

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
April 28, 2024**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Frank McMahon
Ron Mustello
Russel Tompkins
Daniel Vonderbrink

MEMBERS ABSENT

ALSO PRESENT

Arlene Campbell, Secretary

Katherine Mustello, Liaison Officer

Chairman Malcarne called the meeting to order at 7:00 pm.
Chairman Malcarne 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.

VARIANCE:

None

INTERPRETATION:

StopSixSensesNY,Appeal re MCEI determination dated 12-12-2023 -68 Naylor Road, Tax Grid No. 6268-00-59136 (Clinton parcel) and 2450 Route 9G Hyde Park, Tax Grid No. 6268-03-46140 (Hyde Park parcel).

The appellant is appealing MCEI Michael Cozenza's December 12, 2023 determination on CECNY Land Holdings LLC application for Amended Site Plan and Special Permit approval, in which MCEI Cozenza determined that CECNY Land Holdings LLC's application to use 68 Naylor Road, Tax Grid No. 6268-00-59136 (Clinton parcel) and 2450 Route 9G Hyde Park, Tax Grid No. 6268-03-46140 (Hyde Park parcel) as a Conference Center,

The board returned to session for the discussion of the above matter after the public hearing was closed on March 25, 2024. Warren Replansky was not in attendance while Victoria Polidoro sat in the audience with her team.

Shane Egan, Town Attorney was also present to represent the town.

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The board agreed to enter into an executive session.

Mr. Canham motioned to enter into an executive session at 7:05 pm for the purpose of discussing confidential attorney-client work product and to confer with the town attorney regarding privileged and confidential information and material,

Seconded by Mr. Tompkins,

Discussion. None.

All Aye, Motion carried, 7-0.

The board reconvened.

Chairman Malcarne motioned to return to regular session at 7:36 pm, seconded by Mr. Canham, **Discussion.** None. All Aye, Motion carried, 7-0.

Mr. Canham indicated the topics for discussion including the most important matter i.e. definition of conference center. He introduced each topic as itemized below and opened discussions to the board.

Suggested topics for discussion

1. Are the environmental issues raised by applicants relevant?
2. Is the developer's proposal consistent with the Comprehensive Plan?
3. Do the applicants have standing?
4. Has the proposal been developed "on the fly" (and does this matter)?
5. The six main headings in the MCEI Determination (in reverse order)
 - a. Outdoor event center
 - b. Is there road frontage and access?
 - c. Is an amended special use permit appropriate?
 - d. Is the 2017 SUP still in effect?
 - e. Were previous violations resolved?
 - f. Does the proposed use qualify as a conference center?

1. Do applicants have standing?

Mr. Canham said that there have been arguments from Six Senses that applicants do not have standing. Mr. Canham indicated the summary of case law from the town attorney who assures the board that the applicants do in fact have standing. He said that he is satisfied with the facts. The board unanimously concurred with Mr. Canham.

2. Was the timing of the MCEI review in December 2023 premature?

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Per Mr. Replansky's argument, the MCEI did not have sufficient information about the nature of the proposal to render a determination. Mr. Canham stated that per the advice of the town attorney and per his own reading, a lot of information has come out since then as to exactly what Six Senses would like to do. The nature of the program was still very clear in December that what was anticipated was a very substantial expansion of the previous special permit. The document from KARC Consultants shows quite a substantial list of all the buildings proposed to be constructed, some of which were 10,000 square feet. There was no question that the MCEI had a great deal of information about the scope of the project envisioned at that time by the Six Senses. As pointed out by the town attorney, the MCEI has a responsibility to issue a response in a timely manner given the request for the submission of the site plan. Based on these findings, Mr. Canham concluded that the MCEI determination was not premature. He asked the board about their view and the board unanimously concurred that the determination by the MCEI was not premature.

3. Are the environmental issues raised by applicants relevant?

Mr. Canham indicated the enormous volume of comments received from the public. One of his favorites was the one from the retired English Professor who helped them parse the language of the conference center definition. He underscored that the ZBA is being asked to decide whether the proposed project qualifies as a conference center and whether Six Senses could proceed to site plan and special permit process approval as a conference center. He indicated the great number of public comments raised about the environmental concerns. In making a decision on variances, Mr. Canham stated that one of the things the board is charged to review is the environmental impact to the site and change to the character of the neighborhood. However, this is not the case here. In this decision, all the issues raised in the MCEI determination are more definitional. All the environmental concerns are discussed during the Planning Board site plan review. These are the Planning Board's purview. Some of these comments do not actually help the board settle the issues that were before them. He doesn't think that the board has the latitude to decide that this is not a conference center because it has environmental impacts.

Chair Malcarne noted that the board is concerned about all these things but this is not the Zoning Board of Appeals purview.

4. Is the developer's proposal consistent with the Comprehensive Plan?

Mr. Canham commented that this is not the Zoning Board of Appeals purview. They do not have the legislative or executive function. It is the Town Board who makes the determination to bring the zoning law in conformity with the comprehensive plan. The board doesn't get to decide whether the definition is consistent with the comprehensive plan. The definition is what is given to the board and the code is what is given to them

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by the Town Board. The definition! This is what the Zoning Board of Appeals has to interpret. From his own perspective "We all value rural character but rural communities do not survive without commerce." The notion that commercial activity is not appropriate in a rural community just doesn't make sense to him. He said that he spent so much time in other parts of New York where small towns are dying because they don't have the commercial activity to sustain them. We encourage and emphasize most commercial activity in the hamlets as clearly stated in our comprehensive plan and zoning law but anybody who knows our hamlets know how small they are. He opined that maybe that's exactly what they like -- small businesses that the town has. Per Sec. 250 of the Town Code, schedule of use and regulations allows a great many things in the AR 3 Zoning District besides agriculture and housing. He agreed that farming has been in decline for 199 years since the bicentennial of the Erie Canal. This is when the population of Dutchess County began a decline that it did not recover from until 1950. Mr. Canham stated that we are not a community that can survive on just farming and residential communities so Section 250 allows a very long list of activities in an AR District besides farming and residences. Mr. Canham cited some of the uses that are allowed in the AR Zoning Districts like hospitals, camps, home businesses etc. Clearly, commercial activity is not inconsistent with our Comprehensive Plan. It is a question of whether this action in this district meets the definition of a Conference Center which is an allowed commercial use in an AR Zoning District.

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Mr. Calogero said that having been through the Comprehensive Plan from a variety of Angles, a lot of it is aspirational and not realistic. Everything changes. The tone that comes out of the Comprehensive Plan pretty consistently is that the residents who did respond and participated in it clearly had the feeling that they wanted the town to stay the way it was. He would certainly like the town to stay exactly as it is, as the reason why he moved here. However, there is a balance that has to be achieved in some way to make that realistic. He is glad that it doesn't fall on this board that often. It is very hard to make that decision. He commented that the Town board is upholding it to a large degree but when you get a proposal like this that is controversial and we're stuck with the law the way it's written and the board has to see how it fits and how it doesn't fit.

Mr. Tompkins said that he was born and has been in this town for eighty years. He'd seen a lot of changes. One thing they want in this town is to keep open space. This property that is proposed to be developed is keeping a lot of land open. He cited a scenario: if you turn around and develop this land into building lots and put a maximum number of houses then it will have less open land. He agreed with Mr. Calogero that things have changed. You might not like it, he doesn't like change but we have to give it a change.

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5. Has the proposal been developed "on the fly" (and does this matter)?

Mr. Canham discussed Mr. Replansky's criticism of the Six Senses' proposition. It has certainly evolved in response to the public comments and Zoning Board of Appeals concerns. If you look at the site plan and special permit process, this is exactly what is supposed to happen. Public comments will be solicited during the public hearing and the planning board reviews the application based on the town code. The Planning Board can deny the special permit if it doesn't meet the requirements of the code. They hope that applicants will change or modify their proposal in response to concerns from the Planning Board. At the end of the day, the Planning Board is in charge of making sure that the proposed development is consistent with the town code and comprehensive plan and SEQRA. He doesn't find this to be disqualifying, the fact that the proposal has evolved for the past three or four months. This is really how the process should work. He asked the board if they were comfortable with these findings and the board unanimously concurred.

Chair Malcarne acknowledged all the letters and correspondences from the public since the last meeting. The board heard and appreciated all the public comments. He also thanked Mr. Canham for all his hard work in this matter.

6. The six main headings in the MCEI determination.

- a. Outdoor Event center
- b. Is there road frontage and access?
- c. Is an amended special use permit appropriate?
- d. Was the previous use non-conforming?
- e. Is the 2017 SUP still in effect?
- f. Were previous violations resolved?
- g. Does the proposed use qualify as a conference center?

Mr. Canham discussed the seven main questions from the MCEI determination in December of 2023.

- a. Outdoor event – Mr. Canham stated that the new town code is very specific on where outdoor event can happen i.e. shall be located at least 500 feet from any lot line which separates the property of an agricultural event venue from an adjacent property not owned by the owner of the agricultural event venue property.

Mr. Canham also discussed the related issue to outdoor events i.e. noise and sound which is also addressed in the town code. He stated that he didn't see anything controversial about the MCEI letter in regards to this matter. He solicited the board's comment and heard none.

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The board unanimously agreed about this matter.

b. Road Frontage and Access – Mr. Canham stated that the town code is quite clear that you cannot issue building permits without, not just road frontage, but public access to public roads.

§ 250-24 Road Frontage Requirement states that No lot shall be created nor any driveway permit issued nor any build building permit issued for any structure unless the lot upon which such application is made has not less than 40 ft of Frontage and access to public Street or Highway

Mr. Canham said that he can't imagine why MCEI Cosenza would have thought that this was at all an issue. There had been a road in use for many years. It is fair to say that at this moment, the property does not have road frontage nor access to public streets or highway. The town attorney has prepared a lot of detail about this issue. Attorneys from both sides submitted information about this. Mr. Canham commented that the Town of Clinton doesn't get to decide whether the Town of Hyde Park is going to grant access across the parcel in Hyde Park. Until this issue is resolved, Mr. Canham said that it is not clear for him how the proposed project can proceed with the Town of Clinton.

Mr. Canham commented about the public comment that the Zoning Board of Appeals members are not lawyers. He said that one of the board members who was sitting next to him was a retired judge in the town for 15 years.

Chairman Malcarne stated that as a Zoning Board of Appeals, they are deliberating on what is in direct relation to what they have. The board is not waiting for a decision from the Town of Hyde Park though that piece is relevant.

Mr. Canham added that they have no control over the timing of that process and there is no way of predicting the outcome of that process. There's a lot of arguments from the attorneys on both sides but at the end of the day, this is not the board's purview.

Mr. Egan concurred with Mr. Canham. This is the Town of Hyde Park's purview. The Town of Clinton has requirements about road frontage and access to public roads that is relevant to the board's decision. The board is interpreting the town code - "Does the project as proposed right now have that access?" He said, "Based on where the project stands in Hyde Park is the big open question right now."

Mr. Mustello commented that he doesn't want to find fault with MCEI Cosenza since the driveway has been there for many decades. All this new information has just come

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to light. He agreed that the code is very clear. Unfortunately, they don't have access at this point and the board is bound by that at this point.

Mr. Canham said that he can't imagine why MCEI Cosenza would have called the Town of Hyde Park to ask if this was legal access. It had been in place for many, many years. He said that the Town of Hyde Park denial of the request for access came after the MCEI Cosenza's letter.

Mr. Canham stated that what is being pursued right now is an amendment of the special permit. There have been various arguments that treating this as an amended special permit is not appropriate and should have been treated as a new special permit. Mr. Canham stated that he was assured by the Planning Board that the treatment of the proposal is the same. He can't find anywhere in the town code that tells the Planning Board when a special permit be quoted as opposed to an amendment.

Mr. Canham said that it's a request to get a special permit for the same use that has been there before. It is clear that it is a very significant intensification of the use but it is still a request to use the site as a conference center. He underscored that the review of the proposal is based on exactly what's presented as the development at hand now. There's no presumption that this special permit will be granted for this more intensive use simply because there was a previous special permit. There is no benefit to the developer treating this as an amended special use permit. This has been an argument from both sides. Mr. Canham said that as far as he can tell, there is no relevance to how the process works.

Mr. Canham read item #4 of MCEI letter of determination dated 12-12-2023 that read "Questions have been raised regarding the Planning Board's authority to amend an existing special use permit." Mr. Canham commented that there's nothing in the town code that says this is not the appropriate way to proceed particularly because the proposed use is in the same category under Sec. 250 Schedule of Use and Regulations.

Mr. Canham discussed the second issue related to whether the previous special permit has lapsed. He explained the difference between nonconforming and conforming. Nonconforming use is something not allowed under Sec. 250 Schedule of Use and Regulations. He cited the Cornerstone matter as an example. There are limits on what can be done. He indicated some of the grandfathered nonconforming uses in the town that existed before zoning was instituted. They are grandfathered in and were allowed to continue. They are not allowed to expand their use.

Mr. Canham explained that a conference center is not a nonconforming use. It is a conforming use. The special use permit that was in existence before the 2021 new law that he described at the previous meeting very significantly expanded the regulations

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about the conference center; that special use permit was granted under the previous law and therefore did not conform to the 2021 law.

Mr. Canham said that an argument can be made that the developers could have chosen to operate under the 2017 Special Use Permit in a nonconforming way but would not be allowed to expand it without going to the whole new amended site plan process as long as the special permit hasn't lapsed.

Mr. Mustello cited an instance about a variance that stays with the property forever and the concern about "What if the code changes?" It is the word "Grandfathered".

Mr. Calogero added that it's important to note that in this particular case, the current proposal would increase the current population from 44 to 200. This means that they would need to come back before the Zoning Board of Appeals again.

Mr. Canham solicited the board whether they are comfortable with his comments and description. The board unanimously concurred.

Mr. Canham stated that it seems clear that the developers anticipate an intensification that requires fundamentally new but can be called amended special permit that is conformity with the new 2021 law. He underscored that the new 2021 law has a number of new restrictions on the operation designed to protect the character of the neighborhood.

Mr. Canham said that at the end of the day, the fundamental question is "What is a Conference Center?"

Mr. Canham stated that a special use permit lapses if the use was discontinued for one year. He indicated the issue of whether the 2017 Special Use Permit is still in effect.

Mr. Tompkins commented that reading all the submissions and the back and forth from the attorneys, the question is –"Is this really relevant?" Clearly, the developer proposed to do something more intensive than operating under the 2017 Special Use Permit.

The board concluded that the special permit is still in effect. There hasn't been sufficient evidence presented that the use did in fact lapse. The burden of proof would be on the applicants opposing Six Sense.

Mr. Canham stated that one of the letters from the developers asked whether there are existing violations. Per MCEI Cosenza's letter, there were no active violations. The previous violations have been resolved. Mr. Canham indicated that he was personally

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satisfied with the MCEI's determination. He questioned the advertising of a secret hotel when you perfectly know that you are not allowed to operate. Mr. Canham noted that the two outstanding violations have been resolved.

Mr. Egan agreed with Mr. Canham that the violations have been resolved. In regards to whether the special permit has lapsed, Mr. Egan noted that the special permit was continuously in effect and was never suspended.

Mr. Canham indicated the last item on his list, i.e. "Does the proposed use qualify as a Conference Center?"

Mr. Calogero read the definition per the regulation as stated below.

Sec. 250.105 Conference Center defines. "An establishment for hire as a location for events used for business or professional conference centers and seminars, often with rooms for lodging, eating, and recreational activities. Also, an establishment which attracts clients principally for recreational or health activities and contains rooms for lodging and eating for its clients."

Mr. Canham indicated that there was one part of Mr. Cosenza's letter that he disagreed with. The notion that a hotel can't offer recreational activities or programs is too strict. A lot of hotels had pools, gyms, treadmills, and so forth. He indicated his struggle about the distinction between the conference center and the hotel. He pointed out that the town code allows conference centers in the AR Zoning District but does not allow hotels. He opined that there has to be a way of ensuring that something that is operating as a conference center is not operating as a hotel. We have to understand the distinction between a conference center and a hotel.

Mr. Canham said that in his mind, a hotel is a place where you stay primarily for things you're doing elsewhere like for instance you're going skiing then you need a place to stay overnight or you're going to a wedding and the wedding is not in a hotel. A conference center is where you stay to attend conferences.

Mr. Canham stated that if you showed people a description of what Six Senses is proposing and you asked them whether this is a conference center or a hotel, people will respond, "It is a resort!"

Mr. Canham underscored that the board has to stick with the town definition of a conference center. He spent a lot of time trying to figure out the difference between a conference center and a hotel. He cited an instance every time he attended a conference or seminar every year for the last 40 years that is usually in the hotel if it's

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more than 500 people. The only ones that usually take place in the actual conference center are smaller groups, usually less than 50 people. He cited the conference center on Blue Mountain Lake that is only for workshops, events, retreats, etc. Trinity Church in Manhattan has a lovely conference center. It can hold maybe 30 to 40 people. Over the years, most of the places that call themselves conference centers, especially when they have spare bedrooms also operate as a hotel especially if they are profit making. Most of the ones he finds only allow overnight guests, if they do, they didn't have an event happening that weekend.

Mr. Canham stated that there are places that solely function as a conference center and not as a hotel. He commented that he needs something that will assure him that a conference center is not acting as a hotel. This seems to boil down to this notion of registering events. He reiterated that he is looking for an assurance that there is a boundary between the conference center and a hotel and there is no crossing of the line. He is not comfortable that the standard was just met.

Mr. Tompkins indicated the letter from Mr. Palumbo dated September 2022 giving them examples of the things that they would have on the property. It says that they are not focused on weddings and large loud events. However, under special events and page 3 of the document dated April 4, 2024 provided by their attorney, listed examples of weddings, family reunions and parties. Mr. Tompkins remarked, "This seems to contradict Mr. Palumbo's letter!" This is concerning! A wedding with a lot of people, a lot of noise and dancing didn't seem to be appropriate.

Mr. Mustello said that per the town code, a building permit cannot be issued if there is no legal access. We do not allow hotels but conference centers are allowed. The board had spent enormous time trying to determine the difference between hotels and conference centers. He opined that the burden of proof is on Six Senses to come back to the Zoning Board of Appeals and Planning Board and say, "This is why we are not a hotel because we don't have transient people, or we don't have people just checking in to sleep, etc!" They have to do their job. The burden of proof is on them and not the board! He doesn't think that the board has enough information at this point to make that determination.

Mr. McMahon echoed Mr. Mustello's comments. He cited an example, "What if he goes to Six Senses for a week for a conference, brings his wife though she's not a part of the conference? Is her wife just a transient? How does this work?" The board needs answers to these questions.

Mr. Canham imagined every time he sends and signs up his kids for a camp. He goes on the website and wants to stay at this wonderful facility with all these activities and

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events. You have to check off the events you're going to participate in when you register. He wonders if there are also events for kids.

Mr. Canham underscored that our town code does not allow hotels. He hopes that they could find a way to convince the board that this will function as a conference center. Right now, things are just popping in his mind like - It is easy for someone wanting to stay there and just say that "No, I don't feel like going to my equine therapy today and will go for a hike on beautiful trails instead."

Chairman Malcarne feels that the board has received enough and concrete information at this point. It's just like any proposal that they receive, no one is sure, whether or not – someone will abide by that, then that is an enforcement issue. He reiterated that he is simply looking at the conference center definition. He feels that they presented adequate information.

Mr. Mustello said that they cannot make a rule or decision based on what an applicant might do in the future. If they deviate on what they're supposed to do then the town has a Code Enforcement Officer to issue a violation. Oftentimes the violation is issued to private ownership, individual or local resident. In this case, it's not a local resident. It is a multibillion-dollar organization that we don't have the horsepower to stand up against!

Chairman Malcarne doesn't disagree with Mr. Mustello. He commented that this is what our law says. He feels that what they presented so far as he can tell falls in line with what they requested.

Mr. Mustello disagreed. He noted that they haven't clearly defined the difference between the conference center and a hotel.

Chairman Malcarne said that it is up to the board. They are the ones deciding if it's meeting this requirement or not.

Mr. Canham asked the chair if what they're doing is also functioning as a hotel, would you be comfortable?

Chair Malcarne responded that if they are meeting the requirements of a conference center like strictly a conference center, then -Yes. For him, the purpose of a hotel is to spend the night. If you're going to a place to attend a conference and they are meeting the requirements of a conference center then it is a conference center. He commented that they all have been to a lot of conference centers. When you go to a conference center for instance and that place is full then you have to stay at a hotel somewhere else.

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Chairman Malcarne commented that if the purpose is to go there for the hotel and it is established as a hotel then it is a hotel. Likewise, if you go to a conference event and that's how it is established and presented, then it is a conference center. In this case, it is a multi-billion-dollar company. The question is – Are they meeting the requirements of the law? Chair Malcarne feels that what was presented to the board meets the requirements of the code. In his opinion, this is what they're doing right now. They certainly hope that they indeed follow through and do what they promised. He agreed that this is the big question right now.

Mr. Canham asked, "What if somebody is just staying there overnight?" Chair Malcarne responded that it is a hotel. He strongly feels that the applicant's proposal clearly meets the requirements of the conference center.

Mr. Canham said that a resort hotel is where you stay and enjoy all the amenities of the facility.

Chair Malcarne commented that he is just focusing on what is before the board. Does this meet the town code requirement? He said, "We can call it whatever we want, you can even call it a hotel and ask, "Does this hotel meet the requirements of a conference center?" It's a question of how does it function? If it doesn't meet the requirement of the conference center then it is not a conference center.

The board had a lengthy discussion about the matter. Mr. Egan agreed with the chair. The board's job is to interpret the code based on the proposal that was presented. The question is – Do they fit within that definition based on what's been proposed? This is the question to the board.

Mr. Egan indicated that Six Sense submitted a tremendous amount of materials of how it's event based and to draw a distinction between a conference center definition and a hotel definition. This is for the board to decide whether it met the threshold.

Mr. Mustello commented that the board asked questions and received answers but those answers lead to more questions.

Mr. Egan noted that the time for more information is over. Public hearing was conducted and now is the time for the board to decide based on the tremendous amount of materials that were received from both sides.

Mr. Tompkins said that he is probably going to be in the opposition. Looking at the definition is –it's very hard. He indicated one of the violations from the previous one in

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2021 when it was a conference center and they had a wedding event when it wasn't allowed. He felt that the Planning Board should list all the restrictions that are disruptive to the neighbors when they issue a special permit. He commented that the Six Sense lists weddings and family parties on their current examples. He looks at it as a resort hotel given the amenities. He doesn't look at it as a conference center though as a previous judge, he went to various conference meetings and he cited this hotel that was functioning as a conference center instead of a hotel. He underscored that he wants this facility to function all the time as a conference center and no time as a hotel. As what the chair and the town attorney said, they cannot anticipate that they will be lying to the board and do something different. Per the Six Sense's proposal, the customers cannot stay overnight unless they are registered for classes. He hopes that they don't just register for classes, show up and spend the night and don't attend the classes. He opined that based on what was presented to the board and looking at the definition, it seems that they qualify as a conference center.

Mr. Egan pointed out that our town code has a definition of hotel and conference center. We heard the phrase "resort/hotel" but that is not in the town code. There are two different definitions in the town code that you have to parse. Maybe, what you think of a resort/hotel is a conference center that is permitted here. He underscored that the town code has no definition of "resort/hotel". The question is – "Does it meet the definition of a conference center based on what's been submitted to the board as of this date?"

Mr. Calogero stated that one of the charges of the Zoning Board of Appeals is to find a balance all the time and to weigh the benefit to an applicant versus the detriment to the town. He found that this helped him a few times and confused him some times through this process.

Mr. Vonderbrink said that based on the definition of the Conference Center, the fact that you cannot enter the property without being signed up for something is an indication of event. They clearly defined that they have people at the gate that are going to ask those things. This feels like a conference center to him. It's much more of a learning experience than what a hotel does. He also wrestled with what this does to the community? He moved up here based on the potential of where the community could go and also based on the rural nature of what this community has to offer. He asked, "What does the long-term changes mean to the community on this? In regards to alternatives to this space, Mr. Vonderbrink said that he would rather see somebody or an owner take or treat this property with the respect that it deserves and that it needs. He indicated the lady he'd met at Bread Alone who came to visit because she was told how pretty it is here. Mr. Vonderbrink commented that this is what keeps people wanting to come to this town and spend money in this town. This is the type of property owner who pays respect to what this town is. He also commented about the public comment about bringing Walmart to the town. He said that these are two totally different environments

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for him. This is something that will continue to pay respect to this land here. He noted that it doesn't mean that he disrespects some of the comments made about the comments made regarding noise, etc. It's clearly defined within our zoning rules of what those rules are and adhering to those. He thinks that the board has the authority to stop those in that situation. He added that they can't judge on what somebody may or may not do after a judgment. They can only define what is in front of the board. Given all these reasons, Mr. Vonderbrink feels that this is a conference center.

Mr. McMahon said that he was more concerned about more information to a detail level. He agreed with the chairman that the overall definition seems to fit.

Mr. Canham thinks that this would be a great use of the property. He cited about a 70-lot cluster subdivision which is likely to end up there. He stated that we do need more housing in the town. He is not opposed to seeing more residents in the town but he thinks that this would preserve a lot of open space there. He is still not satisfied. Six Senses is such a well-known brand that people will just want to go there and it's because it's a beautiful place. People sign up, check a few boxes of activities, check in and they tell them ---"Time to attend or do the activities" and these people respond, "Okay, thank you" but decide to just stay in the room or do whatever. The person could say, "I just paid \$1,000 a night to stay here, I would rather not go to those activities."

Chair Malcarne commented, "This is okay since it meets the definition of the conference center.

Mr. Canham commented that it is not okay if it basically means that anybody can put a hotel anywhere in town by simply having the reservation and checklist that you have to check a box and it doesn't cost you anything. For him, this is described as a hotel and the town code clearly does not allow hotels.

Chairman Malcarne asked, "Then tell me what is a conference center?"

Mr. Canham responded that you have to participate in the event.

Chair Malcarne asked, "Have you been to a conference center and missed the event?"

Mr. Canham responded, "Yes, he missed one day of 5 events but noted that he still participated in the rest of the events. He commented that this is a convention center!"

Chairman Malcarne said, "We can theorize all we want about changing the town law but this is what's before the board.

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Mr. Tompkins said that his interpretation and understanding is – they have to register for events first then pay for events before they are allowed to stay depending on the length of stay.

Mr. Canham said that they don't know whether there is separate pricing. These are the things that he's looking for. It's vague.

Chairman Malcarne said that they don't have to stay overnight.

Mr. Canham stated that he is not saying that this is not a conference center. He is just not there yet.

Mr. Canham commented that this is setting precedent. Any hotel can at least, at a very low bar, call themselves a conference center.

Chairman Malcarne said that, "On the flip side, you could take any establishment trying to be a legitimate Conference Center and disqualify them saying they're just a hotel trying to be a conference center".

Mr. Canham cited Omega Institute as an example who holds 93 events onsite. These events only occur over a 2-to-3-day period in six months. They have a speaker and instructor and you come and stay for those days. For him – this is what a conference center is. If this is a stretch of what a conference center is –then he is happy to accept that if there is an event everyday all year round.

Chairman Malcarne rebutted that's not what it says in the code. It doesn't say events must be 2 to 6 days long or anything like that. It doesn't say they have to stay overnight! It's very broad. As far as he's concerned, what they've presented more than adequately meets the requirements of the law.

Mr. Mustello said what he's hearing and based on what Mr. Canham is saying – "So you could build a hotel and offer finger painting and be compliant."

Chairman Malcarne refuted and said he doesn't think that's all what has been presented to the board.

Mr. Mustello said that to the chairman's point --- if you offer the activity, it doesn't seem to get you off the hook from being a hotel. He feels that it's a loophole!

Chairman Malcarne doesn't disagree with Mr. Mustello. He said, "Maybe there's something that needs to be tightened down more but right now --- it's really broad."

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Mr. Mustello felt that it needed more in-depth discussion. "We're not there yet!"

Mr. Tompkins commented that it seems that the board has to make a decision on what was presented to the board at this time. He doesn't think it's appropriate to say, "Okay, we have to go out and ask for more." The board had already made a decision on the point access. It is clear that they don't have legal access. The stumbling point is --- Does this meet the definition of a Conference Center? He doesn't feel that they have to demand for more to be provided. If you read the definition in a broad sense, the proposal falls under the category of a conference center. He may not like it and wish it was like when he was a kid.

Chairman Malcarne said that the question is – "Is what was presented to the board a conference center? Does it fit within that or not?" He commented that if they're able to get access and able to meet all the other requirements of the law then it goes to the Planning Board for the special permit process. They may or may not be able to meet the rest of the requirements but the board is sitting in the shoes of the MCEI. Does the proposal fit the definition of the Conference Center or is this a hotel?" Which category does it fit?

Mr. Canham said that it seems obvious that they have to come back before the Zoning Board of Appeals because the Town of Hyde Park access issue needs to be resolved.

Chairman Malcarne stated that based on our town law, in order for them to proceed, access is required. Right now, the Town of Hyde Park denied their access so they do not have legal access.

Mr. Canham commented that it is quite obvious that they have to overturn the MCEI's determination given the no access until it is resolved. They are within their entire rights to come back before the board once the access issue is resolved and they have legal access. There are two points to an interpretation, one is to deal with the specific issue and the other is to give guidance to the MCEI on how to deal with the same issue in the future since the ZBA wants to see all those guarantees to prove that the proposal is a conference center and not a hotel. For him this is the whole point of discussion here. He needs to see more guarantees than what was provided. He noted that at this point, they haven't satisfied him. He will vote to overturn this determination as a conference center. It hasn't met his standard yet. He expressed his concerns about precedence the next time somebody proposes a conference center. It might be a hotel in disguise! He reiterated that he feels that this project cannot continue until the road access issue is resolved. This might take some time. He doesn't think that the Planning Board process

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should continue in the interim since they could not issue a special permit if there is no access.

Mr. Tompkins asked, "Supposed, they have the majority of the vote that this qualifies as a conference center, why would it go back to the Zoning Board of Appeals and not straight to the Planning Board if they do get access?" This seems to be the Planning Board's purview. He thinks that there's no reason to go back to the Zoning Board of Appeals.

Mr. Canham said that this is a town attorney's question.

Mr. Egan opined that it is an option as well.

Mr. Tompkins expressed his hope that the Planning Board will carefully review the proposal to consider what they wanted to allow there that would fit in with the rest of the people in the town and especially the neighbors.

Chairman Malcarne summarized the two key issues of this interpretation. One is do they have road access? If there is no road access then stop at that point. The second item on the table is – They have no road access but it meets the requirement of the conference center. Chairman Malcarne commented that obviously they can't move forward without the road access. He underscored that the second point is moot without the road access.

Mr. Canham proposes the option that they do not have road access and they haven't met the standard for a conference center.

Mr. Mustello asked, "What is the process in Option 2 where the applicant is successful in getting road access? He asked, "Does the Zoning Board pick it up where they left it off?"

Mr. Canham responded that the ZBA will not have any role in that.

Mr. Tompkins agreed, it will be the Planning Board's purview to proceed with the special permit once the road access is resolved and if the board establishes that it is a conference center.

Mr. Egan stated that the board is sitting in the shoes of the MCEI. They have the findings. It is incumbent that they address each of them based on what was submitted. He understands the threshold about the road access issue but thinks that the board can reach the other issues. If there is a consensus of the board that this meets the definition

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of the conference center based on what was proposed or B that it does not. He feels that if the board has the consensus, then they can make the decision at that meeting or the next time they reconvene. For him, this is the threshold issue that there is no road access. He reiterated that the board is sitting in the shoes of the MCEI regarding his determination of a conference center versus a hotel.

Chair Malcarne stated that they have to address each finding in their motion.

Mr. Canham felt that the board already covered every point in the board's discussion. There was a consensus on all of them. He agreed that the motion, whatever it is, should flesh it out and respond to everything in the letter. The board will vote on a motion next month.

Mr. Egan noted that the board has until June 11 to make a decision.

After a very lengthy discussion and all deliberations were made, the board agreed to issue a motion next meeting.

Mr. Canham stated that the board has over a month to work on a motion that will be voted on May 29th.

No action taken.

APPROVAL OF MINUTES:

No minutes were approved.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 8:40 pm, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary