

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

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DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on August 15, 2011, at 6:00 P.M.

Present at the meeting were: Caroline Trzcinski, Member
Martin Steinbach, Member
E. John Schmidt, Member
Mark Cipperly, Member
James Hannan, Chairman

Also present were Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally.

The Chairman called the Regular Meeting to order at 6:00 P.M.

The first item of business was approval of the July, 2011 Minutes. Member Trzcinski made a motion to approve the Minutes without changes. Member Steinbach seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of DANIEL and JACKLYN LINDEMAN, owners- applicants, dated July 14, 2011, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a storage shed on a lot located at 1 Diana Place, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-15 District in that 15 feet is required and 10 feet is proposed, and also violates the rear yard setback in that 60 feet is required and 8 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Dan Lindeman appeared. He stated that he wants to put up a 10' x 16' storage shed. He wants to put it 8 feet back from Route 2 and 10 feet off his side property line. It would be in the back corner of his lot. His property is 15 feet higher than Route 2. The shed will be pre-made and delivered to the site. His lot is a corner lot, so the setback from Route 2 to the rear of his lot is considered the same as the front yard setback, here 60 feet.

Member Trzcinski asked why he couldn't move it a little further away from Route 2. Mr. Lindeman stated that 60 feet from Route 2 would take him almost to his house. Members Schmidt noted that this is a corner lot, so he has to be 60 feet back from both Route 2 at the rear and Diana Place from the front. There was discussion regarding the location of the septic system. There was also a discussion regarding the power lines at the rear of the property. It was noted that National

Grid requires that nothing be built underneath its power lines, within 10 feet on either side of the line. Attorney Cioffi stated that he lives next door to Mr. Lindeman. Mr. Lindeman first asked him whether he had a problem with the shed being built 5 feet from the property line. Attorney Cioffi states he advised him that that was too close and later said he would not object if the shed was at least 10 feet from the line. Member Trzcinski stated that she would like to see the shed moved a little. Member Steinbach said that these are substantial variances. A variance can only be granted if it is the only way to achieve the goal desired, and then only the minimum variance needed to achieve the goal can be granted. He is concerned about creating a precedent here. The Board reviewed the statutory criteria for granting area variances.

No one from the public wished to comment. The Chairman suggested that Mr. Lindeman reconsider his options in light of the Board's comments. Member Schmidt made a motion to continue the public hearing. Member Trzcinski seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of NEIL and DIANNA McGREEVY, owners- applicants, dated July 20, 2011, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a storage shed on a lot located at 437 Menemsha Lane, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-25 District in that 15 feet is required and 3 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Neil McGreevy appeared. He stated that he lives on a very rural road. He wants to have a tool shed. He wants to put it 3 feet from his side property line because his property is very hilly. The location he is proposing is the best place on the lot for the shed. He may choose not to build if he has to put it elsewhere. Member Trzcinski asked whether the shed could be closer to the house. The applicant said he could build 5 feet from the line, rather than 3 as proposed. Member Steinbach said that the land looks fairly level. The applicant disagreed. He said he would not build the shed if he has to comply with the 15 foot setback. Member Schmidt asked whether there is another shed on the property. The applicant stated that it is a concrete shell for holding sand. Member Schmidt stated that he is not comfortable with 3 feet as requested.

Member Cipperly asked what would the cost be to excavate if the shed was placed in compliance with the setback. He also asked about the overhead wires. The applicant stated that there is 50 feet from the wires to the edge of the property. Member Cipperly said there was no hardship; the applicant is just looking at aesthetics. The applicant said that the shed would not look right unless it is placed where he has proposed. The Chairman stated that this is a good sized shed. They need to know where it will go in relation to the overhead wires. Attorney Cioffi read the statutory criteria for area variances aloud.

Michael Kukulka, 44 The Knoll, stated that he owns the property to the west of the proposed shed. He has reviewed the plans and photos. It is much closer to his property line than it needs to be. There is already another shed very close to where he is now proposing. The applicant's property is very long. There are many places he can put the shed that will not require a variance.

The Chairman suggested that the applicant reconsider other places to put the shed and also determine the costs of the excavation he claims will be required to build in accordance with the

setback. The public hearing would be held open. The applicant then stated that he was withdrawing the application and would build in accordance with the setbacks.

The next item of business was the public hearing regarding the appeals filed by Oakwood Property Management LLC from the Notices of Violation issued by the Code Enforcement Officer in connection with Oakwood's business operations at 215 Oakwood Avenue. The Chairman and Member Steinbach had previously recused themselves from hearing these appeals, and they left the room. Member Trzcinski then made a motion to elect Member Cipperly to serve a Temporary Chairman. Member Schmidt seconded. The motion carried 3-0.

Attorney Cioffi then read the two Notices of Public Hearing aloud. The first Notice concerned the Notice of Violation issued by the Code Enforcement Officer on June 10, 2010. The second Notice concerned the Notice of Violation issued by the Code Enforcement Officer on June 21, 2011. Attorney Cioffi then described the procedure for the hearing, which had been discussed and agreed upon by the attorneys representing Oakwood and the Town building Department. Essentially, Oakwood, being the appellant, would proceed first, represented by its attorney, John Henry, Esq. Mr. Henry would make a presentation on behalf of his client, and submit whatever documentary evidence he deemed relevant. He would then call on his clients to make presentations as well. At the conclusion of the appellant's presentation, the Code Enforcement Officer, represented by Andrew Gilchrist, Esq., would have a similar opportunity to make presentations and submit documentary evidence. Once both sides completed their presentations, the hearing would be opened to public comment. Each member of the public would be permitted to speak only once for a maximum time of 5 minutes per person. When public comment was over, unless something came up at the hearing, the public hearing would be closed, subject to the filing of post-hearing Briefs by the parties. The Board would then issue a decision at a future meeting.

Attorney Cioffi noted that the Planning Board had provided its written advisory opinion has requested and that it was being made part of the record. Attorney Cioffi also read through a list of other documents which had been submitted to the Board in connection with this appeal, which were also being considered part of the record. These included a letter from Barbara McDonald, dated August 11, 2011, a letter from Whiteman, Osterman & Hanna signed by Christopher McDonald dated August 8, 2011, a letter from Jack Rifenburg dated August 11, 2011, a letter from the Rensselaer County Chamber of Commerce, dated August 12, 2011, and a letter from Michael Schongar dated July 22, 2011. The Chairman then told Attorney Henry to proceed with his presentation.

John Henry stated that he is the attorney for Oakwood Property Management LLC. Also present was Larry Schillinger, Esq., also representing Oakwood and the Gallivan family. Sean, Shannon and Brendan Gallivan were also present. Attorney Henry handed up a binder containing the appellant's documentary evidence. It was accepted by the Board. Mr. Henry noted that there are two violations at issue. Oakwood has operated since 2001, employing some 100 people. He stated that Oakwood has been operating since 2001 with the full knowledge of the Town. Oakwood sought the Town's blessing to operate there. They were encouraged to operate. The Town passed Empire Zone resolutions on the land they were operating on. It was not until June 2010 that the Town told them they were in violation. After Oakwood purchased the parcel zoned "Schools and Cemeteries", the Town again encouraged them to operate. The Town passed a second resolution supporting

Empire Zone designation for that land. Oakwood has graded and filled its property. The Town has inspected the property over the years. At no time until June 2010 was Oakwood told it was in violation. The Town officials new what they were doing there. They could not have operated without the Town’s approval. They have expended over \$100,000.00 in improvements to the property.

Mr. Henry stated that there are three parcels involved. He will refer to them as Parcels A, B, and C, as follows:

Parcel A	Tax Map 90-1-14	5.4 acres	Zoned Industrial
Parcel B	Tax Map 90-1-13.1	43 acres	Zoned Schools and Cemeteries
Parcel C	Tax Map 90-1-12.2		Zoned Agricultural

He stated that the primary charge in the violations is that Oakwood is operating without proper approvals on Parcels B and C. As to Parcel B, zoned Schools and Cemeteries, there is no limitation set forth in the Zoning Ordinance on the way property zoned that way can be used. Therefore, there can be no violation by Oakwood with regard to its use of that property. There is no list of allowable uses in that Zoning District in the Zoning Ordinance. The Notice of Violation does not specify what type of approvals Oakwood needed to operate there.

As to Parcel C, zoned Agriculture, he noted that Forestry and Nursery operations are allowed there. Oakwood processes wood products and stores it on its property. This falls within the Forestry and Nursery use. The Zoning Ordinance must be construed in favor of the property owner. Also, other place in town process wood products and store them on their property. Yet they have not been charged.

Mr. Henry noted that Oakwood is also charged with Site Plan violations. Oakwood did file an amended site plan application. The Planning Board conducted meetings and investigated zoning issues. The Planning Board continuously tabled the application. Oakwood claims it was approved by default as provided by law.

As to the June 2011, Notice of Violation, the Town claims that Oakwood can’t access Parcel C, zoned Agricultural, where it conducts farm operations, through Parcels A or B, which are not zoned Agriculture. This makes no sense.

Before 2001, Oakwood operated on Deepkill Road. Sean Gallivan also worked for Supervisor Herrington on his farm. They were looking to expand and wanted to stay in Brunswick. So they went to the town and asked whether Parcel A was suitable for their operations. They were told that it was. They purchased Parcel A in April, 2001. The town supported an Empire Zone designation on this property. In 2002, they became aware that Parcel B was available and asked the town whether it was suitable for their operations. They were told by the town that it was “perfect” and that they needed no permits to operate there. They did get a fill permit for that property in 2002. The town well knew that this parcel was not going to be used for schools or cemeteries. The Gallivans told the Town Building Inspector what they were doing there. The Town Supervisor has purchased mulch from the Gallivans. In 2005, Oakwood purchased Parcel C. Also in 2005, Parcel B received Empire Zone designation with the Town’s approval.

In 2005 - 2006, Oakwood began receiving complaints from property owners claiming excessive noise and odors. The Code Enforcement Officer investigated and concluded no action could be taken. The Town conducted regular inspections of Oakwood's operation. In June 2007, Oakwood was informed by the town that it need an updated site plan for its operations. It was not told at that time that it could not use the additional land it purchased for its business. Oakwood went to the Planning Board seeking an updated site plan. There were continuous adjournments through January 2009. Finally, the Planning Board adjourned it without date. The Planning Board never acted on the amended site plan application. This constitutes default approval. None of these violations can stand. The Schools and Cemeteries zone has no use regulations, so Oakwood can't be in violation.

Oakwood has been operating for 9 years. The Town knew exactly what was going on, encouraged it, and taxed all the land as business property. Oakwood relied on this and spent lot of money on the business. They are not in violation on Parcel C as theirs is a Forestry operation which is allowed in an Agricultural zone. They are not in violation of the site plan law. They filed an application and it was approved by default.

Sean Gallivan, stated that he is one of Oakwood's owners. The company engages in truck transportation, landscape supplies, fuel chips, and raises beef for market. There are 105 employees. He was born and raised in Brunswick. In 2000, his company was looking for a new location. They found a parcel of 5.4 acres available on Oakwood Avenue. Phil Herrington encouraged them to acquire the site. The first leased it and then purchased it in 2001. That parcel was put into an Empire Zone in 2002. Later, an adjacent 43 acre parcel became available. He spoke to the IRA. Then he went and spoke to Herrington. He encouraged them to go forward as the property was never on the tax rolls. Herrington told him that the Town wants businesses on the Oakwood Avenue corridor. They purchased that parcel. They were told that no permit was needed to log that parcel. They also asked the town for a fill permit, which was granted by the Building Inspector after they submitted a sketch plan and showed where the fill would go. The fill permit was good for two years and was reissued after that. The town conducted numerous inspections. They knew what was going on on the property. Herrington asked if the town could dump yard waste there when the town lost its burn permit. Herrington also purchased materials from Oakwood to use in its own mulch business. Herrington manufactures and retails mulch on his farm, which is zoned Agricultural. Oakwood also raises beef cattle for market. In 2005, the town added the 43 acre parcel to the Empire Zone. Oakwood incurred engineering costs for that. No violations were ever brought by the town against Oakwood for their first nine years of operation. In 2007, the Building Inspector told Oakwood that they needed a new site plan. Oakwood started the site plan process. There were multiple adjournments by the Planning Board. Oakwood never agreed to the extensions. They incurred thousands of dollars in legal costs. The town asked Oakwood to file an application for a Planned Development District. They were told that that would clean up any zoning issues. They spent thousands of dollars on the PDD application. They thought they were being good neighbors. The people residing in the houses nearby thought Oakwood was expanding. Then the town turned its back on Oakwood. The town knew what was going on on Oakwood's properties at all times. They encouraged the purchase of the additional parcels and gave Oakwood Empire Zone status. Oakwood imposed Best Management Practices on itself. They have hired Henry Scarton, a noted sound expert, who designed a sound muffling system to reduce the impact of the noise from the business on those residing nearby. Only a few people have complained directly to Oakwood about

its operations. Oakwood employs over 100 people. It pays “industrial” property taxes. They operated with the full knowledge of the Town. A portion of the product they produce is used for bedding for the beef cows they raise for market on Parcel C. The Notices of Violation should be set aside. They want to submit a list of property taxes they paid. He also wants to submit a map prepared by Rensselaer County showing local farms and the products they produce. He pointed out that Herrington Farms produces all natural topsoil and mulch. He also read from Town Board Resolution No. 52, 2002 and Resolution No. 83, 2005, which concern the Empire Zone.

Shannon Gallivan stated that she is one of Oakwood’s owners. She was one of five children. Her family farmed for decades. They employ 100 people. They only recently understood the neighbors concerns. She admits she did not return some calls, but now she follows up on all complaints. They follow Best Management Practices. They hired Henry Scarton, who is an expert and a neighbor, to help with noise issues. They were never told they could not operate. They received Empire Zone designation and fill permits from the town. They spoke to the Supervisor before they purchased their parcels. She read aloud the letter from Jack Rifenburg and the letter from the Rensselaer County Chamber of Commerce.

Dr. Henry Scarton handed up a report to the Board. He stated that he is a vibrations and acoustics expert. He is an RPI professor. He resides at 14 Kestner Lane. He did an earlier pro bono study and report because of the noise issues in his neighborhood caused by Oakwood’s operations. He did find there was a problem, but also felt it could be mitigated. Later, he was hired by Oakwood as a consultant. His new report summarizes what he did. He concluded that the major source of noise was the roto-chopper mulching grinding machine. He further concluded that the noise could be mitigated by putting up a wall of hay bales which would absorb the noise. The nearest neighbor is 875 feet away from Oakwood’s property. With the hay bales, he found there was a marked reduction in noise. The noise was essentially reduced to background noise level. The noise caused by Oakwood’s operations can be mitigated.

Attorney Henry stated that Oakwood rested, subject to filing its post-hearing submission.

After a five minute break, Attorney Andrew Gilchrist, representing the Code Enforcement Officer and the Building Department, began his presentation. He noted that there are two appeals, and that they are being heard jointly on the agreement of all parties and the Board. He handed up his binder of exhibits. He referenced the Town Zoning Map as of January 2009, and noted that all of the parcels in town zoned Schools and Cemeteries were highlighted in yellow. Attorney Gilchrist stated that during his presentation he would be referring to the three parcels owned by Oakwood as follows:

Parcel 14	Tax Map 90-1-14	5.4 acres	Zoned Industrial
Parcel 13	Tax Map 90-1-13.1	43 acres	Zoned Schools and Cemeteries
Parcel 12	Tax Map 90-1-12.2	26 acres	Zoned Agricultural

The original application for site plan approval on Parcel 14 notes that it is in an Industrial zone. This is not disputed. Shown as Exhibit 5 is the site plan approval by the Planning Board on Parcel 14. The approved site plan shows the area denoted for mulching, a fuel storage area, a parking are for employees, and an existing car garage. Shown as Exhibit 6 is the fill permit Mr.

Henry mentioned. It was issued in December 2002, and renewed it 2004. It was renewed only once. The applicant was SM Gallivan LLC. The fill permit was for Parcel 14, not Parcel 13. \$0 investment is shown in the application. Exhibit 7 shows that there was a violation of the Federal Wetlands Act regarding the fill. In 2004, Oakwood returned to the Planning Board for an amendment of its site plan on Parcel 14. This is shown in Exhibit 8. This clearly shows that Oakwood management understood that it needed to get approval to change its site plan. Exhibits 9 & 10 show what was being proposed in the amended site plan. Oakwood was asking for the expansion of an existing garage building. The 2004 site plan application also added mulch storage bunkers which were approved. Exhibit 12 shows a Building Permit application filed by Oakwood in 2006. It only mentions Parcel 14 and notes the Industrial zoning. The permit application pertained only to the physical expansion of an existing garage. The Town never issued a Certificate of Occupancy in connection with Oakwood's mulching operation. The Certificate of Occupancy issued in July 2006 pertained only to the commercial building expansion. Exhibits 13 and 14 are the Town Board resolutions supporting Empire Zone designation for Parcels 13 and 14. The Resolutions were format resolutions prepared by Rensselaer County which the Town was asked to pass. It is the County, not the Town, which supports the Empire Zones. Only Parcel 14 and Parcel 13 are in Empire Zones. The Empire Zone designation has no relevancy to the Town Zoning Ordinance. Placing a property within an Empire zone does not have any legal effect on the parcel's zoning. In his presentation, Mr. Henry stated that Oakwood had spent \$26,000.00 on a site plan in connection with the Empire Zone designation. A FOIL request to Rensselaer County did not disclose any such site plan. E-mails obtained from the county under FOIL indicate that the county never looked at the town Zoning Ordinance regarding the Empire Zone designations. The county apparently just assumed that the land was zoned properly. This is all shown in the Exhibits. Exhibits 15, 16, and 17 are applications for Empire Zone designation filed by companies owned by the Gallivans. Exhibit 17, an application filed by Oakwood Property Management LLC, indicates that it was planning on developing and leasing commercial real estate. Oakwood stated that it was making a capital investment of \$500,000.00 to attract new businesses and lease property to businesses. It did not say anything about expanding mulch operations. As of 2004, Oakwood's plan, as expressed in its Empire Zone applications, was to develop commercial lease space.

Attorney Gilchrist stated that Mr. Kreiger, the Code Enforcement Officer, did send a letter in 2007 which indicated that Oakwood could use a parcel adjacent to its Industrial-zoned parcel for its business if it obtained an amended site plan. Mr. Kreiger stated that he was mistaken in what he said in the letter. Attorney Gilchrist explained that this is the theory of legal estoppel, which is not applicable to the Town. Oakwood claims that because of this letter, the town cannot now enforce the Zoning Ordinance against Oakwood. This is not true. The Town always has the right to enforce its zoning laws, even if mistakes were made in the past.

Oakwood submitted its new site plan application in 2008. The map was dated 8/7/08. It was noted on the map as "Existing Site Plan". It shows the business expanding from Parcel 14, the original parcel, zoned Industrial, onto Parcels 13 and 12. Mr. Kreiger noted that the practice of the Planning Board is to bring new applications in at the end of the agenda as "New Business". He does not review the applications for zoning compliance before presenting them to the Planning Board.

Attorney Gilchrist noted that Exhibits 20 - 25 are the minutes of the Planning Board meetings at which this site plan application was discussed. The default approval provisions in the Town Law

apply only when there is a complete application. The meeting minutes, especially those of the November 6, 2008, meeting, confirm that the application was not complete. Mr. Kreiger also noted that no EAF was ever filed by Oakwood on this application. Mr. Gilchrist stated that Oakwood actually requested an adjournment from the Planning Board to complete the application. But they never did. At the November 20, 2008, meeting, the Planning Board noted that the representative from Rensselaer County stated that the County did not address local zoning compliance as regards the Empire Zone designations. A Planning Board member raised the issue of the zoning on Parcel 13. Options for Oakwood were discussed. An application for a planned development district was not the only option discussed. The Planning Board adjourned the application because of the zoning compliance issues. This was no surprise to Oakwood. They knew there was a zoning issue.

Ultimately, Oakwood filed an planned development district application in 2009. A site plan map was filed with the application. It showed that Oakwood's mulch operations were located at that point on Parcel 13, the Schools and Cemeteries parcel. It also showed mulch stockpiles at the rear of the parcel.

Mr. Gilchrist noted that although the "text" of the Zoning Ordinance does not specifically mention a "Schools and Cemeteries" District, Section 3 of the ordinance specifically incorporates all maps and notes on the Zoning Map into the ordinance. The Zoning Map clearly depicts and notes the Schools and Cemeteries districts throughout the town. Exhibit 36 depicts all of the parcels zoned Schools and Cemeteries. Each one is a school or cemetery except for three. The Oakwood parcel in question (Parcel 13), a parcel owned by Rifenburg, and a small parcel on the west side of Oakwood Avenue which is part of the Stone Ledge project. All three were previously owned by cemeteries and sold. Exhibit 37 shows some parcels that are not zoned Schools and Cemeteries which are used as schools or cemeteries. These include the Banker and Schermerhorn family burial plots, which pre-date zoning in the town. There are also some group homes, which are allowable uses in the Districts in which they are located under the Zoning Ordinance. The Historical Society building on Route 2 and the old school on Route 278 are historic school building.

Mr. Gilchrist stated that Oakwood claims that its activities on Parcel 12, zoned Agricultural, are allowed as they constitute silva culture, forestry and agriculture. Oakwood claims it has a "farm operation" on Parcel 12. Agriculture and Markets Law, Section 301, defines "farm operations". Compost and mulching operations are included, but only where the materials used to make the mulch and compost are generated on site or where off site materials are blended with on site material. If the mulch and compost is made solely from off-site material, it can only be utilized on site. In the case of Oakwood there is no evidence that any on-site generated material is being processed into mulch or compost and then sold. Rather, only off-site generated material is being used. Hence, Oakwood's mulch business does not constitute a farm operation as defined in the statute. On June 15, 2011, the Code Enforcement Officer requested a site inspection of Oakwood's claimed farm operations. It did occur on consent. Mr. Kreiger was accompanied at that time by Assessor Steven Rooney. A Memorandum prepared by Assessor Rooney regarding the site inspection states that as of April 14, 2011, the fenced area he observed on Parcel 12 did not exist. Nor were any beef cattle present on the site.

Mr. Gilchrist went on to state that it would not be a zoning violation for Oakwood to operate a farm on Parcel 12, since it is zoned Agriculture. However, Oakwood claims that it is using an

access road going through its other parcels, which are not zoned Agriculture, to reach Parcel 12 in furtherance of the agricultural operations. This would constitute a zoning violation. He noted that Parcel 12 is not landlocked. It has direct access onto Oakwood Avenue.

To summarize, Mr. Gilchrist stated that Oakwood's effort to create a farm on Parcel 12 to cloak its other operations must fail. The 2002 site plan was limited to about 5 acres. That is the only site plan approval Oakwood has, and they have expanded far beyond. The Empire Zone designations have no relevancy to zoning issues. The Notices of Violation should be upheld.

Attorney Henry then asked whether he could ask questions of Mr. Kreiger. Attorney Gilchrist opposed this, stating that the format for the hearing agreed upon by the parties and adopted by the Board did not include cross-examination of witnesses. After some discussion, Attorney Henry was allowed to note that Mr. Kreiger did not have the Town's binder of exhibits when he issued the Notices of Violation.

The hearing was then opened to the public. Jay Sherman stated that he is the Rensselaer County Empire Zone Coordinator. He stated that he went to Supervisor Herrington and asked him where Brunswick wanted to have Empire Zones. Oakwood's property is where he was told. The county does provide format resolutions to the towns. The Gallivans did a good job with this Empire Zone. They started with 16.5 employees. Through 2009, they had 75 employees. They have invested \$3,988,000.00 in the community. Dewey Delsignore, said that Brunswick is eating one of its own. The Gallivans employ 100 people. They are hardworking people. Most places are downsizing now. Tom Meyer, 7 Northstar Drive, stated that the Town's presentation tonight was fact-based, while Oakwood's was not. The Notices of Violation should be upheld. Michael Schongar, 21 Lindsay Drive, stated that what is unfair is how they have suffered through 4 years of zoning violations by Oakwood. The claimed farm operation just started up. The ZBA should uphold the violations and reject the appeal. Oakwood expanded from 5 to 70 acres without approval. It affects the quality of their lives. When Oakwood was limited to 5.2 acres, there was no problem. The noise and odor from the mulch operations is unbearable. This company will not go out of business if they are made to comply with the law. The massive cutting of trees on the property by Oakwood also took its toll. These are legitimate citations. Beth Roundle, 200 Oakwood Avenue, stated that her house is full of dirt that comes from Oakwood's mulch piles. She handed up pictures and referred to them. She does not understand what Dr. Scarton is saying about the noise. She hears the piles being made by bulldozers early in the morning. There has been no change in their operations. The mulch piles get larger and larger. The noise is unbearable. She has complained. Nothing has been done. Her property has been devalued and her health threatened. Jim Tshack, Route 2, stated that Oakwood is not engaged in farm operations. Agriculture means growing things. Schools and Cemeteries is obvious. Dennis Speich stated that he owns a vacant lot in North Forty. The Gallivans have a 5 acre parcel which is zoned properly for its use and they are very successful. They should have hired an attorney to find out what uses were proper for the other parcels. They should not have taken the word of town officials. The residents have suffered from noise and odors. It smells there all the time of decaying material. There is also a lot grinding noise. Lisa Payjak stated that she works in economic development. There are no clear answers here. She sees both sides. When an Empire Zone application is filled out, it is assumed zoning is in place. Tim Meyer, 14 Lindsay, stated that he commends Gallivan's work ethic, but their operations place his property value in jeopardy. Marie Schongar, 21 Lindsay Drive, stated that this was a nice quiet community

before the Gallivans. They are not good neighbors. They operate their roto-chopper at 6:00 A.M. On June 22, they had friends over. There was loud noise and a stench all day. They were embarrassed. The appeal should be rejected.

There was discussion of the post-hearing briefing schedule. Member Schmidt made a motion to set September 1 as the deadline. Member Trzcinski seconded. The motion carried 3 - 0. Member Trzcinski then made a motion to close the public hearing and adjourn. Member Schmidt seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
September 19, 2011

Respectfully submitted,

THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary