

**Town of Clinton
Zoning Board of Appeals
Meeting Minutes - February 28, 2019**

MEMBERS PRESENT

Joseph Malcarne, Chairman
John Calogero
Charles Canham
Norma Dolan
Chris Juliano
Arthur Weiland

MEMBERS ABSENT

ALSO PRESENT

Arlene Campbell, Board Clerk

Eliot Werner, Liaison Officer
Michael Appolonia, ZA

Chairman Malcarne called the meeting to order at 7:35 pm.

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

The Punchars and their legal counsel, Allan Rappleyea were back before the board for an Interpretation application. The public hearing was open December 6, 2018 and is still open. Also present at this case was Shane Egan, who is representing the Town. Notably absent was Brian Kearney who is the Bishops' Attorney.

Mr. Canham stated that this an interpretation application request by the Punchars to reverse the Zoning Administrator's determination dated October 2, 2018. He made a recap of what had transpired at the previous meeting dated December 6, 2018.

Mr. Canham indicated for the record the documents submitted by Mr. Rappleyea dated February 21, 2019.

Mr. Canham read out loud the email/communication from one of the neighboring property owners, H. Herrera and Salermo, 84 Deer Ridge Drive, Letter read as follows:

From the desk of Harold Herrera and Ron Salerno
The Woodland House
84 Deer Ridge Drive
Staatsburg NY

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To: Zoning Board of Appeals
Town of Clinton
1215 Centre Rd.
Rhinebeck, NY 12572

Dear Sir/Madam

In regards to the letter we received informing us of the appeal to reverse sections 250-28(B), (J) at 92 Deer Ridge Drive. The Bishop's residence.

1-We live next door to Mike and Laurie Bishop at 84 Deer Ridge Dr.

2-In the years we have been neighbors **we have never experienced or been affected by any "smoke, fumes or odors coming from their property"**.

3-The Bishops are nice and kind neighbors. Dedicated parents and hard workers. Always there to lend a hand when asked. Just like everybody else in the area they have the occasional BBQ in their yard and the only thing we have smelled is their burgers being cooked on the grill, and they smelled delicious.

Nothing else. No environmental hazards, no bad air, no toxic smoke. Nothing.

4-There is a swamp and also a pond nearby. Plenty of neighbors have lots of animals. Is that where the smell is emanating from?

5-We have a few questions:

- Is there a real health hazard we should be aware of?
- How is this appeal being vetted?
- Did a lab determine unhealthy air conditions and is EPA involved?
- Name of the lab that did air studies?
- What time of the year were air samples taken?
- Is there a report available?

This request sounds like a case of bad blood between neighbors. Very unfortunate and unnecessary - and clearly a waste of the Board's time and taxpayer money.

Respectfully,

H. Herrera
R. Salerno

Mr. Weiland asked about Section clarity about the application on hand in relation to the previous decision of the court.

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Mr. Egan responded that the context of this appeal is from the Zoning Administrator's decision. The board will not be reviewing the court's decision.

Mr. Canham indicated for the record the new documents that were received: a letter from the Bishop's attorney, Mr. Kearney, a letter from George Weibrecht of 100 Deer Ridge Drive and other new materials on bonfires, campfires, etc.

Chairman Malcarne noted that the new documents were received for the record and the board will take a look and review these new materials.

Chairman Malcarne asked for comments from the applicant.

Mr. Rappleyea made a recap of what had transpired at the last meeting dated December 6, 2018. The Bishops did have a bonfire on December 10, 2018. To his knowledge, there has not been much burning since then. The Punchars bought an air quality measuring device which will measure the air quality and particulate matter. They have a base line to measure the air quality when there's no burning. There is no dispute that there is a burning going on. This is a question about impact. The board heard multiple testimonies from the neighbors about burning.

Mr. Rappleyea commented about Mr. Kearney's comment that the Bishops are getting picked on or run out of town because they are blue collar job class people. This is a silly characterization. This is simply about living in peace on their own property.

Mr. Rappleyea stated that what they're asking the board to do and to characterize it very well --- the Bishops were prosecuted under a different section of the law. He said, "With all your due respect, Mr. Appolonia felt that this decision has a preclusive effect upon the board, in other word, "We already tried that, but it didn't work." Mr. Rappleyea said that this is entirely different. As Ms. Puchar pointed out in her appeal – Folks, these are the applicable sections and it boils down to that these sections are incorporated with the state law. Does it affect the quantity, characteristic and duration of nuisance. The testimony from everyone here last time is that the Bishops failed those standards. Now we have the device to measure it. We have the baseline to measure that. We can't predict the future, we know that. The baseline has been given to the board to make your life easier. You have the measure of air quality when the Bishops are not burning.

Mr. Rappleyea continued, "Let's step back for a second. This is not about somebody saying, "Don't enjoy your property." This is not about somebody saying, "Don't do what you want to do with your property." This is about somebody asking, "Do not do on your property what's wrong to others." This is not about a class worker. This is not a complicated matter.

Mr. Rappleyea stated that he tried his best to be very brief. He addressed each of the item that Mr. Kearney raised in his arguments for his clients. He said, "Let's think for a second about those arguments. (1) They didn't get proper notice. – Mr. Rappleyea asked, "What does it have to do with fires?" (2) Board member to recuse for engaging with improper communications – Mr. Rappleyea, "What does it got to do with fires?"

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Mr. Rappleyea underscored that Mr. Kearney's arguments have nothing to do with substance of the matter. To his point, -- Let's not focus on the real issues. Let's talk about class worker, let's talk about lack of notice, let's say you need to recuse yourself. All those are just designed to opt out the real issue. This is about people burning on their property in the matter that is greatly offensive to their neighbors. It's undisputed fact. They sat there at the last hearing and didn't say a word. They didn't say, "We're not burning, that never happened!" They had plenty of opportunity to do that.

Mr. Rappleyea said that what they're asking the board to do is – "You have a lot of materials to read, some of them you just recently received – put yourself in the shoes of the Punchars, read the town code, consider the credible evidence that's been offered to you and determine – "Is the Zoning Administrator correct or incorrect? If incorrect, would it be a different finding then a Zoning Administrator would prosecute from that. He said, "That's what we'd like you to do."

Ms. Puchar noted that she is an environmentalist. She made inaudible statements.

Mr. Rappleyea advised his client to indicate how the measuring device works and how does it measure. What does this thing measure and how do you measure and ---

Ms. Puchar made an inaudible statement. She explained how the measuring device works and indicated the baseline and the measurement (inaudible statements)

Ms. Puchar commented that it seems that everything is very straight forward. (inaudible statements--) She commented about downlighting and trees. You wanted to plant trees. Why? Because you don't want your neighbor to see (inaudible statement). She said, "We're not affecting any other people on their property. This is causing health problems".

Ms. Puchar commented about the two letters received and mentioned at the beginning of the meeting who indicated no issues or concern about the Bishops' burning. She said that the Herrera's property has a very long driveway and not affected by the Bishops' burning. With regards to the Weibrect, Ms. Puchar commented that this property owner had prior issues about burning and was cited a violation letter twice, a Cease and Desist Order in the past for burning. Ms. Puchar underscored that these two property neighbors are not affected by this burning. They are the ones that are mostly affected. She said that they never had any problems with any neighbors before. She just wants this to stop. They are not going to compromise their health. Life is too short and (inaudible statements)

Chairman Malcarne asked for any comments from the board.

We have a pretty lengthy discussion at the last meeting. Mr. Canham asked the applicant, "What aspect of the zoning law do you think would be pertinent here?" Mr. Canham indicated that the zoning regulations are under revision. There was a lengthy discussion at the Town Board meeting with comments recently about how to regulate smokes, toxic and fumes came with the discussion about light industrial district which are very strict, and even then, it's difficult how to craft language on how to accomplish that. The Town to be honest defaults to requiring to adherence to

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State code since they're often very strict and most spelled out. The Town also has difficult time on how to quantify (inaudible).

Mr. Canham stated that Sec. 250-98 (General Standards) seems to be the one that we were searching for the relevant aspect of the code that the Bishops are violating. He said that he's struggling to define exactly and in what way the ZA's determination was not consistent with those sections. They're not particularly stringent frankly. This is a difficult issue even how to write regulation. He noted that they don't get to write the law. It's the Town Board's purview. He noted that the board's job is to interpret what is on the current zoning regulation. This is the challenge. He thinks that both parties should feel free and help the board on how they would interpret this issue and the board will make a decision based on the strongest case.

Mr. Rappleyea said they will give it a shot. He said, that the underlying assumption is that the smoke is a particulate matter is invading the property. He said that he thinks that the board's record states that facts.

He said, "I don't have the code in front of me so, I'm reading peace and bits of letters in front of me."

Ms. Punchar stated that Sec. 250-28 (B) and also (I). She noted that "I" also refers to "All applicable requirements of the New York State Uniform Fire Prevention and Building Code, DEC regulations, as well as the provisions of the National Fire Protective Association (NFPA) Code, shall be observed."

Ms. Punchar noted that this section incorporates by reference to NYS regulation Title 6 NYCRR Part 211.1(Air pollution prohibited). She also cited section 215 of the State Law (as stated in the document that she submitted to the board about Open Burning) that states "Open burning are allowed unless it bother somebody." Sec. 215 specifically address to Open burning and then referred to it cannot contravene to other law that exists. The other laws that exist are 211 and 215.3. She stated that they cannot be violated.

Mr. Weiland asked if 211 and 215 are State Laws.

Ms. Punchar responded, "Yes, they are State Laws.

Mr. Juliano asked about the topography of her land. He asked, "How does your property sits against Bishops?"

Ms. Punchar described the downgrade of the property. She noted that they're on the ridge, the Bishops sits here (pointing and explaining in motion the lay out of the two properties), then it comes up (inaudible). So – what happens is – when you burn, it goes up from that direction to their due to the wind and topography of the land. She commented that it's been a nightmare since the Bishops move in there. She said she wonder why everybody is struggling to figure out what sections are violated. It is pretty straight forward, she exclaimed!

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Mr. Weiland asked the lawyers about the specific communication between the previous Zoning Administrator and the Town Supervisor. There should be a specific action that should be taken in relation to this act. He made an inaudible statement about his personal instance. He said to the Punchars, “Your situation is terrible! I don’t deny that you’re breathing poison. I don’t deny that but also, he doesn’t know if they have fines for this, these are referring to state and federal. (Inaudible statements). You have the measuring the device and you’re going to measure it, and it will be challenged whether it is certified measurements. He said, “I’d really would like to focus on the ZA determination and what the board is being asked to interpret.”

Mr. Canham added that there are several communications, but he assumes that it is the October 2, 2018 email/determination from the ZA to the Punchars is the effective basis for the request interpretation. It’s fairly long and it’s in the packet of December 2018. The key sentence for him is – after describing that the Town Zoning commenced an action in Town of Clinton Justice Court against the Bishops that results smoke in odor disseminating to Punchars’ property and after multiple trials result in a not guilty verdict. Mr. Canham commented that for him, this is in effect they are asked to provide an interpretation. And then he read the ZA determination stating, “Again, it is my opinion as the Zoning Administrator that your complaint does not rise to a level of prosecutable offense under the Town of Clinton Code.....I am basing this decision upon the facts presented to me, my investigation of these facts and as well as prior decision of Honorable Judge Barbara Seelbach of the Town Justice Court.”

Mr. Canham said that this is what the board is being asked to do.

Mr. Rappleyea made inaudible statements. He said, whatever was heard with Honorable Judge Seelbach was the past. The facts now are different. If have a fire this big, and Judge Seelbach (inaudible word), that magnitude doesn’t violate the law and you have the one this big that doesn’t have preclusive effect.

Mr. Weiland remarked “I am familiar (paused)” and asked, “May I speak?” I am not concerned about preclusive effect! He insisted!

I realized that there is a situation and situation that she feels that is appropriate and she asked for a relief. Mr. Weiland said, “We are being asked to address specific to the Zoning Administrator – (stuttered words) actions that haven’t done since then, also, I would like to ask to recommend action to be taken, at this time – it’s a mistake. I see that what you should be looking at --is what action you need to interpret on this – not about actions that he never took that he never responded to..”

Mr. Rappleyea gave his comment. He said, let’s forget about Judge Seelbach and let’s look at Mr. Appolonia’s email. (Inaudible statements)

He continued...we have forms, we have the newer files, we have all kind of things. The Zoning Board of Appeals are generally not board suppressive, so- you determine the facts that come before you and you make the determination. If you determine that the level of burning that’s occurring here violates the zoning law, it doesn’t mean the Town of Clinton can’t have a fire, So – the last section in particular, in reference to the section of local law which incorporate my reference being

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the Department of Environmental Conservation on regulation. The section on Odor for example that Mr. Appolonia refers to. “(J) Odor. No person, firm or corporation, excluding farms and agricultural operations, because Farms generate the manure--- when they composted (inaudible) – on field then it smells! (Inaudible statements). Mr. Rappleyea continue reading the section...then shall permit the emission of any offensive odor –Mr. Rappleyea remarked, “The fire smells guys!”

Mr. Canham commented, “It depends if it’s offensive!”

Mr. Rappleyea asked, “Is it offensive?” He paused, “Ah..”

Mr. Canham asked, “And how do we determine that?”

Mr. Weiland responded that each individual has different interpretation of that. At a base, we refer to a dictionary.

Mr. Canham asked, “Do we use a community standard for instance?”

Mr. Weiland concurred with Mr. Canham. “Community standard might be a good one.”

Mr. Egan commented, “That in the view of the Zoning Administrator that this is fire strict sensitive.

Mr. Weiland added that this fire is on a different category.

Mr. Egan agreed.

Mr. Canham said that there’s basically three categories – smoke, toxic and noxious matter. These are the ones that are pertinent to me. He said that he’s going to defer and talk to the town attorney on how the board should exactly react to a claim that this actually violates the state law.

Mr. Weiland remarked, “That’s not our concern!”

Mr. Canham said, “Well, it’s in our code!”.

Mr. Weiland said that it seems that the documentations were not correct. We’re not concern in determining about what should happen under the state law if we should have brought state law since this action was not properly structured.

Mr. Canham murmured, “I’m not following!” He asked, “Shane – could you help me?”

Mr. Egan responded, “In my view, Mike’s letter saying that his interpretation of the Town Code does (inaudible) reference to the State Law. There is no violation of the Town Code by a conduct that allegedly occurring from the Bishop’s property ---and that includes everything in the Town Code.

Mr. Weiland asked, “So – our interpretation would be agree or disagree with his opinion?”

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Mr. Egan responded, "Correct!"

Mr. Calogero added that they might also have to consider that interpretation whether that action might have a serious effect (inaudible words). And that we are saying that we view the fact differently if we overturned that decision. We all review them the same...Mr. Calogero made inaudible statements.... Not the air quality.....not scientifically..

Mr. Egan concurred, "Correct or incorrect!"

Mr. Rappleyea interjected and asked, "May I offer another alternative. You can actually concur with an interpretation of the facts that this (inaudible statements) require a law firm."

Mr. Canham said, "I'm actually trying to figure out where that would lead it?" Mr. Rappleyea responded, "Say – you have an option. My personal view is this is purely an issue of the law. The facts are undisputed! "

Mr. Canham responded, "Yes and No". There's a whole sequence of events being disputed here, so, Mike's decision and the facts that we face are based on a series of actions, up to some date but you're presenting to us now the potentials that there might be some new actions. He continued, "Presumably our interpretation might be influenced on how the ZA might react to a future complaint. I think, it's sort of what the remedy is.

Mr. Weiland (inaudible statement). Decision on the initial action and (inaudible statement) and another decision on not to respond on any other future further complaint. Each could then be substantially different from other incident.

Chairman Malcarne asked clarity of Mr. Weiland's comment.

Mr. Weiland cited an instance, "There was a violation and in fact apparently a violation ...and (inaudible statements)evidently there was no violation.. did not violate, but they brought this violation and it was agreed that there should not be any further action in relation to this particular situation but It's not the only situation with regards to dimension of impact.

Mr. Canham said that he would need some feedback from the town attorney on how to interpret. He opined that the language here is incredibly broad. He read the section as follows:

NYS DEC Title 6 - §211.1 Air pollution prohibited. states...

No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property.

Mr. Canham asked, "So, what unreasonably interfere?" There must be a case law on this because otherwise, every neighbor who doesn't like another neighbor ...and a neighbor...(stutter words..) paused...I noticed my chimney wasn't drawing very well when I walked out my front door, and I

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could smell my woodstove. He commented, “I’m sure that both sides of my neighbors can smell my woodstove. They allowed to bring an action on me under this.”

Mr. Egan underscored that the town had contacted the DEC. He said, “Their view is there was no violation, that’s what we were told, and they will not take any action”. (Inaudible statement). Which we can do under the town code that incorporates this. The DEC not taking any action.

Ms. Puchar interjected and noted her conversation with the DEC about the issue. (inaudible statements). The DEC defers it to the Town.

Mr. Canham said that the Town ZA is going to have a basis for making decisions on what is unreasonable.

Ms. Puchar noted that there’s also a problem with the Zoning Administrator responsiveness and actions. She indicated the instance (inaudible statement) where 24 hours after the incident and then she was told that it requires 24 hours to report an incident. Ms. Puchar remarked, “I don’t need a 24 hour to report an incident.” She said but the day of the incident when she came home, and her car was filled with smoke and odor as she was pulling up the driveway and it continue on to her property.

Ms. Puchar addressed the ZA’s referral to the original court case. She said, “There were two charges brought and numerous violations against the Bishops (inaudible statements) so – the judge chose to lump the two charges together so that she can have a legal way to say, “Not guilty”. She provides no justification or rationale. Ideally, she should have! I think especially when you rule on individual charge and again the one charge that seem I would agree would have been not guilty because its specifically state burning within the building. Ms. Puchar noted that none of her complaints to date indicated that Bishops were creating fire and burning within the building.

Mr. Canham said that the board do not get to overrule the judge decision.

Ms. Puchar continued, “Understand what I’m saying..you’re blocking out the point in reference to the ZA’s decision the made referral to the original court rule. It’s not appropriate.

A couple of people talking, inaudible statement from everybody.

Mr. Egan addressed Ms. Puchar’s comment about the ZA decision. If you read the letter, it’s actually not just the court. That’s not accurate. I just want to put this for the record. Mr. Canham concurred with Mr. Egan.

Mr. Rappleyea asked the board to look at the first sentence of part 2

NYS Law – 6 NYCRR Part 211.1 which is incorporated by reference in Article V of Sub Sec. 250-28 (B) & (I). He read the section which states, “No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the

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comfortable enjoyment of life or property.” Mr. Rappleyea said’, “Let’s stop here for now. The quantity could be three seconds. There’s nothing subjective at all about that sentence. He read the section again out loud, putting emphasis on every word. “No person....”

Mr. Rappleyea continued with his arguments. “The testimony on the record states exactly what’s happening. You don’t need to go further than that. I think you should continue to read on (inaudible words) there’s conjunctives or..”

Chairman Malcarne interjected and said, “And I appreciate you bringing note on that.” He solicited more comments from the board. “Are there any more comments before we give the floor to the public?”

Mr. Egan said, “They should state their names and addresses for the record.”

Inaudible talks from the crowd and the panel in the room.

Mr. Weiland asked Mr. Canham about the particular communication from the Zoning Administrator. He asked, “Is it August?”

Mr. Canham responded, “No, there is a later one which is October 2, 2018.” He said, I can pass this down to let everybody..(paused). I found it miraculous that it was actually on the very top of my file. (laugh in the room)

Mr. Egan made inaudible comments about it.

(Mr. Canham and Mr. Egan talking at the same time.)

Mr. Egan said that whatever is the packet...(inaudible statements) for the interpretation - They are very similar.

Mr. Canham agreed. There a whole series of them in there.

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Chairman Malcarne opened the floor to the public. He said, “At this point, as a reminder, if you have comments –please raise your hand, if you can please state your name and address for the record.” The chairman of the board noted that any comments should be directed towards the board.

Lauren Bishop of 92 Deer Ridge Drive spoke and started by noting why her legal counsel is not in attendance of the meeting. Mr. Kearney is in the hospital. He sent an email asking for a postponement of the meeting, but this request was denied.

Ms. Bishop said, “There are few things in the packet that I want to go over with everybody.” She indicated the two letters from the neighboring properties who expressed no concerns about her burning. She said, “We have George Weibrecht letter and the Salermo letter who lives up the hill next to me.” She also commented about Mr. Rappleyea’s earlier comments. She said, “right here, Mr. Rappleyea kept referring the fires as bonfire, they are not bonfires, they are campfires, she exclaimed! There is a difference between a campfire and a bonfire. Ms. Puchar kept saying about which direction the air and the wind is going and (inaudible words – stutter) says it comes from the west. (Lots of inaudible on the background. One male voice telling Ms. Bishop that’s it’s okay, take your time, breath since Ms. Bishop sounded stressed out in giving her public comments)

Ms. Bishop continued with her comments. She said, “Ms. Puchar also stating that they had a fire on December 10, 2018. She noted that she has a charcoal fuel from smoker that she adds (inaudible word) for flavor. She said, “Kim also said that we burn from 6 pm until.. (inaudible), I don’t know, it’s in the paperwork” She made an inaudible statement. She underscored that she did not have a recreational fire that date. She made inaudible statement. She doesn’t think that it is in the packet that was submitted that night.

“There’s a few things that I want to move on,” Ms. Bishop continued. I don’t understand how my fires are different from any of the town residents whose burning whether they are inaudible word, grill or recreational fire.” I don’t understand how mine could be violating the right to burn from the rest of the town residents. She added that there are several people including Ms. Puchar and Patricia Smith all admitted to burning whether (inaudible word) or wood, everything that burns, and smokes are outside. The Smiths and Trusz are (inaudible word) to Puchars. Ms. Bishop described the topography of her property. How the Smith’s and the Trusz’s properties are below Ms. Puchars. She said, “When I was in school, I was taught that when there’s fires, get low, paused (inaudible word) I’m up above, She remarked, “I’ve never seen a picture showing smokes

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on the Punchars' property." As far as Ms. Punchar's air qualifier meter, she asked, "How does she know that nobody else is burning?" Is she coming to my house and measure (inaudible words). She noted that the town website directs you to a DEC website regarding burning regulations. Every burning that she had done was always in accordance with the DEC ruling. She noted that she never received any violation for all the burning that she had...and paused that's about it, Ms. Bishop concluded her comments.

Mr. Egan asked clarity for Ms. Bishops' comment that she never got cited any violation. He asked, "When you said never got any violation --was that from DEC?"

Ms. Bishop responded, "DEC, Sheriff and State Trooper went out there, also the West Fire Department went out." She underscored that none of them found any violations. The town took me to court, and I was found not guilty of all charges.

Mr. Weiland said that there was a statement in one of the paperwork that the Fire Department, probably West Clinton Fire Department, came by and she was found burning 12 inch of (inaudible word).

Ms. Bishop responded that she doesn't recall doing that. She said that her fires never got told to put out.

Mr. Weiland indicated the communication from the town supervisor stating that she should have put out the fire. He asked, "And you don't recall that situation?"

Ms. Bishop responded, "No."

Mr. Weiland said, "Thank you."

Ms. Bishop asked if she could add something else. "We don't burn frequently, everybody (inaudible word) and if I do, it's in my (inaudible) sole campfire usually, I mean I have burned brush twice this year, after the clean-up. It's always within the guidelines. Everybody's opinion are different – "Frequent and what they find (inaudible word)."

Mr. Egan asked, "This is actually for the benefit of the board. What are you burning?"

Ms. Bishop responded, "When I bought the house back then, 2013, there was a huge pine tree that she took it down (inaudible words) except from them. David told her that they can't let that tree fall on somebody. She made inaudible statement. She noted that she did use them for her recreational fire pit, just to get rid of it.

Mr. Egan asked, "Only (inaudible)"

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Ms. Bishop confirmed, “Only (inaudible word).”

The board thanked Ms. Bishop.

Chairman Malcarne solicited for more comments and questions.

Linda Hautman, 92 Deer Ridge Drive spoke and said that the (inaudible word) had three pellet stoves. Every night she smells it. It comes over in their yard and goes to the east (inaudible statements). She does it every day, that’s one thing. The people behind her have woodstove and they burned. She commented, “I don’t know if they did it this year but every other winter they burn and when they burn the smoke goes through our yard. The house next to Patty Smith does bonfires in the front yard. They just had one a week or two weeks ago and Ms. Puchar just drove by it and she never said anything about it. The people behind us burn and also the one next door. He does it outside. The house next to it where new people just moved in also burn outside. They all burn, they all have a fireplace going. That’s all.”

Chairman Malcarne asked, “How many people you think burn around the area?” 2,5,10?? “Give me a number”

Ms. Hautman responded, “Everybody around!”

Ms. Bishop remarked, “Maybe two or three houses don’t!”

Chairman Malcarne opined, “So, roughly eight houses.”

Crystal Berry, 40 Hollow Circle Drive spoke and said, “First thing and foremost, she never been to anything like this or any representative or (inaudible statement). Now, second, a contaminate, you define it as (inaudible word) ...what New York State definition (inaudible). She has a son who has asthma and been hospitalized at least for 20 times for unable to breath. We had campfires. We go camping and it doesn’t affect us. She made inaudible statements. The smell of the fire, the odor of the fire, which is a (inaudible word) substance, so it’s not quite (inaudible word). She cited an instance in November (inaudible). We have a woodstove. It wasn’t because of the smoke but it was because of the cold in school and from being sick.”

Ms. Berry said that 90% of people around this area burn wood. That’s how they keep their houses warm. I know blue collar person. I know high end person. I burn wood to heat my house. I can’t afford a \$400 oil bill and most of us can’t. Not everybody has the privileged. It’s a little frustrating to hear a community to say, “Keep your odor in your yard, or my air quality or tip or tap, when you can die from air pollution, when odor of wood burning is not one.”

Ms. Berry asked the board, “Am I allowed to ask questions?”

Chairman Malcarne responded, “Sure.”

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Ms. Berry asked, “Why would one set of paper get accepted and the other one kind of like oh, let’s just put it on the record.”

Chairman Malcarne explained the procedure (inaudible statements) especially when a document comes in during the discussion period. They were all accepted and put on the record.

Ms. Berry said that she just wanted to know. That’s all. She noted that wood is not contaminant.

Mr. Egan wanted to put on the record about his response to Ms. Bishop’s earlier question about the adjournment request from her legal counsel, Mr. Kearney. Mr. Egan said, “The meeting was duly noticed, I did address his email after speaking with the Chairman of the board. The public hearing was kept open. He noted that he personally sent Mr. Kearney an email on February 15 telling him the meeting is on and is not being adjourned. We wished him well, but the public hearing is open.”

Jennifer Bishop, 305 E. Fallkill Road and brother of Michael Bishop said, “She’s been on her brother’s house all the time. All the fires that they have are always small. We put marshmallow on those. We put hotdogs on those, and it never been like it smoke out where you can never breathe (inaudible statements).” She commented that her brother has been dealing with this stress for years. She also commented about the court decision that apparently certain people didn’t like that decision, so they kept on going on and on until they get what they want. She thinks that this is unnecessary to keep on doing this. Her brother worked really hard to buy this property. She described the level of stress that her brother is dealing with. She said that her brother is a hard worker. They burn during the day; they burn at night. If he wants to come home and have a campfire, why can’t he? I don’t see any problem with that. I think that it is very unfair. That’s all!

Mr. Rappleyea spoke and said that the Punchars work and saved hard to buy their home as well. It’s not a question about whether you work hard to acquire your property or not. It’s a question whether you’re allowed, having worked hard rather, to affect someone else property. Ms. Bishops sister indicated that her brother burns during the day and during the night. He remarked, “That sort of scooping up? Frequency of the burning! Ms. Bishops indicated that they burned pine. I understand that she might have to get rid of the pine and it is expensive to get rid of woods. But we should know that burning pines particularly wet pines generates a lot of smokes. To my knowledge, there are no other sort of woods indicated. There are indications that other folks might be responsible for this. What I asked the board to consider that this is a relatively novel issue in the Town of Clinton since it never came up until the Bishops burn, not caused by somebody else. It caused by the Bishops. Most of the neighbors have been there for a long time. The other gentleman who I believe the name is George was cited for burning. This is not a point finger at somebody else. This is upon (inaudible) burn during the day and night on the Bishops property because Mr. Bishop works hard and wants to be able to enjoy his property. Mr. Rappleyea commented that he should be able to enjoy his property but not to the extent it affects other people especially the Punchars. That’s all.

The board thanked him.

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The board agreed to take recess.

Chairman Malcarne reconvened the meeting at 9:15 pm.

Mr. Calogero asked Ms. Puchar about her measuring device. “Does it anyway differentiate between the smoke that is emitted from the chimney versus the smoke coming out from an open space?”

Ms. Puchar responded that as you know smokes from a campfire barbecue grill, a smoker, chimney or woodstove – they all contain particulate matter.

Mr. Calogero remarked, “I am aware of that!” I am asking you about Ms. Puchar, “It measures 2.5 level just like as I said (inaudible statement) when we’re not being affected by someone else (inaudible statements).

Ms. Puchar made inaudible statements. She said, “I can take a video and picture of it”.

Mr. Rappleyea commented that the Puchars don’t want to be here anymore than the Bishops do. The idea that they just kept (inaudible words) and it’s not fun for everybody. If it stops, everything stops. If it doesn’t it’s not going to stop.

Mr. Juliano asked Ms. Bishop, “Are you only burning pines?”

Ms. Bishop responded, “No, I also burn wood.”

Mr. Juliano explained the rationale of his query. He said, “The reason why I asked is because of the earlier conversation that pines get more smoky.” He turned around to Ms. Puchar and asked, “I know you’re smelling the smokes, but are you actually really seeing the smokes more on your property?”

Ms. Puchar indicated the video and the picture taken on her property that she described as “clearly showing” the smokes. She said, “Keep in mind that is a 15-megabyte video camera from a cellphone.”

Mr. Juliano asked, “How long ago was that video and picture taken?” He said that he’s been a member of the board for almost a year now. He missed the last meeting, but he’s been reading materials about this case.

Ms. Puchar responded that she doesn’t have the actual date, but this was taken after the court case.

Ms. Puchar commented that after the break, she surely smelled smoke behind her. (An insinuation after the Bishops’ party went outside for a smoke break). She remarked, “You don’t have to --- paused.” Don’t differentiate the (inaudible) because I cannot see it from my property. We never

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complained about that. (Inaudible words – Ms. Puchar and Mr. Juliano were talking at the same time).

Mr. Juliano explained, “What I am trying to understand, (paused), (inaudible statements), with your property being a little bit lower the density changes. I am just trying to understand the dynamics of where you’re located when I drove by and passed there.

Ms. Puchar said, “It’s like a bowl, it’s geographically..(paused), it’s an awesome piece of property. We have a pond, a stream, woods, (inaudible words).

Mr. Juliano said that he always try to be a problem solver. “We are all neighbors, that’s the point! The thing of trying to point fingers into resolve something, together...and trying to become friendly, (paused) –”

Mr. Juliano cited his experience about his neighbors that they became good friends after years of having family fight and court cases. Sometimes you have to sit and work out a solution. It’s very costly to have lawyers. We’re trying to really understand and interpret. It is very vague. From what I see, and I understand where you’re coming from and I understand what the state says. What really defines contaminant? I wish they have a certain thing (inaudible statement) but we know that’s not the case.”

Ms. Puchar said that it is actually (inaudible) standard. “You can research it.” (Inaudible statement). She said that she can submit more information to the board. “It’s very complicit thing. The Bishops chose poorly. If that’s what they want to do i.e. to burn and have smoker then you don’t buy a house that is surrounded by other houses. Unfortunately, Deer Ridge Drive is one of the most congested area (inaudible statements) even though it’s a 5 acre zone. We’re literally on top of each other. Our location is very tight. It’s also a bowl! There’s also a topography situation. We have lived there for almost 23 or 24 years. We were friends with (inaudible) on our road and on the other roads. Ms. Puchar said that they helped a lot of people and they are very helpful people. She underscored, “I am not looking for any trouble. I would have preferred to have a nice family moved in there but it didn’t so –they could (inaudible statement) but they’re choosing not to. Ms. Puchar said that it is not appropriate for the smoke odor to get into her kitchen, it’s not appropriate that she can’t enjoy watching TV on a Saturday night and her living room gets the smoke odor and she has to stop what she’s doing to find out if there’s anything burning and there it is-- the Bishops again. It’s not just when they burn, after they have their fun, they go inside their house and this fire goes smoldering for hours.” Ms. Puchar made an (inaudible statements). She added, “We have the right to enjoy our property. She reiterated the effects of the smoke that they’re been suffering like sore throat, headaches, lungs, etc.

A lady asked if the public can still make a comment.

The board responded, “Yes.”

Mr. Egan reminded the public to maintain their cool. Everybody has to respect the court.

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Chairman Malcarne stated that all comments should be addressed to the board.

Ms. Campbell asked the lady to come closer so that she can be heard.

Jennifer Bishop asked if they ever go camping. When you go camping and like a camper in a campsite, (paused), just like they own their own property and they can do their own thing on their property. Jennifer Bishop asked, Should the Bishops be able to do what they want to do on their own property as well? I don't understand. If I smoke outside, then I smoked outside. I wasn't smoking in here! It's ridiculous! It really is ridiculous!

Chairman Malcarne reminded the public to address their comments to the board. He understands the expression of feelings but asked the public to be passive. He also acknowledged the difference of opinions and views of the public. He said, "This is why we're all sitting in here. We're doing the best we can to listen and work out the different thoughts and opinions.

Mr. Weiland stated that request from the applicant is an interpretation. He said, "I have several back and forth communications and I still can't find particular document. Can somebody find the October document for me?"

Mr. Canham gave Mr. Weiland a copy of the said document. He said, "As Shane pointed out, there is an earlier document dated August 21, 2018."

Mr. Weiland voiced out that he finally found the document from his file.

Mr. Canham said, "Can I get those back please?"

Chairman Malcarne thinks that the interpretation application was specific to...(he didn't finish his sentence).

Mr. Egan said that whatever (inaudible) submitted that in the (inaudible word) decision, that's what they're appealing. I believe that's it or maybe similar one. It's on the record.

(Inaudible statement from Board Members).

Mr. Canham said that there are 2 documents that are similar (August 21 and October 2, 2018).

Mr. Egan said, "Arthur, what I would say is that whatever document date they submitted. The applicant, (paused) it's in the record.."

Mr. Weiland interjected and said, "That's why I am looking at this packet which thus start with their application and then attach to their application are all these documents including half a dozen emails with different things. I can't tell from this packet which specific.."

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Mr. Rappleyea noted that the nature of the appeal is sort of dual emails between Ms. Puchar and Mr. Appolonia. They reached a conclusion really in October where Mike said, “it’s not a violation, these are the reasons why.

Mr. Weiland said that he found the October document.

Mr. Canham remarked, “That is the one that I gave you Arthur”.

Mr. Egan concurred with Mr. Rappleyea. He said, “That is my recollection too.”

Mr. Weiland struggled to find the date on the document. Ms. Campbell and Mr. Canham tried helping and pointing out where to find the date on the said document.

After reading the document, Mr. Weiland commented, “It looks like whether the smoke, odor, fumes does created violation or not.”

Mr. Egan thinks it is broader than that because the conclusion that Mike reaches are (inaudible) and at the end of that it states “There is no violation of the Town Code by the alleged conduct of the Bishops on the property.” That is my interpretation.

Mr. Canham agreed.

Mr. Weiland asked about the specific section in the General Performance Standards.

Mr. Canham responded that smoke is under Sec. 250-28 (B)

Mr. Weiland made an inaudible statement.

Mr. Canham asked if there are any other comments from the public. No response.

Mr. Egan asked for the benefit of the board because it does talk about private nuisance complaint. He stated that he’s not trying to get the specific of the litigation going on. I know it was brought out last time, but for the benefit of the board. What’s the (inaudible words) generally of litigation that is going to be mentioned by the applicant here?

Mr. Rappleyea responded that it was brought out before the meeting was adjourned at last meeting in December, Mr. Kearney on behalf of his clients made a motion to dismiss the action indicating that serious of arguments and court denied that motion in all respects. In fact, Mike (inaudible words) mistakenly (inaudible word) court’s decision without, (pause) the effects of smoke and things off this property and so forth and so on, but the action – and we will proceeding with it, and the town permits private action, Mr. Appolonia pointed out in his letter that (inaudible word), you have a remedy to (inaudible word) so the Puchars are trying to pursue with every remedy they can – just to live in peace and they’re not going to stop until they live in peace.

Mr. Egan said, “And that decision is in the record.”

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Mr. Rappleyea said, "Right".

Mr. Weiland verbalized that he found two documents from his packet including the document that Mr. Canham handed him earlier. (Crosstalk inaudible). Mr. Weiland said that he is giving back the other document.

Mr. Canham said that it took him awhile to organize this huge file.

Ms. Campbell said that Mr. Appolonia was raising his hands and wishes to speak.

Mr. Calogero asked if this is a civil action?

Mr. Rappleyea responded, "Yes", which includes the request for permanent injunction (inaudible words).

Mr. Calogero clarified, "They're seeking injunction?"

Mr. Rappleyea said they are seeking damages and injunction.

Mr. Weiland asked if the case is already before the judge.

Mr. Rappleyea responded that it was assigned to Judge Maria Rosa because the Bishops dismissed it and their motion was denied.

Mr. Weiland said, "That's what I read twice".

Mr. Rappleyea said that's the only thing that was happening. He said that letter was issued in February. He added, "So the Bishops will presume to be refiled at some point.

Mr. Weiland said, "But your action is before judge?"

Mr. Rappleyea responded, "Yes".

Mr. Weiland asked again, "You're asking the judge to -?"

Mr. Rappleyea responded that they are asking injunctive relief, meaning at the end of the day a permanent injunction that there will be no more fires at the Bishops property – and also for money down suits for injuries, anything that in sustain including medical visits that the Punchars have incurred.

Inaudible statements Mr. Weiland.

Mr. Egan asked, "Would the act of private nuisance play (inaudible) part or in general?"

Mr. Rappleyea responded, "In part, it's true, Yes."

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Mr. Canham gave the floor to the Zoning Administrator. Mr. Canham said, “Yes, Mike – please.”

Ms. Campbell asked Mr. Appolonia to come up closer so that he can be heard clearly. (inaudible statements)

Mr. Appolonia began by introducing himself. He said, “I’m Mike Appolonia, the Zoning Administrator. The letter that Ms. Puchar wrote stated, “I have not received acknowledgement or call”. Mr. Appolonia noted that to his knowledge, he had acknowledged every call that Ms. Puchar ever made. The second item mentioned equipment that will be used to measure – Mr. Appolonia noted that the Town does not historically have that type of equipment and never been asked to use that type of equipment. So that would be a learning experience and a revolutionary (inaudible word) for the town. Thank you.

The board thanked the Zoning Administrator.

Mr. Canham asked, “Any other questions from the board or the public?”

Keith Puchar commented about the board granting variances. He said, “You’re talking about variance about no tools or anything in the setback yet this has been going on for 3 years, smoke being offensive, you got lots of documentation about it, tons of proof such video, pictures, neighbors’ complaints, and all kinds of complaints and you’re okay with the smoke as long as the wheelbarrow is not in the setback. There’s no help with that. It’s very offensive.

Ms. Puchar added that this is complete invasion of property.

Mr. Canham said, “I will say that for better or worse, our zoning code is quite clear that you can store materials in the setback. So, enforcement of the zoning law requires that we pointed out to people.” The question of how clear our zoning law is about this issue is a very different matter. Inaudible statements from the Puchars.

Mr. Egan said, “We have everything that you submit, and the board will consider it.”

Mr. Weiland wants to go back to a particular email dated October 2, 2018. He read out loud the statement in the ZA’s email stating, “The smoke, odors and fumes of which you complain do not create a violation in the town code.” I am basing this decision upon the facts presented to me (inaudible) Mr. Weiland commented, “What I am looking at here is evidently he has an accumulation of facts presented to him. Mr. Weiland said, “We don’t have those facts. We have a lot of information and a lot of testimony, but I don’t know what facts we have.

Chairman Malcarne asked clarity about his statement. “What are you saying?” he asked.

Mr. Weiland said, “He has facts. I don’t know what they are.”

Chairman Malcarne asked, “Are you asking Mike?”

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Mr. Weiland responded, “No, I am not asking Mike, I am trying to focus on –(paused) if we are going to interpret his decision whether or not this create a violation cause that was his decision that this does not create a violation, and – Is that decision wrong? Well, he claims that decision was based on facts. We don’t have his facts even though we have a lot of information on both sides – That’s where I am at the moment – I am trying to focus on what we’re asked to do in this specific point in time. This has been going on for over 3 years or 4 and it’s going to keep on going on for a while (inaudible word). My opinion is – if the Bishops stop burning and you found out that the rest of your neighbors are still (inaudible word) smoke and got into your yard, then that would reveal a greater problem for the community and for you living where you live.

Ms. Puchar made inaudible comments.

Mr. Weiland said, “So you will (inaudible word) all other individual that are.

Ms. Puchar interjected and said, “Well, it came out at court ..(inaudible statements –) that actually came out in court and we have a conversation with her cause she was problematic as well. Ms. Puchar cited an instance about a neighbor with a wood pellet stove.

Mr. Juliano asked, “And that is with a wood burning stove?”

Ms. Puchar said, “Yes.”

Mr. Juliano asked, “And that one is with another neighbor? – “Yes.”

Mr. Juliano asked again, “And where are they located?”

Ms. Puchar responded, “They are adjacent to us”.

Mr. Weiland said, “What I see in the zoning code is very, very restrictive.”

Ms. Puchar said, “And again, you guys burn in the wood stove, that’s fine, you’re not bothering your neighbors and your neighbors are not complaining – Good for you! Awesome! But you know what – if they came over to you and said listen –you’re killing me with the smoke – Would you say – I don’t care (inaudible statement). Ms. Puchar said, “No you wouldn’t do that. That’s not what a normal person would do. You try to be considerate, try to get along and be respectful with one another.” The appropriate reaction should be “Oh My God, I am sorry, and adjust the caliber... You don’t choke it down and drive off with your electric cars. It just doesn’t make sense.

Mr. Weiland remarked, “No, I don’t want to (inaudible words) so I’m not fighting with my neighbor on situations that are temporary. (Inaudible statements). I don’t know why is it too much for you (inaudible statements)

Ms. Puchar remarked, “Well, this one is (inaudible statement) not for a lifetime.”

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Mr. Weiland said to Ms. Puchar, “You’re jumping in. I’m giving you a perspective. I’m not asking you to (inaudible statement). Mr. Weiland cited an instance about his neighbor about burning rubber and it smoke. They do it once a year. He remarked, “It’s annoying as hell!”

Ms. Puchar said, “That’s not the case though. Again, this has gotten up to different level and so many ..(she paused). They have been approved. I won’t give them that (inaudible statements) And we can all be happy and it’s not going to be..

Mr. Weiland jumped in and remarked, “I don’t know if your neighbor will be happy but not..

(Ms. Puchar and Mr. Weiland were talking over each other.) Inaudible statements.

Mr. Weiland stated, “I read the zoning and it’s extremely restrictive.

Ms. Puchar commented, “(Inaudible word)”.

Mr. Weiland said, “Oh yeah, so that we can all enjoy our property.” (inaudible statement)

Chairman Malcarne stated, “What I want to do is to wrap this up and maybe give Charles a recap and if there’s no objection then– to close the public hearing and we have 62 days to give a decision. It will also give us a chance to put it together and discuss it.

Mr. Rappleyea stated that they are not objecting to ...(pause). He said, “If you need more time, the applicant will be willing to (inaudible word) As far as I am concern, we are not going to hold you up with the 62 days

Mr. Weiland said, “Okay, can we keep it open (inaudible statements).”

Mr. Rappleyea said “There’s no objection to that.”

Mr. Canham disagreed, saying “No”. Ms. Campbell said take a poll.

The board had a lengthy discussion whether to keep the public hearing open.

Mr. Weiland said, “That would show that we’re willing to give an order, to give their lawyer the chance or if they can’t then they could hire a different lawyer. I think that’s appropriate or have another session.”

Mr. Juliano asked, “So – keeping the public hearing open?”

Chairman Malcarne responded, “Right and I think...(pause).” He asked, “Would there be any – if we close the public hearing, is there anything precluding us from receiving (paused)??”

Mr. Egan replied, “I would say this, once the public hearing is closed, Laurie could correct me if I’m wrong, Brian submitted (inaudible words) that are not on the record, and we have

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acknowledged, I don't know what more would be there. There are two full nights of this. Once the public hearing is closed, that's it! My reading of law, he's not allowed to submit any more materials."

Chairman Malcarne asked Mr. Canham about his thoughts.

Mr. Canham asked, "What are you asking me?"

Chairman Malcarne replied, "recap".

Mr. Canham said, "As I said, I presumed that we are here to try to interpret whether Mike's decision is correct and that whether the smoke, fumes and odor emitted from the Bishops' property violates the Town Code, or by reference to State code, reference within in the Town Code. We have a lot of materials before us. We need to come up with a – I would propose to come up with a draft of an interpretation that we as the board should discuss. I don't know how else to proceed other than close the public hearing and prepare a draft that we can start to think on how to address this. It would make us move promptly. I think these all folks like closure on this. We're here to serve the town and if you're all want to keep on talking about this – we're here! That's our job! We're volunteering, I want to add that that, but we'll be here so as long as people – and so if there is a need to keep the public hearing open – well, that's our job."

Mr. Egan asked the public, "Is there anyone here who has an issue of the public hearing being closed? Any objection with the board closing the public hearing?"

The board exchanged opinions.

Mr. Juliano said that there's a lot of information.

Mr. Weiland added, "Which would mean that their lawyers will not submit any additional information."

Mr. Egan said, "That's right."

Mr. Canham commented, "It will also mean that we cannot begin to come up with an interpretation until the public hearing is closed."

Ms. Bishop asked to speak and said, "Can I say something? I would like to have my legal counsel since (inaudible words) speak without him so you do have your choice."

Mr. Calogero agreed and said, "That is really a courtesy. (inaudible words)."

Mr. Canham said, "Yes, then Absolutely! We're here! That's our job!"

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Mr. Calogero continued, “So that he will have an opportunity to address whatever points maybe she feels wasn’t addressed or – paused—I think points are well taken that we all need to get along, I would presume to not just go further to –”

Chairman Malcarne commented about Ms. Puchar’s request that they can’t move forward. He said, “We have a lot of information and again here, we hear a lot, the same things, so many things that were mentioned, and both parties, (pause) but in general it’s the same information that we had in the first meeting. So, we want to make sure that everyone here feel that they were able to say.”

Chairman Malcarne addressed Ms. Bishop, he said, “We want to allow your lawyer to share whatever (inaudible word) ...(paused) that he might want to provide that courtesy to you but at the same time, we would like to put a closure on this”.

Ms. Bishop said, “I think it would be great to be given an opportunity”.

Mr. Egan said, “Again, that’s definitely a board decision. The materials that were submitted by your attorney – will be considered (inaudible word) lengthy on the record, it’s up to the board, (paused), I don’t know how long they’re going to (inaudible statement). I am not sure.”

Mr. Weiland made an inaudible statement... and I don’t know if they want to find another qualified lawyer to address additional points --paused-- That would be the end of their legal submission of ...

Mr. Egan said, “To this point does the board need more (inaudible) but if that’s what you think you need, then that is your prerogative.”

Mr. Canham expressed his view. He said, “I agreed with John. If there is a request from all the parties that their lawyers should be present, I think we have to honor that.”

Chairman Malcarne said, “Just to be clear, what we have, the Puchar’s attorney – they are requesting the interpretation --The information that we have I think is adequate, and the sole reason for leaving the public hearing open is courtesy to the community.

Ms. Bishop remarked, “You want to close it, that’s fine because you guys have heard what I have to say, but I feel that my rights were violated.

Mr. Canham commented, “We have a lot of materials”.

Mr. Egan asked the board if they want to leave the public hearing. He said, “I just want to make sure.”

Mr. Canham asked, “Do we have a motion to close the public hearing?”

No one answer.

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Ms. Campbell commented, “Just say keep it open”.

Mr. Canham said, “Okay, we don’t have a motion to leave the public hearing open.”

Mr. Weiland said, “I don’t know if Mike can make a list of facts when he made his decision on October 2, 2018. We don’t have these facts”.

Mr. Egan responded, “I don’t want to talk for Mike, but I think—a lot of the facts that you’ve heard are facts from both sides that you’ve been hearing for years. I don’t know...”

Mr. Appolonia agreed.

Mr. Weiland remarked, “I know that it’s fairly clear that people have customable location and experience in smoke in front of the (inaudible word) but I don’t ..”

Mr. Appolonia said that he was looking at the fact that this has been going on for years.

Mr. Weiland asked, “Is there a particular complaint that you’re responding to? –

Mike said, “Oh Yeah!” So, the lawyer is not (inaudible word)

Mr. Weiland continued asking Mr. Appolonia, “And on that particular complaint you did not see a violation of smoke, odor or fumes?” –

The Zoning Administrator responded, “Correct”.

Mr. Weiland asked the board, “Do we have a copy of that particular complaint?”

Mr. Canham responded, “I will be happy Arthur to go through and try to annotate and make it in order for you. There is a very long record of here.”

Mr. Weiland made an inaudible comments.

Mr. Canham opined, “I would say that there is a timing issue here and try to pull together a material on which to base an interpretation – technically we should be looking at the complaint that lead up to the denial. (paused) to the decision but not to what happens since then, although the interpretation that we can come up with will certainly inform the ZA going forward. There’s been changes in the behavior and activity, but it seems to me that.He asked the town attorney what he thinks.

Mr. Egan said, “You’re right on point. To me the facts are very simple. (inaudible) consistent with smoke coming from neighboring property owners and whether that conduct constitute the violation of the town code and not on how to later degree but how it currently.”

Mr. Canham concurred with the town attorney.

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Mr. Weiland made inaudible statement distinct ...enough for the facts to be seen but he doesn't see what you just spoke with.

Mr. Egan said, "And that's Mike's view of it and your job whether or not to (inaudible word)..

Inaudible words between the Town Attorney and Mr. Weiland.

Mr. Canham said, "There are a whole sequence".

Mr. Weiland remarked, "He's responding to a date in time."

Mr. Egan said that it's very difficult for the ZA to be out there within (inaudible words).

Inaudible words from Mr. Weiland. He said, "And that's perfect, whether (inaudible) to be an eyewitness. But there are evidently facts and I don't know what they are.

Mr. Appolonia said, "Just to figure on the 10th of December around 9:30 at night. I would not be aware of that until days later."

Mr. Weiland said, "But they were saying of that something occurred and you have facts that it didn't violate?"

Mr. Appolonia said, "No, I am not saying one way or another. I'm saying that I haven't the opportunity to observe it because they have them..."

Mr. Weiland interjected and said, "So what facts do you have? The basis of it."

Mr. Canham said, "Arthur – there's a long list of complaints and responses in the record and I will coordinate this..."

Mr. Weiland interjected and said, "facts were (Inaudible)"

Mr. Rappleyea said, "And those facts have been repeated to your testimony and was offered in December."

Mr. Egan said, "I agree with Allan and according to the complaints you've heard."

Mr. Rappleyea said, "I think what this gentleman is saying that when the fires happened, Mike wasn't out there. Then, (inaudible) Mike gets there, Kim personally observed it and unless it was (inaudible word) but that's why the testimony of Punchars are important because they're replicating the circumstances while the fires are going on or dying out. Unless Mike runs up there and immediately (inaudible word) but that never happened, it's not..(pause). Mike is part time.

Mr. Egan said that it is impossible for the ZA to be out there. (inaudible words).

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Mr. Weiland said, "Maybe I misunderstood the complaint. The complaint is a whole series of incidents and (inaudible words) and because of the series of incidents, it was believed that the town code has been violated."

Mr. Rappleyea said, "That is potentially correct."

Mr. Weiland said, "So there are many different incidents and each of them have different facts as opposed to testimony."

Mr. Canham said, "I think you're getting hung up on the word fact".

Mr. Rappleyea made inaudible statement. He said the only way to get the facts is by somebody saying...this is what it would like, or it would be the testimony or a video of the smoke or photographs.

Mr. Egan said, "All the instances are basically the same as I understand. These outdoor fires and the smoke create from most outdoor fires going across the property lines."

Mr. Weiland added, "That creates the violation".

Mr. Egan said, "Correct".

Mr. Canham said, "Okay".

Chairman Malcarne asked Mr. Weiland, "Arthur, are you good?"

Ms. Bishop made inaudible statement. She said (inaudible word) what were opinion consistent is different from another. I thought (inaudible word) like I did have (inaudible words) for months without burning anything but nobody ever heard about that.

Mr. Juliano asked Ms. Bishop, "How often on average do you burn?"

Ms. Puchar interjected and remarked, "Three times a week!" She made inaudible statement.

Ms. Bishop said, "No, that's so untrue."

Ms. Bishop and Ms. Puchar exchanged words (inaudible).

Chairman Malcarne said, "Hold on, Wait! Everybody please, address it to the board!"

Chairman Malcarne asked Mr. Juliano about his query.

Mr. Juliano said, "Let's start with Ms. Bishop. How often do you normally burn?"

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Ms. Bishop replied, “It varies, in December of 2018, I had two fires the whole month. Prior to that I hadn’t burn since probably like July of 2018. I go months without burning and there are times that I have a few. I smoke (inaudible word), I cook, I grill and that’s what happen (inaudible word). (Couple of people talking at the same time) ...barbecue grill. Am I not allowed to cook now?”

Mr. Juliano asked Ms. Puchar, “Now how often are you noticing it?”

Ms. Puchar responded, “It depends, it the beginning it’s like three times a week. Normally, they can’t wait to get home, they jumped out of the car, they ran across the property and light the fire with their kids right across my driveway.”

Mr. Rappleyea asked Ms. Puchar, “What year was that?”

Ms. Puchar responded, “That was 2015, 2016 and obviously, I think it gotten problematic and definitely not (inaudible words) not just burning...(inaudible words). They had recently (inaudible words) the fact since they moved here. Ms. Puchar made an inaudible comments. Until they are accountable or (pause)...rectify, they are not going to stop.

Chairman Malcarne asked Mr. Juliano if that answer his question.

Mr. Juliano responded, “Somewhat.” He asked, “Would there be some happy medium?”

(Everybody laughs. Lots of comments and inaudible talks, reactions)

Ms. Puchar remarked, “(Inaudible words) we want to enjoy our property, we want to be able to leave our windows open on beautiful days, you know and that is our right. We want our rights protected. We have existing laws that are designed to protect us.

Ms. Campbell asked Ms. Puchar, “Can I just clarify, the burning of 3 times a week was back in 2015?”

Ms. Puchar said, “Yes”. There is a whole log on the file and on the record with a date, time frame and time stamped whether it’s significant or moderate.

Mr. Egan asked, “That log that was submitted was part of the court case with Judge Seelbach, is that correct?”

Ms. Campbell said, “but that was an improvement?”

Ms. Puchar said, “They have improved, Yes!”

Mr. Weiland asked the Town Attorney, “And you made that point being?”

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Mr. Egan responded, "It's just in terms of the law (inaudible word) and on the record (inaudible word)".

Mr. Weiland said, "Inaudible words..whether the judge action reflect on the law (inaudible statement). There is no indication whether or not her action reflects on the law."

Mr. Egan asked, "What do you mean?"

Mr. Weiland responded, "The judges' action".

Mr. Egan remarked, "The judge reached the determination she agrees.

Mr. Weiland said, "But there is nothing in writing that reflects the law.

Mr. Egan underscored to Mr. Weiland that the judge found and ruled, "Not guilty".

Mr. Weiland said, "I understand that but that doesn't either support or negate the law."

Inaudible talks between Mr. Egan and Mr. Weiland.

Ms. Puchar added, "But the relevance is Mr. Appolonia uses that as part of his basis and that part is incorrect."

Mr. Egan remarked, "It's a court decision, let's not litigate it."

Crystal Berry stated that when the Bishops first moved in, her and her husband were at their house helping them redo it so it would be nicer inside the house, so the comment about running out of car to light a fire was completely ludicrous, but ...Pause...this whole situation lead from one thing back to another. (inaudible words) say a lot about everybody! Maybe we should be more observant of that I would like to be of (inaudible word) neighbor babysitting scheme. I didn't know that one group of neighbor watching the entire neighborhood for everybody. I've been in their house since 16 (inaudible words) cause I was 13 years old or 14 years old, and everybody who owns the house works very hard to keep it and enjoy it, so if they want to have a campfire occasionally or burn a woodstove or smoke a cigarette, or to go to a grocery store, common sense, (inaudible words) and Ms. Bishop gave here maybe on average yearly basis if you want a number from somebody outside who doesn't live there, and hasn't been over and involve with their life for the past --what maybe 4 years, Oh, let me correct myself, it's 2013. Okay so it's been very sporadic since 2013, here and there, how you doing? The past few years, we've been a little bit (inaudible word), but in the past like since they moved there, on an average a year...maybe and maybe (inaudible word), five to six fires. That's not including a grill, that's not including a smolder. There is something called, "hearsay" nobody can prove anything of any of this. That is a like a big factor that I am not understanding. Nobody can prove their side or the other side. It's all hearsay. But somebody from the outside who'd seen it? It's kind of like (inaudible word), Make me kind of speechless that this is all happening. For what? That is my question to everybody here – "FOR WHAT??"

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Ms. Campbell asked the Bishops when they moved up here.

Ms. Bishop responded, "I moved up here in 2013".

The board thanked the lady.

Linda Haughtman spoke and said, "I just want to say that the Bishops don't have a fireplace, they don't have (inaudible word). She described the fireplace chimney. The smoke is not going down the yard. When Laurie moved in, she started attacking her, (inaudible word) the kids, (inaudible words), she was calling the police almost every day, for the noise, for the fourwheelers in the yard that kids play. She made inaudible statement. She started the fire thing with the town and that's the only one (inaudible words – hard to understand) Town Board meeting, the last time she went there, that's the only one they accepted it, (inaudible word) that's why she's pushing it. What she is saying is not true. I live there. I see it! The smoker is off over the hill with the wind away from her house. She is not telling the truth. She is lying to you.

Chairman Malcarne interjected and said, "Again, just share your experience and no accusation."

Ms. Haughtman said, "Okay, I am so sorry but she's not telling the truth!" (Everybody laughed)

(Lots of inaudible talks from everyone.)

Mr. Egan underscored that the board will consider every testimony. He said, "I heard, they heard! It's all on the record!"

Mr. Canham expressed his view, "It seems to me that we cannot proceed any further tonight if we're going to keep the public hearing open. So, I should hope that we heard enough, and we would begin to move and discuss the interpretation but if we're going to leave the public hearing open then this meeting will have to be adjourn until next month.

The board discussed the next meeting date.

Mr. Rappleyea asked when is the next meeting date?

Ms. Campbell responded, "It's on every 4th Thursday of the month".

Mr. Rappleyea responded that he will not be around that week.

Ms. Campbell asked, "So, do you want to do it in May?"

Mr. Rappleyea responded, "Not really", but ...

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Mr. Egan commented, “I understand that there is a request from Mr. Kearney to leave the public hearing open, if he wants to see it, all the evidences and testimonies are on the record, It’s not the board’s fault.”

Mr. Rappleyea gave his comment. He said, “I was copied on the email about the request. Mr. Kearney did not give a lot of notice about his request for adjournment, then he indicated, he was hospitalized. I didn’t respond, (inaudible words), I’m not sure there is anything else that could be added at this point, Mr. Kearney submitted these 16 page long letter and maybe 50 pages of Exhibits. Now, I want to be respectful but on the other hand, I don’t want to (inaudible word). I am not here the last week of March and I am not sending anybody who doesn’t know anything about the case. So, on behalf of the Punchars, I asked the board to close the public hearing so that we can move ahead.”

Chairman Malcarne asked for any reservation from the board.

Mr. Calogero remarked, “I have strong (inaudible word). She indicated that she really feels uncomfortable with this, that she’s not being represented and that she’s at a lost that her lawyer did not come. I appreciated the fact that she couldn’t gotten another attorney but as Allan has pointed out, he will have to be brought up to speed and if nothing else this board stands to make amend with the community and someone feels that they’re not being represented and that they have a voice and the fact that she spoke to us so strongly and spoke to us strongly, correct me and I personally wouldn’t want to see (Inaudible word).

Mr. Canham agreed with Mr. Calogero.

Mr. Canham said, “I would love to bring this to closure for all the parties but if someone is feeling unrepresented then”.

Mr. Egan said, “I suggest (inaudible statement). I know you would do a regular meeting, and there’s normally a couple of items on the agenda, do you want to have a special meeting or I don’t know if Mr. Kearney (paused)”It takes a lot off the board agenda. It might be easier...

Ms. Campbell agreed with Mr. Egan.

Ms. Bishop remarked, “Can I say something? So – is it okay to have a public hearing without my attorney?”

Mr. Egan clarified and said, “No, what I’m saying is to allow your attorney to be here.”

Ms. Bishop said, (Inaudible statement) because Ms. Puchar ’s lawyer can’t be here next month.

Mr. Rappleyea said, “Your attorney was notified as (inaudible statement) I think that was 3 days ago, so I’m saying that now. There’s a very big distinction difference in saying a month ahead of time than 3 days beforehand.

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Ms. Bishop said that Mr. Kearney didn't know his release date.

Mr. Rappleyea remarked, "But knows he went in. He didn't send everybody an email saying, "Guys I've been hospitalized"."

Ms. Bishop said, "Yes he did. He said something a month ago that he was hospitalized."

Mr. Rappleyea said, "Well, he didn't tell me!"

Chairman Malcarne asked the panel to go back to the question about the next meeting date.

Mr. Egan said, "I don't know what the board's (inaudible word).

Mr. Weiland said, "I certainly am available many days a week to just for the decision and 3 weeks for the (inaudible word).

Mr. Egan asked Ms. Bishop about her availability.

Ms. Bishop tried to respond but Mr. Weiland interjected and said, "I think should would have to get back to us with a firm statement from her attorney that he would be available on a certain date and we will have to be free."

Ms. Bishop said, "I just wanted to know if my attorney has the option to say or agree whether or not to close the public hearing."

Mr. Weiland made an inaudible statement. He explained the process of having at least 4 board members to have a meeting.

Mr. Canham said, "Yes and no, we all have work and time schedule, so I keep my 4th Thursday of the month pretty open. We might not be able to get a full board if we start going other days.",

Mr. Juliano indicated that he won't be available next month. After a very lengthy discussion, the board agreed to make it April 25.

Mr. Egan said, "Just a note that I won't be at the meeting due to the new Justice Town Court night. (inaudible word) But that's the board's decision."

Mr. Canham said, "I would propose at this point that we adjourn!"

Mr. Malcarne said to Mr. Canham, "Before we go there, (then he addressed the public), our intention would be any information that we have whether an attorney can make it, can't make it, anything can come up, put together whatever you have so that we have it by then, our intention at this point would be to close the public hearing at that time, once we received all the additional information, again the public hearing is still open so there's two months, so – any additional information – just submit it to us."

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Mr. Juliano asked, "Can we put a time limit on that meeting? (inaudible word)"

Mr. Weiland made an inaudible statement.

Mr. Juliano explained, "No to our point of having the public hearing part of it extra amount of time. I feel there's a lot of stuff in here. I do understand John's point as far as giving Ms. Bishop's lawyer more time, but we have a lot of evidence in here. I would like to push the public hearing a max of maybe 40 minutes."

Mr. Canham commented, "Then it defeats the purpose of public hearing."

Mr. Juliano said, "I've been to a court where the judge limited the time case."

Mr. Egan said, "I think that's a good point but I don't know if you can put a time limit on it but I think that the public hearing on the 25th, (paused) the materials have been covered, we have the facts, that's all on the record, everyone should understand that. We don't need to keep on going on and over and over and over. The board knows. If there's new information to be brought, then (inaudible word)."

Chairman Malcarne said, "Again, we have two months for whatever information that we have, and we will just ask the attorneys and will welcome the public but again if there's new information and say it as quickly as possible. You may feel strongly about something and if we already something then we already heard it."

Lots of inaudible comments. Mr. Egan, Mr. Weiland and the chairman of the board all talking at the same time.

Ms. Bishop underscored, "I just want my attorney to feel comfortable in closing the public hearing. It is not up to me".

Mr. Egan said, "It's fine".

Mr. Rappleyea spoke and said, "Here's a suggestion as well. Ms. Bishop after speaking with her lawyer and if Mr. Kearney consented the closing of the public hearing-- let's say March, nobody even needs to be here". He joked, "Everyone will promise not to show up!" (loud laugh in the room)

Mr. Egan suggested that he will email everybody. The board agreed.

Mr. Canham expressed his comment. He said, "I do really appreciate Mr. Egan's comment. We have heard you all. I do believe that this is a very open-minded board. We listen to you. We feel for all sides but we have decisions to make so unless there is new information... (pause). I think we all feel for the pain that is causing the neighborhood and hope that you let us come to the decision that helps.

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Chairman Malcarne said, “And with that, John made a very good point, we’re here to listen to you and if you notice, (inaudible words)... what’s important to you and because it’s important that each of you sought that feelings, We want you to feel that your individually heard and (inaudible words...) Just like Charles said, we are volunteer. We don’t get paid by the hour, or by the minute. We joked around that we get paid double. We’re here for you and we’re striving to do the very best. We appreciate coming and sharing...pause...I know it’s not easy to come and speak and share your thought and feelings on the public. We appreciate you and with that we’re going to table this.

The case was tabled.

Certification:

The forgoing represents accurate minutes of February 28, 2019 Public Hearing and Zoning Board of Appeals Meeting.

Respectfully Submitted By:



Arlene Campbell
Board Clerk, Zoning Board of Appeals