month or so. He made inaudible statements.

Mr. Egan asked for the record, "What is being burned?" Do we know what they are burning?

Ms. Puchar responded, (inaudible word).

Mr. Weiland remarked, "How would you know?" Did the neighbor asked you to come over and take a look at it?

Mr. Egan said what is being burnt other than (inaudible statements) smells.

Ms. Puchar said that the police report specifically said that they saw multiple large pine woods in the fire pit.

Mr. Weiland remarked that pines are generic.

Mr. Egan said that he was trying to get some facts.

Chairman Malcarne stated that before he opens the public hearing, he wants to emphasized as Mr. Calogero pointed out that there were here to specifically at the request of the applicant to decide about the determination by the ZA. The comments that would be made will be reviewed by the committee. He asked the public to put whatever personal feelings they have on the side. The board is specifically interested in hearing is what is relevant to this particular situation dated October 2,

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

2018. He asked the public to please direct any comment to the board. Whenever they have questions to anybody in the room, they will have to ask the board and they will decide. He said, "Please state your name and address for the record".

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 4-0.

Denise Trusz, 69 Deer Ridge Drive, indicated the smoke that's coming into her property. She noted that they have actually been court for this as you all know. Going forward, since that hearing, there was smoke on my property and my house when my windows are open. At this time of year, my windows are not open. This is like (inaudible word), between spring, summer and fall, and most recently in the fall. Ms. Trusz said that my neighbor, Patty who was with her at the meeting was visiting her at her house that time witnessed the smoke in her house. The problem with this is just you can't just close the windows. You'll trap the smoke in the house, and she said that if she opens the windows, then she doesn't have any way to regulate it to get it out once it's in. Her husband and her will catch it the minute they see the smoke but most of the time, it's already too late because they're in. There is nothing they can do. She underscored that she is extremely sensitive to the smokes. She said that her mother was a chain smoker growing up and she has sinusitis from smoking though she never smokes. She added that she's very, very sensitive to the fumes and particulate matter. That does affect her health. She also indicated a lot of head aches that she'd had.

Chairman Malcarne asked Ms. Trusz about the specific date that this burning occurred.

Mr. Canham noted the long list that was submitted on file.

Chairman Malcarne asked even just one specific date.

Mr. Egan responded that on October 1, 2018 per Ms. Puchar's email to the Zoning Administrator, among others, Mr. Egan paused and apologized and said --rather on September 29, 2018 beginning 6:20 pm and continuing throughout 8:30 pm, there were smokes, fumes and toxic matter travelled onto the Puchars property. Mr. Egan stated that's what he thinks they're dealing with.

Chairman Malcarne verified the date.

Mr. Egan responded September 29, 2018. That was the specific instance that generated this.

Mr. Weiland asked what the ZA's response to that complaint.

Mr. Egan read out loud the ZA's response to the Puchars email dated October 2, 2018. Mr. Egan noted that the letter also talked about the right to appeal to that ZBA at the end of the letter.

Ms. Puchar commented about that letter. She said that they asked Mr. Appolonia why he made that decision and the ZA referred them back to the incident about the Police Chief and the Sheriff which she thinks is inappropriate. She said that she wanted to comment about that for the record.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Chairman Malcarne turned back to Ms. Trusz who was before the board for the public hearing comments. He asked if he recalls the date specific to that burning happen.

Ms. Trusz responded that it was summer, late September, early October.

Chairman Malcarne asked Ms. Trusz the frequency of the burning. He said, in general, he's hearing that there's a smoke and often burning (inaudible statements).

Ms. Trusz indicated the topography of her property. She's at the lowest point, she might be farther away and steep, but because of the topography, she got hit in a different way. (inaudible statements) She described how her house gets the smoke due to the topography of her land. Her husband and hers gets the smoke completely but the neighbor won't even get it. She indicated once instance when there was a bonfire, or not sure what was happening or what's going on at the neighborhood that time, her husband who works for the Fire Department for years, was sitting in the living room and has to go to work at 5:00 am when a smoke detector alarm went off. She said that her husband ran out thinking there was a fire. They went out but it was not. It was something going on with the Bishops property.

Mr. Weiland asked, "At 5:00 am?"

She said, "Yes".

(inaudible name) Rhynders Road, said that she normally cross over Deer Ridge Drive to get to Rhinebeck since she goes to Rhinebeck quite often. Few times when she noticed the burning and she asked, "What's that fire? What's going on?" She said that for her it's common sense, if can't give courtesy or you don't get along with your neighbor, the common sense to think (inaudible statements). There is a big difference between campfire smokes, the fireplace that she has, it's light, and then there is this noxious, health smoke that goes and stick into your wall, your clothes, into your furniture. She cited an instance from one of the articles in the geographic newsletter wherein they were cutting trees to grow more palm trees. She indicated the outcome of that story which was so many people died from the smoke. She said that if your neighbor is lighting little pit fire 3, 4 or fives times a month, and it's not going all over, then it's fine. She gets the opinion when she listened that it was smoldering 12 hours later, then it seems to her that they are purposely putting something into that fire pit to burn for 12 hours. If she has a fire in her fireplace and burned for 4 hours, let it go out and 2 hours later, there is nothing. She also commented that they have anything in the code something like this.

Chairman Malcarne asked the lady if she remembers anything, she can think of September 29th.

Ms. (inaudible) said that she knew she went over (inaudible), like the end of September. She can't tell the exact date. She was driving the road from Route 9G and she decided to open her windows. Mr. Weiland asked, "And you drive by there quite often?"

The lady said, "Yes".

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Mr. Weiland asked her how often she noticed the smoke like once month, twice a month.

The lady said that she wasn't taking notice of it. She would say often. She knew that she passed there one evening and she saw the flame. She said to herself, "Ah that's what it is. She asked," Why would the fumes go till wee hours in the morning? She said – maybe 8 pm at night.

Mr. Canham asked the chairman whether the complaint letter from Ms. Puchar does mention the September 29th fire. His wondering whether a decision has to be based only on a single event. His sense here is not just an issue of one fire. He said that he would be willing to bet that most of them has at some point has a massive bonfire after a storm. Having a single fire is not uncommon. His sense of the issue here is the frequency of this. He could not tell from either Mr. Appolonia's letter or theirs whether they were solely asking about the one event. He's not sure whether this is just about one event.

Mr. Weiland said that the board is responding, what they can in terms of the ZA decision recently and he thinks, and the other lawyers made a point quite reasonably that its event is going to be quite unique. So, he is not necessarily concerned that the September event to be identical to all other events. But it is the event that was reported for action.

Mr. Canham said, "I guess I'm saying I'm not sure that was intended by them. I think they were mentioning it as an example. That's the way I read the letter."

Mr. Egan commented that he thinks that it is appropriate for the board to take into consideration the totality of the history of this case and whether or not that totality makes it something more or less more offensive and read the whole thing in context. He doesn't think that there is anything inappropriate with that even though the genesis or that September 29th (inaudible statements).. As you can see on Mr. Appolonia's response, talking about prior (inaudible word) and what went on. He doesn't think that there's anything inappropriate about that.

Mr. Canham said, "It's good!"

Mr. Egan said that it's a good question.

Chairman Malcarne said that for both sides – one is – we are responding.

Mr. Weiland just wants to be specific instance - the reason why this specific instance is recurring is because they heard so much.

Mr. Weiland said if he can just read,, "Can I just disagree having heard the frequency and the intensity versus a more common situation in the township which is un-occasional occurrence. So that is what I'm wondering with right now, Mr. Weiland uttered.

Mr. Egan opined that he's sure that the board will hear all the facts and the other sides will have a different view.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Ms. Maloney said that again ---She just wants to know and because this is happening. It seems to me that this is ongoing and ongoing and becomes vindictive um, you can make a (inaudible)fire smolder, they go in to your house and this is annoying, and just throw enough water on the wood that's in there which will keep it smoldering and smoking. She remarked, "It (inaudible word) me! She made inaudible statements. She said that she doesn't know how you can have that in your code. You can't have fires that are going to affect your neighbor's health and wellbeing. She made inaudible statements. Who would do that?

Tiffany Pratt, 1472 Centre Road said that she's a long time resident and moved here because of the peaceful community. She made an inaudible statement.

Chairman Malcarne verified the spelling of her last name.

Ms. Pratt spelled her last name – P-R-A-T-T.

Ms. Pratt commented about the comment that was made earlier. She said, "what I think here...and I'm really talking...(she paused and addressed the gentleman who made a comment earlier). "I'm sorry but I didn't catch your name." Ms. Pratt said that what the gentleman point that he's making is (inaudible words) when you're talking about fire, (inaudible) or whatever, but I think that's what exactly the problem that every time they bring one, it is one, I've been saying it before, and so it is treated as an isolated incident. It is a very different standard that it is a repetitive ongoing constant action.) If my neighbor burns something once, it's (inaudible word), but if all of the time, (inaudible) I think that's really (inaudible) you know, as the letter said, this is the first time I ever heard about this, it's very articulate, that (inaudible – constant cough in the background) but because, the (inaudible statements), specifically because he was the one (inaudible words) before then he is acknowledging the repetitive nature and that would be, perhaps (inaudible word – lady was mumbling).

Chairman Malcarne thanked Ms. Pratt. He asked for more comments from the public.

Patricia Smith, 93 Deer Ridge Drive who leave directly across the Bishops, said that she doesn't get the smoke because she has a barn in my property, to the topography of the property but she has seen multiple fires, and I have to say something that all those little fires, (inaudible statements), that had dried...inaudible words...fire pit at the back of their house. She underscored that she'd seen the smokes, a lot of smokes. She was infected by the smokes. She noted that she was at the Trusz' house on September 29th and her house was filled with smokes. She attested to the burning that night.

Ms. Campbell asked, "Whose house – Denise?"

Ms. Smith responded, "Denise Trusz".

Chairman Malcarne asked, "Anything else? Appreciated that. He asked, "Any other comments?"

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Ms. Puchar said that she would like to make a comment that they have been mostly affected by the campfires (inaudible statements) front of their lawn (inaudible statements) sometimes went up (inaudible words).

Brian Kearney, the Bishops' legal counsel spoke. He remarked, "Where to begin?" He said that he'd like to begin by making a reference to Exhibit 8 #141 to his submission but said to the crowd that they should also be familiar with it because it is in the Town Hall, he just picked it up that day, talking about "Open Burning Regulations" by the DEC and it specifically says that burning is permissible for barbecue grill, cooking devices, small cooking and campfires using only untreated wood, bonfires, celebratory or otherwise, all which are permissible activities in this Town.

Mr. Kearney continued, "We may not like those regulations but those are the regulations. And we're not here to determine whether they're right or wrong. That's the State of the Law. The Bishops are entitled to have their whether to campfire, or an allege bonfires. It's an offensive smear on their reputations. The Bishops are hardworking blue-collar family. Mr. Bishop is a plumber and his wife cleans houses and does other work. They are not college educated people. As I understand it from the Bishops, Ms. Puchar and the other neighbors are, and there's definitely an attitude from the Bishops' side of things that they want them to be run out of town. Since burning is legal, they are trying to prove a negative grief, "smoke in my house was 500 feet away" seems to be an incredible thing as just common sense. Mr. Kearny said that he cannot accept it. He said, "What I will say is this – in our papers, there is a memorandum from the initial ZEO who was on the case, who sent the memo, to I believe was Mr. Egan."

Mr. Egan interjected and said, "Bob Fennel wrote the memo".

Mr. Kearny continued, "that he has investigated the complaint and said that there was no violation of State, Federal or Local Law that it is not being complied with. "Why do you think that there is a need to keep going on then?" That should have been bright red light that the Bishops' actions were lawful. Then, there was a note included with our papers from the DEC saying that the DEC has sent a trooper 4 or 5 times to the Bishops' house to look into their fires and he had concluded that there was absolutely no activity that was improper on the Bishops' property. They are not hoodlums! They are people who are really run out of town. After that, as if that was not enough, there was a push to go to the DEC where the idea is to get the DEC's law department to take a look at their regulations to see if these fires were somehow violative of DEC code and regulations and the answers came back that after review from the law department that activities on the Bishops were a 100% lawful.

Mr. Kearney continued, "Now, also in our papers, we give you a real flavor of what the Bishops are dealing with - Perhaps two small children at home so – Mr. Kearny asked, "Why would they wanted to engage in some crazy activity so they can harm their own children?" It's absolutely makes no sense! But the Bishops did know that they were being run out of town!

Mr. Kearney noted that the Bishops did what was an incredibly intelligent thing which is to set up a propane fire underneath their fire pit and to use water as steam to replicate smokes and within

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

two seconds of that being lit, there was a call placed to 911, and, and it was a call from Ms. Puchar as a “fog fire”, at the Bishops’ house causing all sorts of noxious, toxic fumes and the like. Mr. Kearney highlighted, “The truth of the matter was – THERE WAS NO SMOKE!” He continued, “But you did call it in as a fire as fires of Town Code, (inaudible words) everything that there is to say, about the fact, that each complaint aren’t really complaints. They are just a way of just getting the Bishops to draw the line as these more educated neighbors who have been there longer, and don’t like the blue collars neighbors who moved in.

Mr. Kearney stated that the only issue that is in front of this ZBA is one issue and it’s not about any other fires except this fire on September 29, 2018. And as to the other fires, Ms. Puchar has filed complaint after complaint after complaint, after complaint with the ZEO. They have been rejected for the reasons that have been stated – “An Investigation of the fact of review of the relevant laws in reference to the issues that was raised at the trial for Judge Barbara Seelbach which found the defendant “Not guilty of all charges”. He remarked, “I think it’s (inaudible word)! Just to show you how bad they did (inaudible) is to look at the handouts that Puchars did handed in tonight! I believe the last page of it references “Cease and Desist Orders” from 2-15 which were found to be invalid which was essentially negated by the verdict of the judge. Mr. Kearney asked, “So, what’s that supposed to show? That Bishops are bad people? Well they are not bad people. There’s two sides to every (inaudible words) and in our working area, testimonies like Pat Maloney (inaudible statements), talking about hypothetically interjecting a gratuitous smear on the Bishops. Mr. Kearney mimicked, “Oh they pour water on the fire to create smoke and create fumes. They’re doing it intentionally! They’re doing it in a horrific fashion!” Mr. Kearney remarked, “They had no knowledge of that!” She got no knowledge of that! She got no basis and facts to (inaudible word) that! This is not a free for all. There needs to be some element of personal knowledge. They can’t be biased! But that is bias in the (inaudible). And we heard from Tiffany Pratt who has no personal knowledge about what the events are at the Bishops. And we’re supposed to understand that she – if I understood, that she never saw what the Bishops were burning, never saw them do anything improper.

Mr. Kearney continued to address the comments made by the public. “And we have Pattie Smith, Who as I understood had a fire alarm went off and her house is 500 feet away from the Bishops’ house, The Bishops house is 440 or 482 feet topographically from the Puchars’ property? It is typical in a real world sense to believe that smoke from a higher point is going to or goes down the hill, go cross across the public road, and to go up the hill and to do the things that Ms. Puchar was saying. And also note in that exhibit that it is supposed to show the smokes on the Bishops - on her property. Mr. Kearney remarks that smokes are (inaudible word) on the Bishops property. The road is in front of the smoke. There is no smoke on her property. And just because someone says that “Oh they are bad guys! Oh, they are bad guys!” That is not a bad guy make, there are rules, there are laws, they have been found repeatedly to be in compliance with the rules and the law. You may not like those (inaudible word), but that does not give up a creation of a reason for overturning a decision. And If you want to bring up a (inaudible word), then just go right to it, because someone in this room may have called a 911 to call in a false claim of child abuse and child neglect against the Bishops. The sequence of event in our paper were “On July 25, I believe 2016, the Bishops called in a complaint when they saw Mr. Puchar taking pictures in front of the yard and one of the Bishops 11-year old daughter was playing in the front yard. Mr. Kearney

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

commented, “Of course they would be alarmed, it alarmed me, I’m a parent.” So, the police came, there’s a police report, it’s in the paper, and the police report says, “We checked the Punchar’s camera there were no inappropriate photos.” But, what happens next? asked Mr. Kearney. The next day, Mr. Kearney said, on July 26, the CPS shows up at the Bishops’ house with a complaint, that could have only be filed by a neighbor, because it’s based on observation of the kids outside of their house in their yard.

Chairman Malcarne interjected and asked the counsel if they can go back to the topic of the application.

Mr. Kearney explained that the specific is, “They had laid out that the Bishops are some bad people and they are doing bad things.” Well, I’m telling you a fact that is confirmable but looking on the paper, and that a false claim and a child abuse was made that terrified the Bishops and would be for any other parents, and I had to do a ton of legal work to circumvent CPS from being able to interview their kids and getting a non, “unfounded” child abuse, so that they were cleared from the record.

Mr. Kearney asked, “But that’s a friendly street? These are friendly people? Calling false claims against your child? I mean – that is to me a really, really sad state of affairs and certainly shows that the Bishops are people who are really of being harassed and really being run out of town. And we are going to object to that as it relates to this decision to only cases and I’ve heard comments that sort of suggest that we taken into account other (inaudible word). Mr. Kearney remarked, “No, you do not take into account anything other than what is in the appeal and what was the findings. Not getting into our specifics of (inaudible word) but it is clear that nine other decisions that remains by the ZEO after a not guilty verdict. The fact is that none of those decisions were appealed by Ms. Punchar to the ZBA. Mr. Kearney stated, “That has a preclusive effect under the law which does not allow for another complaint to be filed. Mr. Kearney also underscored and said, “We filed our motion in the State Supreme Court.” He commented, “They can (inaudible statements). They can get all the reliefs that they want right now in the Supreme Court Action. They are looking for Preliminary Court Injunction. He asked, “Why are we here?”

Well, I’ll tell you why were here. On October 10, 2018, we filed a motion to dismiss their complaints, saying, among other things, that the nine decisions from the ZEO that were not appealed had legal consequences, and that legal consequences, you cannot go to court and continue to claim repetitive violations. It’s not about repetitive fires, it’s about fires. It’s about repetitive harassment from claim after claim.

Mr. Kearney concluded that the bottom line is Ms. Punchar did not file this appeal until on or about October 22, 2018. Just 12 days after we filed our motion saying your non-appeal after all these decisions was fatal to your case. Is that a coincidence? Mr. Kearney said, “I don’t think so.” I don’t think there is anything for the ZBA to determine in essence of reversing the decision because the case is in State Supreme Court and they’re looking for preliminary injunctive relief and permanent injunctive relief – you might as well get it there. It’s improper to be in two places at one time.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Chairman Malcarne asked, “Is there anything else Mr. Kearney, specifically, (inaudible statements) again..?”

Mr. Kearney responded, “As to this, obviously, the decision is beyond of review, because it’s barred by the law but other than that I just said just to be cleared (inaudible statements) and he asked Ms. Bishop, “Would you state that my facts are accurate as it relates to you and your husband and the activities that occurred to your house?”

Ms. Bishop responded, “Absolutely”.

Chairman Malcarne asked Mr. Kearney again, “Anything else?”

Mr. Kearney responded, “I have a lot to say but I have enough for now.”

Mr. Egan asked Mr. Kearney’s position. He asked, “Your position so I’m just clear, as to the substance of this is – This is a private dispute between two neighbors. Is that accurate for the board? Mr. Egan explained that he just wanted to clarify it for the board.

Mr. Kearney responded, “I do think that it’s true because (inaudible statements) when the original ZEO discussed whether these laws are applicable to a single residence, there was a serious question as to whether there was nothing for the ZEO to really dealt with because it is really one person and that if they came back with three they could begin an injunction action that there was (inaudible word) by the ZEO, etc. (inaudible)

Mr. Canham expressed his comment. (inaudible words) whether a particular action was correct or not, but I still think that (paused). I read your comments saying you believed that we can’t even discuss this and shouldn’t be acting...(paused). What if (inaudible statements) our job here to decide how this code should be interpreted and in that case, I suspect here that many of us would believe that it is the frequency and duration and the aggregate effect. Now whether or not the past ones are subject (paused). He asked, “What if they kept happening?” Couldn’t that be an action (paused)?

Mr. Egan asked, “Am I’m making any sense here?”

Mr. Canham continued, “if the problem continues and is proceed to be a problem by neighbors who then bring a complaint in the future to the ZEO, to me the point of our interpretation would be to help guide future decisions.

Mr. Egan interjected and said, “What I was thinking before was capable of repetition but evading review but almost keeps on happening or doesn’t have the chance to review it. It’s only about one instance but I think the point is yet frequency of the smoke, and I don’t know about the answer, but I think it’s a fair question.”

Mr. Kearney said that he thinks that the answer is that the ZBA is in a position of being an entity with limited jurisdiction and the limit jurisdiction on the appeal from a decision from the ZEO is

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

only limited to “What was the decision?, What was the complaint? What was the resolution?” and that’s it! So, there is no legality to clashing things out! That’s not what ZBA does!

Mr. Canham said, “But a future decision based on future events could be brought and could be subject to review.” And the ZEO may say “Okay!”

Mr. Kearney responded. That’s a complaint that something that I can go forward with or he may say at his discretion, “No, It’s not!” at which time the Puncar’s could (inaudible word) their appeal, if so desire.

Chairman Malcarne asked Mr. Rappleyea who asked to speak, “Do you have another comment specifically to this...?”

Mr. Rappleyea said, “Yes, please briefly, if I can be heard.” I don’t think I could be relying on that (inaudible statements) I don’t think that the Bishops (inaudible statements) with Clinton. I think that sadly if that’s the narrative that this is a class work here, then that’s a bad narrative because it misdirects the (inaudible) that the lawyer (inaudible) this has nothing to do with someone being white collar or blue collar or whatever collar, the fact is –what is occurring here is (inaudible statements) that Mr. Kearney pointed out on page 141 of what submitted and I think that relies on ..that ceremonial or celebratory bonfires are lawful. Let’s think about that for a second. Who has a ceremonial bonfire 12 times a month? Or a celebratory bonfire 12 times a month? But that’s clearly pointed to occur to is --Maybe the football game team won the game! Now if you look again at page 9 of the laws – it talks about quantity, character or duration. There’s plenty of quantities and the Zoning Board (inaudible) decision in particularly consider Mike’s review and that particular instance, ..I think from reading and from hearing what’s Mike Appolonia had written here is (inaudible statements) you’re all worn out here by this – of what’s going on between neighbors here, I don’t think there is any question or I could be wrong but correct me If I am that Mike may not had the chance to go there on a complaint and in this issue that he understood Kimberly’s complaint he had heard before and made a conclusion that “Well...that ..I had heard that—(paused) and that’s not enough!” But I know this and if you’re paying attention, you heard from 3 possibly or 4 person’s (inaudible statements) who gave you that specific testimony on September 29 what they observed, so what I am suggesting to you is – you (inaudible word) on your way, disregard the (inaudible statements), there is no dispute from anybody in this room including the Bishops that they had that fires, 3 people observed it, 3 people were subjected to it. Mike didn’t get the chance to see it because he wasn’t there. And when he issued his order, he said, “in essence, Kim, this is (inaudible words) it wasn’t a (inaudible words). when basically it’s a new incident!” So – you can make a finding under the law that doesn’t conflict with Mike’s or essentially, you’re saying is --Mike didn’t have the evidence. You do! You do! Mr. Rappleyea repeated. He said, “Now, if it didn’t happen then the Bishops will be screaming and yelling and said, “We didn’t have a fire on that day!” Guess what? We didn’t hear that.

Chairman Malcarne joked around and commented, “We don’t want screaming and yelling.” Everybody laughed.

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Mr. Rappleyea said, "I'm just saying, and I want to add this and I would close on this – People sitting to my right, the few people, and I think that Mr. Kearney was careful and correctly careful to not accuse them of making a call to CPS because they did not make such a call and I will end with that."

Ms. Puchar added that she'd like to make a clarification statement where they come up with (audible statements) number because I think that "911" number is for really critical things and because they were in violation of Cease and Desist order in creating and putting out those fires. At that point, it didn't matter whether they're (inaudible word), they were told to stop, and they refused to stop. They have never stopped (inaudible statements).

Mr. Kearney accentuated that the Cease and Desist letters do not prohibit the Bishops from burning. They only prohibit the Bishops from violating the sections of the law regarding burning which by definition never happened.

Chairman Malcarne said, "Shane (inaudible statements).

Mr. Egan asked Mr. Rappleyea, "I just want to know your position. What sections of the Town Code are you saying have been violated here? Just for the record – for the board. "What sections have been violated here?" he asked. He said, "We went around with Mike's interpretation ---on the case on (inaudible statements).

Mr. Rappleyea asked, "Today or September 29?"

Mr. Egan responded, " September 29".

Mr. Rappleyea responded," There's several subsections of Sec. 250-28. I think, A, B, J, all of them can be mentioned and if it may then the (inaudible statements) and the board would want to hear going forward. I'm assuming the public hearing stays open, that's your prerogative to get some dates in addition to the testimony heard and then maybe 2 page letter, like what's your position (inaudible words) that you haven't heard (inaudible statements) that's your option? he asked the board.

Mr. Canham remarked, "Ask for an adjournment."

Then everybody laughed.

Mr. Canham said, "For a few minutes".

Mr. Appolonia asked to give comment and give clarity about his position.

Chairman Malcarne said, "Go ahead and we will take a quick recess".

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Mr. Appolonia said that it will be quick. He said, "I'm not saying that it didn't happened or (inaudible statements) meant. I was never called to an active fire question on the Bishops. (inaudible statements).

Mr. Rappleyea asked, "Is there a way that they could call you? Do you have a cellphone or something?" Would it be bother if they call you on your cell?

Mr. Appolonia said that they can call him on his work number.

Mr. Rappleyea made an (inaudible statements). He looked down in it in a couple of weeks and it's (inaudible statement)

Ms. Puchar added that after the hours that Mr. Appolonia worked (inaudible statements) extremely limited. He doesn't answer his phone, sometimes and even often never called back.

Mr. Rappleyea said, "That's why..(inaudible word)."

Chairman Malcarne asked the ZA, "Mike, is that something that you're open to (inaudible statements) and again we can discuss that (inaudible statements) I appreciate the request?"

Mr. Appolonia responded, "Sure".

Chairman Malcarne called for a short recess 9:58 pm.

The board reconvene at 10:06 pm.

Chairman Malcarne welcomed back everybody. He said, "So, kind of picking up where we left off was Mike shared a couple of comments in his ability that he did not actually see any active burns (inaudible word) at all.

Mr. Appolonia said, "That's correct."

He asked, "Let's start with the board first, are there any specific questions and thoughts that you have?"

Mr. Canham commented, "I don't see anything in the zoning code, ignoring how a complaint is made or what. I don't see anything in the code that tells me we should not consider the aggregate problem so - How often? How intense? How big? How noxious? How smoky? My position would be is -- that is a fair game if it's brought as a complaint, .as an aggregate and then to me, a question would be, "How does Mike supposed to make a decision when is too much? When is that claim exceed its standard?" And right now, that is a judgement call. In principle, we're going to give a lot of (inaudible word) to the ZEO because he got the firsthand knowledge and we're sitting here in a room several months later looking at a whole stack of documents. That's where I am right now, is that I think, whether I can take a look at an individual event that happened in the past and be considerate I'm going to really (inaudible word) about that cause I'm not a lawyer. But that is

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

my position, that the aggregate is what matters to me because, as I've said, (inaudible word) in my own instance. Most of us have done fires at one time to get rid of brush and that's not the issue. The issue here is the aggregate effect. I'm trying to figure out on my own line – "How will I make that decision?" And that's where am I.

"And what does the Town law say about it?", Chairman Malcarne asked.

Mr. Canham said, "Well, the Town Law doesn't say an awful lot about how much is too much." Chairman Malcarne said, "Right, and so it becomes the metering device," Okay, you know, if it says this much is too much then I think we have a good reference and (inaudible statement).

Chairman Malcarne turned to Mr. Weiland to solicit his opinion. Mr. Weiland commented that this Town Law doesn't address what is too much smoke is and if we're going to say that smoke is not allowed then next month the whole town is going to come up and He made an inaudible statement. This is rural, condensed neighborhood, there's some very bad location in that neighborhood, or the current situation of...but there is nothing in the town code for the ZEO to say that's too much smoke. He added, "They made an appeal to us. So, there is something pretty straight forward, something pretty, compare to the whole issue, there is something small for us to deal with and whether we disagree with his findings.

Mr. Weiland commented that he thinks that the way the findings are worded makes it weaker than the rest of consideration. The wordings on "There have been so many issues of smokes that this is the same issue of smoke". He opined that each smoke could be different but there were (inaudible word) how much smoke is illegal in our town and there's nothing there. Then we go to – if it State or Federal, from what I heard about the bonfire, it wasn't sole celebratory (inaudible statements).

Mr. Kearney reacted and said he can look at it and start reading (inaudible statements).

Mr. Egan noted that it should be on the record.

Mr. Weiland continued, "So, if we're going to refer to jurisdiction, then, we still have a lot of leeway for people to burn."

Chairman Malcarne stated that the board has a lot of information to look at and review right now. He said, "My thought is to keep the public hearing open."

Mr. Weiland asked, "Have you already filed an appeal (inaudible words)

Mr. Rappleyea responded, "He hasn't filed anything yet."

Mr. Weiland continued, Cause you're response to is probably equally interesting if not relevant exactly to his (inaudible statements).

Mr. Rappleyea said that his response would be, (inaudible word) long (inaudible statements).

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Mr. Rappleyea responded that he normally made it very simple, that's how he addressed most of the town.

Chairman Malcarne asked the Town Attorney for any thoughts.

Mr. Egan said, "My recommendation to the board is for (inaudible statements)."

Mr. Kearney has submitted documents, there is a lot of evidence here submitted here for review, things to look over. I would just recommend a reserve of position, keep the public hearing open, things to consider and come back in January. That is my recommendation."

Mr. Kearney asked, "Just to clarify if the board does take the Town Attorney's advice, would it be narrative in writing, now? How does it work?"

Chairman Malcarne explained that the public hearing is still open. It will be brought out at the next meeting unless we have another discussion here.

Mr. Egan asked when is the next meeting?

Ms. Campbell responded, "January 27, 2019". It's every 4th Thursdays of the month.

Mr. Kearney said, "I just want...okay, then that would be the carry date." Mr. Kearney continued "I just want to clarify that it would be carried to next meeting in January and would it be here?"

Ms. Campbell said, "Yes", and you will get notified before the meeting date.

Chairman Malcarne noted that once the public hearing is opened, then it's open. He said, "Then it's up to you to keep an eye on the agenda, to make sure you're on."

Mr. Kearney that he's unclear about the date, he wants to make sure that he won't miss the date.

Mr. Egan said that he will email Mr. Kearney about the exact date.

Ms. Campbell noted that the next meeting date is January 24, 2019 after checking the 2019 calendar. The meeting starts at 7:30 pm.

Questions raised whether they will be the first item on the agenda.

Ms. Campbell responded that she doesn't know yet. That is still a month away.

Chairman Malcarne said that they will let the parties know once the agenda is created.

(Inaudible - laughter)

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

Chairman Malcarne noted that he won't be in attendance at January meeting. He asked if there would be enough people or quorum for that meeting.

Mr. Canham commented that this is a very difficult issue to resolve. He encouraged both parties to hopefully work on these issues. He thinks that there is good faith on both sides and it's becoming very difficult situation. He said, "None of us could ever want this to kind of thing...paused...neighbors are important. I guess...paused...I personally like to encourage anything that could happen whether mediation, or whatever action that might solve this. This is a very difficult decision. If this is going to stay as a legal issue. Someone can fight this forever, right? No matter what Mike decides, you can come and ask us to try to overrule them and if you don't like what we do then you do an Article 78 and this goes on and on forever.

Mr. Rappleyea agreed. He said, "It's a great suggestion and he said earlier like 15 minutes ago, he said to Mr. Kearney that we should really try to resolve this." This is what it would come down to should Mr. Kearney (inaudible word) as I do and after 28 years of doing this – Somebody is going to run out of money, and whoever runs out of money will lose, and that is a bad idea and there's much better way to spend your money. He said, "Sorry but we have to eat to but (Inaudible - laughter). Anybody who's spending. (Inaudible - laughter)

Ms. Campbell remarked that taxpayers are affected to.

Mr. Egan asked if there is anything that the town can do to mediate these things. He said, "I don't know what that is." Mr. Rappleyea said, the things that stopped for a while, let's hope that persist, and I understand that somebody may say that, "Look we have this little firepit that we'd like to use!", That make sense, I'm not ruling that out. It's a little different than I think of what is going to happen. So- We will see. We're all here, if something comes up, we're happy to try to figure it out but we can't do anything. We're not starting the fires.

Mr. Canham said, "But somebody has to be willing to step back. "Exactly what I said 15 minutes ago"

Mr. Rappleyea underscored.

Mr. Kearney said, "Just to be clear, I said to Mr. Rappleyea we don't want to be (inaudible) fighting for (inaudible word)Mr. Rappleyea joked (inaudible) actually...You don't want to be (inaudible statements – laughter from hearing audience).

Mr. Kearney made an (inaudible statement). He continued "I have said to Mr. Rappleyea and essentially acknowledging your comment, and (inaudible words) open dialogue, inaudible statements....so I have enjoyed the hospitality and the accommodation for my handicap, so we will see. I will (inaudible word) that conversation with Mr. Rappleyea and obviously with Mr. Egan of other things.

Mr. Rappleyea asked Mr. Kearney, "So, we are clear on that point, we don't burn the fires, we don't have them on the property that I know of. So, there is a solution that's going to require some

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - December 6, 2018**

thought into that, away from the theory that someone is trying to make (inaudible) in the neighborhood, that is not what this is all about.

Mr. Calogero said, "I think you really ended on a good note there, so leave it alone." (Inaudible - laughter).

Mr. Rappleyea said, "I actually think that what were both doing is talking louder to the other folks' clients.

Mr. Egan noted that the town and everyone would love to see this resolved.

Mr. Rappleyea said that the Punchars would love to see this resolved.

Chairman Malcarne thanked everyone for coming out that night. He reminded the crowd about the January meeting and changes will be posted on the town website.

Public hearing remains open.

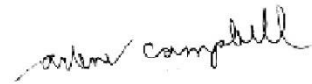
ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 10:45 pm, seconded by Mr. Canham, all Aye, motion carried, 4-0.

Certification:

The forgoing represents accurate minutes of December 6, 2018 Public Hearing an Zoning Board of Appeals Meeting.

Respectfully Submitted By:



Arlene A. Campbell
Board Clerk, Zoning Board of Appeals