

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero  
Charles Canham  
Frank McMahon  
Ron Mustello  
Russel Tompkins

**MEMBERS ABSENT**

Daniel Vonderbrink

**ALSO PRESENT**

Arlene Campbell, Secretary

Katherine Mustello, Liaison Officer  
Jeff Newman, MCEI

Chairman Malcarne called the meeting to order at 7:03 pm. He welcomed everyone and asked his colleagues to introduce themselves. He noted that this meeting can be watched on Local TV Channel 22 and is streaming live via YouTube.

**ADMINISTRATION/INTERPRETATION:**

**John Caccia Appeal re MCEI Determination** in regards to 99 Willow Lane Wetlands Permit application with **Tax Grid No. 6567-00-193832.**

The appellant, John Caccia, pursuant to Sec. 250-89 (L) of the Town of Clinton Zoning Law, is seeking an interpretation and an appeal from the determination of the Municipal Code Enforcement Inspector dated June 11, 2024 waiving the requirements of the code and issuing the wetlands permit.

Shane Egan, Town Attorney was also present for this administrative appeal.

John Lyons, appeared for the appellant John Caccia while Lindsey Brown's husband appeared for Ms. Brown.

Chair Malcarne stated that the public hearing was closed exactly 62 days ago and a decision has to be made at this meeting.

Mr. Canham made a recap about the history of this case. This is an appeal from Mr. Caccia of a letter of recommendation from the MCEI to the Planning Board concerning the wetlands permit application by Lindsey Brown, property owner of 99 Willow Lane. This matter has been percolating for over a year dating from the first work done in the wetland and a stop work order was issued by the MCEI. Subsequent applications for

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

wetlands permit application were submitted including variance application that was eventually withdrawn. Mr. Canham indicated the subsequent wetlands permit application that was filed in spring at which the Planning Board asked the MCEI for his recommendation. Mr. Caccia, the neighbor, filed an appeal for this recommendation/determination, two public hearings were held on two successive meetings and the public hearing was closed at the October meeting. Mr. Canham also indicated his feelings about this case which is contained in the August meeting minutes.

Mr. Canham explained the resolution and the Findings of Facts and Conclusion that he crafted. He commented about Ms. Brown's comments during the public hearing referencing activities by neighbors. Two wrongs don't make it right. He also read the letter from the neighbor, Eliot Werner in response to the allegations made. Mr. Werner wants to make it clear that the small pond to which Ms. Brown referred to has been there for years even before they bought the property. The work they did by the driveway involves no change to the drainage or creation of the pond.

Mr. Canham complimented the attorney for the applicant in sending the July 25, 2024 letter. This letter is succinct and gives a very clear statement of the concerns essentially of which he also shares about the seven determination that went into the recommendation. He added that the Findings of Facts contained a lot of the same sentiments.

After all the deliberations were made, the board passed a resolution, to wit:

Mr. Canham motioned the following resolution:

At a meeting of the Town of Clinton Zoning Board of Appeals (the "Board") duly held at the main Town Hall of the Town of Clinton, 1215 Centre Road Rhinebeck NY 12572 on the 30<sup>th</sup> of October, 2024.

Upon the calling of the roll by the Zoning Board Clerk the following members were:

Present: Joseph Malcarne, Chairman  
John Calogero  
Charles Canham  
Frank McMahon  
Ron Mustello  
Russel Tompkins

Absent: Daniel Vonderbrink

The following Resolution was offered for adoption by Charles Canham. The Resolution was seconded by John Calogero.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

**RESOLUTION APPROVING FINDINGS AND DECISION DATED October 30, 2024.**

**WHEREAS**, On April 23, 2024, Lindsey Brown (the “Owner”) submitted an application for a permit pursuant to Section 250-78 of the Town Code (a “Wetlands Permit”) to the Town of Clinton Planning Board to perform certain activities in a Controlled Area as such term is defined in Section 250-105 of the Town Code (the “Application”);

Page 2/

**WHEREAS**, on June 11, 2024, Jeff Newman, the Municipal Code Enforcement Inspector (“MCEI”) issued a letter of recommendation (the “Letter of Recommendation”) interpreting certain provisions of Section 250-78 of the Town Code (Freshwater Wetlands, Watercourses, Lakes, Ponds and Floodplains) and recommending that the Planning Board waive requirements and immediately issue the Owner a Wetlands Permit under Town Code Section 250-78 (H);

**WHEREAS**, the Letter of Recommendation rendered seven separate determinations interpreting the provisions of Section 250-78 in the context of the Application;

**WHEREAS**, on June 25, 2024, John Caccia (the “Appellant”), a neighboring property owner residing at 95 Willlow Lane (Parcel Identification No. 132400-6567-00-197864-0000), represented by John F. Lyons, Esq. (“Attorney Lyons”), submitted an administrative appeal and application for interpretation which sought to reverse portions of the Letter of Recommendation (the “Appeal”);

**WHEREAS**, the Board conducted a public hearing in regard to the Appeal on July 25, 2024 which was continued to August 29, 2024, during which the Owner, the Appellant, Attorney Lyons and members of the public had the opportunity to speak and submit written materials both in support of and in opposition to the Appeal;

**WHEREAS**, the Board’s sixty-two (62) day deadline to render a decision on the Appeal commenced from August 29, 2024;

**WHEREAS**, the Board has reviewed and considered all statements and submissions by members of the public as well as from the Owner, the Appellant and Attorney Lyons;

**WHEREAS**, all written submissions and correspondence related to the Appeal were posted on the Town of Clinton’s website; and

**WHEREAS**, in consideration of the foregoing the Board now desires to render a determination on the Appeal.

**NOW THEREFORE BE IT RESOLVED**, as follows:

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

1. The Board determines that Appeal was timely filed.
2. The Board determines that the Appellant has the necessary legal standing to commence this Appeal.
3. The Board upholds the determinations / interpretations contained in the Letter of Recommendation numbered (1) and (2) as provided for in the "Findings and Decision" dated October 30, 2024, which is attached hereto and made a part hereof.
4. The Board reverses the determinations / interpretations contained in the Letter of Recommendation numbered (3), (4), (5), (6) and (7) as provided for in the "Findings and Decision" dated October 30, 2024.
5. The Board holds that the Planning Board should review the Letter of Recommendation in light of the interpretations rendered herein and reach a determination on whether the Application qualifies for a waiver of requirements under Section 250-78 (H) of the Town Code. The interpretations rendered herein should guide the Planning Board as it renders its own determination.
6. The Board hereby adopts the "Findings and Decision" dated October 30, 2024, which is attached hereto and made a part hereof. The "Findings and Decision" details and explains the rational for the conclusions reached in this Resolution;
7. The Board authorizes, directs and empowers Chairman Malcarne to sign the "Findings and Decision" dated October 30, 2024; and
8. The Board authorizes, directs and empowers the Zoning Board Clerk to file this Resolution along with the "Findings and Decision" dated October 30, 2024 in the office of the Town Clerk within five business days of the date of this Resolution as well as mail copies to the Owner, the Appellant and Attorney Lyons.
9. For the foregoing reasons, the Appeal is hereby granted in part and denied in part as described above.

The vote having been taken upon such Resolution the result was as follows:

Joseph Malcarne	<u>Aye</u>
John Calogero	<u>Aye</u>
Charles Canham	<u>Aye</u>
Ronald Mustello	<u>Aye</u>
Russell Tompkins	<u>Aye</u>
Frank McMahon	<u>Aye</u>

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

Daniel VonderBrink

Absent

Seconded by Mr. Calogero,

**FINDINGS AND DECISION  
OF THE  
TOWN OF CLINTON  
ZONING BOARD OF APPEALS**

-----X

**In the Matter of Lindsey E. Brown, Owner**

**John Caccia, Appellant.**

**Appeal Received June 11, 2024.**

-----X

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. By Letter of Recommendation issued to the Town of Clinton Planning Board (the “Planning Board”) dated June 11, 2024 (the “Letter of Recommendation”), Municipal Code Enforcement Inspector Jeff Newman (“MCEI”) recommended pursuant to Town of Clinton Town Code (the “Town Code”) Section 250-78 (H) (1) that an application for a permit under Section 250-78 (a “Wetlands Permit”) filed by Lindsey E. Brown (the “Owner”) dated April 23, 2024 (the “Application”) qualified for: (a) a waiver of any informational requirements contained in Section 250-78 (F) of the Town Code; (b) a waiver of referrals to outside agencies; and (c) a suspension of the permitting process and immediate issuance of a Wetlands Permit.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

2. The Owner resides at 99 Willow Lane, Clinton Corners, New York 12514 (Parcel Grid No.: 132400-6567-00-193832-0000) (the “Property”) which is the lot upon which the Wetlands Permit is sought. The Property is located in the AR5 (Very Low Density Agricultural Residential) Zoning District.
3. The Letter of Recommendation also makes seven (7) separate determinations which interpret Section 250-78 of the Town Code (Freshwater Wetlands, Watercourses, Lakes, Ponds and Floodplains) in the context of the Application.
4. On June 25, 2024, an adjacent property owner, John Caccia (the “Appellant”) residing at 95 Willow Lane, Clinton Corners, New York 12514 (Parcel Grid No.: 132400-6567-00-197864-0000) filed an interpretation / administrative appeal with this Board (the “ZBA” or this “Board”) regarding the determinations / interpretations contained in the Letter of Recommendation (the “Appeal”).
5. The ZBA duly noticed and held a public hearing with regard to the Appeal on July 25, 2024 which was continued on August 29, 2024 with written comments being accepted through August 29, 2024. All of the written submissions were posted and made publicly available on the Town’s website.
6. The ZBA considered all public comments and written submissions when rendering this decision including but not limited to the Appellant’s June 25, 2024 letter with exhibits and submissions made by the Appellant’s attorney, John F. Lyons, Esq. (“Attorney Lyons”), dated July 25, 2024 and August 26, 2024. The ZBA also considered the Owner’s July 25, 2024 written submission, and reviewed relevant Planning Board minutes including but not limited to the May 7, 2024 and July 16, 2024 meeting minutes.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

7. The Appeal and submissions by Attorney Lyons advance several arguments in support of the proposition that the interpretations made by the MCEI were incorrect. These arguments include that the actions taken by the Owner clearly fall within the regulated activities governed by Section 250-78 (C) of the Town Code, as they involve the drainage, removal of material and clearing of vegetation from a Controlled Area, as such term is defined in Section 250-105 of the Town Code.

8. The ZBA will address the threshold issues of the timeliness of the Appeal and the Appellant's standing before examining the determinations and recommendations made by the MCEI in his Letter of Recommendation.

A. Standing

9. The record before the ZBA indicates that the Appellant's property abuts the Owner's.

10. The submissions made by the Appellant and Attorney Lyons allege that the Appellant will suffer specific harms due to the activities performed by the Owner. The Controlled Area is located on both the Owner's and the Appellant's property.

11. In this instance, Attorney Lyons and the Appellant have alleged that the Appellant will sustain direct harm, beyond those that the general public will sustain, if the determinations contained in the Letter of Recommendation are upheld.

12. The ZBA has consistently taken a broad view of standing. This is based in large part on the language contained in Town Code Section 250-98 (C) (1)

13. We find that the Appellant has the legal standing to commence the instant Appeal.

B. Timeliness

14. The Letter of Recommendation was issued on June 11, 2024.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

**15.** The Appeal was commenced on June 25, 2024, which is within the thirty (30) day time limit provided for in Town Code Section 250-98 (B) (3).

**16.** We therefore find the Appeal was timely commenced.

**I. The Work Area is within the boundary of a Wetland**

**17.** In his Letter of Recommendation, the MCEI found that the work area as shown on the Application is within a Controlled Area by determining as follows:

“[T]he work area is within the boundary of a Wetland of a size of between ½ acre and 5 acres or is within 50 feet of such a Wetland.”

**18.** For the purposes of Section 250-78, the Controlled Area is defined by Section 250-105 to mean: (1) any area within 100 feet of a watercourse, lake or pond; (2) any wetland between five acres and 12.4 acres and the area within 100 feet of the boundary of such wetland; (3) any wetland between 1/2 acre and five acres and the area within 50 feet of the boundary of such wetland; and (4) land within the one-hundred-year floodplain.

**19.** There seems to be little dispute on this determination. The Owner concedes that the work provided for in the Application did occur within a Controlled Area based upon subdivision (3) above.

**20.** The Appellant raises concerns about the lack of a precise delineation of Wetlands at the Property. We agree that the Owner should be required to delineate the precise location of the Controlled Area by flagging the perimeter of the work area in relation to the Controlled Area. However, it appears from the record before us that the work did occur within the Controlled Area.



**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

**21.** We find that the work area as detailed in the Application is within a Controlled Area and uphold the MCEI determination on this point.

**II. The Area is not within a Wetland regulated by NYSDEC and is not within the 100-year Flood Plain**

**22.** Next, the MCEI determines as follows:

“[T]he area is not within a designated wetland which is regulated by the New York State Department of Environmental Conservation and is not within the one-hundred-year floodplain.”

**23.** Again, neither the Appellant nor the Owner dispute this determination. We believe it to be correct as well.

**24.** We therefore affirm the conclusion reached by the MCEI on this point.

**III. The Project Achieves the Stated Objectives of Town Code Section 250-78**

**25.** The next determination reached by the MCEI is as follows:

“The currently proposed project achieves the state objective of Section 250-78 Fresh Wetlands, Watercourses, Lakes, Ponds, and Floodplains to ‘minimize any negative impacts caused by development to freshwater wetlands, watercourses, lakes, ponds, and floodplains’ because it is specifically designed to improve the area”

**26.** The Appellant takes issue with this determination while the Owner supports it.

**27.** We agree with the Appellant. There is no provision in Town Code Section 250-78 that exempts or encourages in any way activities “specifically designed to improve” a Controlled Area.

**28.** We note that the approval standards for a Wetlands Permit under Section 250-78 (E) do not include any explicit consideration of aesthetics or visual appearance.

**29.** The nature of the “improvement” in the case at hand is not specified by the MCEI in his Letter of Recommendation. It is clear from documents submitted by the Owner and their

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

presentations at various public meetings that improving the visual appearance of the Property, including the establishment of gardens, was one motivation for extensive deposition and removal of materials within the Controlled Area. However, those visual considerations are absent from the “Purpose” or “Legislative Intent” sections of Section 250-78 (A) and (B).

**30.** It is clear to this Board that many activities designed to improve the visual appearance or aesthetics of a Controlled Area could result in significant and possibly negative impacts to the Controlled Area. We note that Town Code Section 250-78 (C) (11) regulates, “...any activity that may impair the natural function(s) of a wetland...”

**31.** The Application specifically mentions, “[I]mprove drainage to wetlands and improve erosion controls.” Deliberate changes to drainage are, by definition, a change to the natural function of a Controlled Area, and historically have been one of the most common causes of degradation and loss.

**32.** We therefore disagree with the MCEI’s interpretation on this point and find that the Application does not achieve the stated objectives of Section 250-78 of the Town Code because of the impact of the activities on the Controlled Area.

**IV. The Disturbed Area will Remain Open Space and will Improve, Not Despoil the Area**

**33.** The Letter of Recommendation also finds that:

“The disturbed area is to remain as open space and the development activities proposed are intended to improve, not despoil said area.”

**34.** Why the nature of the work will improve rather than despoil the area is not specifically described in the Letter of Recommendation. Regardless, it is our interpretation of the Town Code that whether the activities conducted in the Controlled Area constitute an improvement or a

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

despoliation is irrelevant under Section 250-78 of the Town Code. The key is whether the action constitutes regulated activity under Section 250-78 (C).

**35.** There is evidence that a significant amount of disturbance (both removal and addition of material, including significant changes in drainage) happened squarely within the wetland itself, which is within the Controlled Area.

**36.** The interpretation reached by the MCEI leads one to believe that certain types of improvements, i.e. activities aimed at beautifying an area, are permissible while other disturbances may not be. We disagree with this conclusion as the key to Section 250-78 is whether there was in fact a disturbance to a Controlled Area, not whether the work is subjectively a positive or negative disturbance.

**37.** The other factor would be whether the work constituted a “regulated activity” under Section 250-78 (C) or an “exempt activity” under 250-78 (D). We find that the activities conducted by the Owner are “regulated” activities.

**38.** We therefore disagree with the MCEI on this point.

**V. The Language of Town Code Section 250-78 C is Vague**

**39.** The Letter of Recommendation’s next holding provides as follows:

“The language of Section 250-78.(C). in (4), (5), (7), (10), and (11) is vague as it relates to the proposed project because of its use of the word “any” and its lack of concrete measurement guidelines. For example, ‘Conduct any form of... removal of material...’, taken literally would mean that the removal of poison ivy (a species of plant deemed dangerous by the NYSDEC) would require a Wetlands Permit. Such a requirement would be onerous to a property owner attempting to mitigate a health risk and would create an absurd workload for the Planning Board to have to review and issue such permits. However, the issuance of a Wetlands Permit by the Planning Board for this action would render such vagueness moot.”

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

- 40.** We disagree with this determination. It is our interpretation that the word “any” in subsections (4), (5), (7), (10), and (11) of Section 250-78 (C) is not vague. We interpret “any” as intended to cover a broad range of activities.
- 41.** The legislative intent of the Town Board is clear. The use of the word “any” in the provisions of the Town Code referenced by the MCEI is deliberate. The word “any” should be interpreted by the MCEI in the common, comprehensive usage of the word.
- 42.** The MCEI’s conclusion, that the lack of “concrete measurement guidelines” renders the use of the word “any” unworkably vague, is counter to the very clear language of Section 250-78 (C).
- 43.** Section 250-78 (D) includes a long list of “exempt” activities for which a Wetlands Permit is not required. That section of the Town Code provides the list of activities that are exempt from the broad use of the word “any” in Section 250-78 (C).
- 44.** The MCEI’s interpretation would expand the list of exempt activities to those for which acquiring a Wetlands Permit would be “onerous to a property owner” or create too heavy a workload for the Planning Board. Neither of these are listed as considerations under the Town Code.
- 45.** In his interpretation, the MCEI raises the example of removal of poison ivy, and concludes, incorrectly, that removal of this plant should be exempt from Wetland Permit requirements because it is, “a plant deemed dangerous by the NYSDEC” and a “health risk” to the landowners.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

**46.** The MCEI is incorrect on this point. Poison ivy (*Toxicodendron radicans*) is a common native vine in New York and eastern North America. It is not considered invasive by NYSDEC and is not on the list of regulated invasive species maintained by NYSDEC.

**47.** Since poison ivy is both native and an ecologically significant component of freshwater wetlands in New York, the Planning Board is mandated under Section 250-78 (E), which governs “Approval Standards,” to “consider the effect of the proposed activity on the ecology of the wetland.”

**48.** We therefore disagree with the MCEI’s interpretation on this point.

VI. The Town Codes Allowance of a Waiver Shows that the Section 250-78 C is Not Intended to Apply to ‘Any’ Work

**49.** The MCEI’s next determination is as follows:

“The fact that a waiver of requirements is allowed for projects deemed insignificant indicates that the language referenced in 5. above is not intended to be applied literally to “any” work described in the subsections referenced”

**50.** We once again disagree with the MCEI’s interpretation. Section 250-78 (H), “Waiver of Requirements” provides a process to streamline the permitting process if the Planning Board determines after review of the application and on recommendation of the MCEI that an action proposed for a regulated area is insignificant.

**51.** As discussed in point V. above, the word “any” in Section 250-78 (C) should be interpreted in its literal and common meaning. It is within the purview of the Planning Board to conclude that a proposed action is insignificant within the scope of Town Code Section 250-78, and to authorize immediate issuance of a Wetlands Permit after setting forth its decision and

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

reasons in writing. *See* Town Code Section 250-78 (H) (2). This however does not change the meaning of the word “any” in Section 250-78 (C).

**VII. The Proposed Action is Insignificant**

**52.** The MCEI’s final determination is:

“The action as proposed is insignificant.”

**53.** The Town Code does not provide this Board with a role in making a determination regarding whether the proposed action is insignificant.

**54.** Our interpretation of the Town Code is that reaching this determination is clearly within the purview of the MCEI. The MCEI is permitted to make a recommendation regarding whether the action is significant, but the final determination regarding significance rests with the Planning Board. *See* Town Code Section 250-78 (H).

**55.** We note that the Letter of Recommendation provides no explanation for the MCEI’s conclusion that the action as stated in the Application is insignificant other than the arguments discussed above. As noted herein, this Board disagrees with those arguments.

**VIII. The Recommendation**

**56.** The MCEI concludes his Letter of Recommending as follows:

“Based on the above findings and determinations, and because of the vagueness of the language in Section 250-78(C), I recommend that the Town of Clinton Planning Board waive all information requirements contained in Section 250-78(F)(4) that have not yet been submitted, waive all referrals to outside agencies, suspend the permitting process for this action, and immediately authorize the issuance of a Wetlands Permit for this action.”

**57.** As stated in point VII above, this Board understands and agrees that it is within the purview of the MCEI to make a recommendation regarding the “Waiver of Requirements.” Once

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

again, we point out that the final decision under Town Code Section 250-78 (H) is vested in the Planning Board, not the MCEI or this Board. The Planning Board must make a final determination regarding whether it is appropriate to waive the requirements of Section 250-78 and immediately authorize the issuance of a Wetlands Permit.

**58.** Our interpretation of the Town Code is that the Planning Board should conduct its own independent review under Section 250-78 (H) of the Town Code regarding significance and whether the Application qualifies for a waiver. The Planning Board can and should review the MCEI's recommendation but must thereafter use its own independent judgment to determine whether a waiver is appropriate under Section 250-78 (H).

**DETERMINATIONS**

**59.** The ZBA determines that the Appeal was timely filed.

**60.** The ZBA determines that the Appellant has standing to commence this Appeal.

**61.** The ZBA upholds the determinations / interpretations contained in the Letter of Recommendation numbered (1) and (2) as provided for herein.

**62.** The ZBA reverses the determinations / interpretations contained in the Letter of Recommendation numbered (3), (4), (5), (6) and (7) as provided herein.

**63.** We hold that the Planning Board should review the Letter of Recommendation in light of the interpretations rendered herein and reach a determination on whether the Application qualifies for waivers under Section 250-78 (H) of the Town Code. The interpretations rendered herein should guide the Planning Board as it renders its own determination.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

64. For the foregoing reasons, the Appeal is hereby granted in part and denied in part as described above.

**ZONING BOARD OF APPEALS  
OF THE TOWN OF CLINTON**

There being a majority of the Board voting to approve the Resolution, the Resolution was declared by the Chairman to have been adopted.

Motion carried, 6-0.

**Discussion.**

Mr. Calogero felt that everybody has to apply common sense to a situation like this. He was troubled by the concept that the Planning Board kept focusing under the terminology "de minimis", that this is a minimal project and didn't amount too much. He opined that to agree that the disturbance was minimal was relatively impossible because there was no clear delineation by a professional or expert in that field trained in identifying wetlands. There was also no clear delineation of amount of materials taken out or brought in the drainage nor steps that were taken by a neutral party who is well versed in these things. He thinks that the idea of minimizing the action on the property will set very poor precedence for any future applications of the wetlands law or issuing wetlands permit. The law is clear that the Planning Board has the discretion but that's exactly what it is. In his mind, its discretion has to be exercised very carefully. If they choose to say that this project is so small and it doesn't affect anything then so be it, but, let's have supporting reasons. Let's have a delineation. Let's have the amount of materials or quantitative stuff to go by. Mr. Calogero doesn't think that he could support the Planning Board's determination that this is de minimis without these things at their disposal to make a valid judgment.

Mr. Mustello doesn't disagree with Mr. Calogero. Although he feels that Mr. Newman is doing a fantastic job, in reviewing the volumes of information and looking at the interpretation application, he feels that mistakes happen. He added that this is the reason why these boards exist. They go back, correct it and move forward.

Mr. Canham said that it's worth noting that the board is not in a position to judge whether this was de minimus. This is the Planning Board's purview. They have the prerogative to make that decision. They have the expertise or can call an expert to make that decision. The Zoning Board is just concerned about the language in the letter and the impact of that language if it were broadly applied. He agreed with one of the comments from Mr. Lyon's submission that if the language were broadly applied then it



**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**October 30, 2024**

would seriously undermine the Town's Wetlands law. The wetland law is well crafted and he is proud of it. It is designed to protect a critical natural resource in the town.

Mr. Canham noted that the Findings of Facts and Conclusion of Law goes to every detail of the issues. Nobody argues that this is a wetland. This is not a DEC wetland. Nobody argues about that. The other five determinations dealt with issues like what is the meaning of the word "any". The board concluded that "any" means any. It is not vague. The wetland law has a very specific set of things that are exempt. He noted that the action in this matter wasn't on that list.

Mr. Canham also commented about the MCEI's determination that the actions would meet the spirit of the law because they were designed to improve the wetland. He underscored that this is not contained in the law. There was a significant disturbance in the wetland given both the addition and removal of the material in what appears to be both in the buffer zone and potentially in the wetland itself. He added that beautifying is not in the law. The law is designed to minimize any disturbance in the wetland and the buffer. The Planning Board is there to grant permits for actions while ensuring that the goals of the law are met. Removing poison ivy may seem like a good thing to do for someone who is very sensitive to it but it is not allowed under the Wetland Law without a permit. He hopes that it would be rarely granted. He underscored that poison ivy is a native species and part of wetlands.

Mr. Newman pointed out that the law doesn't say to minimize any disturbance. The purpose is to minimize any negative impact so it recognizes the other. Mr. Canham noted that it does prohibit the addition or removal of any materials.

Mr. Newman asked the board how this resolution impacts any future permit applications. He said, "If any is applied universally and somebody were to place a bench next to the creek that's on their property and it doesn't require any other permit but would require a Wetlands' permit and that means they have to go before the Planning Board?"

Mr. Canham responded, "Absolutely, and the Planning board can decide whether it is de minimus."

Mr. Newman asked, "At what point does the Planning Board get overwhelmed with unnecessary applications the way the law is interpreted if that is really the intent of the law and if the intent is to prevent negative impact?"

Mr. Canham responded that the MCEI is not in a position to judge that nor the Zoning Board of Appeals. He underscored that "any" means any. The law has a 50 foot or 100 foot buffer depending on the size of the wetland. The board doesn't really know which buffer applies to this case but the law is clear, any means any.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

Mr. Newman asked, "Does this apply to existing structures who's having HVAC work done?" Mr. Canham responded, "Yes, if it is in the controlled area."

Mr. Newman argued that if any means any then that changes how he reviews every single application and potentially adds significant time expense to the applicants. Mr. Canham responded that the MCEI's role is to make a recommendation and the Planning Board gets to decide whether to invoke Section H, waive the requirements and just issue the Wetlands Permit.

Mr. Newman was persistent and cited different cases about doing work in the controlled area. Mr. Canham responded that the bottom line is any means any.

Mr. Newman asked again, "In this specific appeal where it was decided that any means any, does this set precedence that he has to send every single application to the Planning Board?" Mr. Mustello responded that let's defer that question to the Planning Board. The board agreed.

Mr. Canham said that the determination in Mr. Newman's letter basically said that the word any was so vague as to be essentially meaningless and therefore he is empowered to make this determination/recommendation based on some standards that the board didn't find in the law. Mr. Canham underscored that the law is very clear.

Mr. Canham said that the Zoning Board of Appeals has great respect for the workload of the Planning Board. They trust that they will find a way to make this work.

All aye, motion carried, 6-0.

**APPROVAL OF MINUTES:**

Chair Malcarne motioned to accept the minutes of August 29, 2024 as amended, seconded by Mr. Tompkins, all Aye, Motion carried, 6-0.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 30, 2024**

**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 7:40 pm, seconded by Mr. Calogero, All Aye Motion carried, 6-0.

Respectfully Submitted By:

A handwritten signature in cursive script, appearing to read "Arlene A. Campbell".

Arlene A. Campbell  
Zoning Board of Appeals Secretary