

**ZONING BOARD OF APPEALS
TOWN OF CANADICE**

Canadice Town Hall

October 12, 2022

Present: Diane Horning, Vice Chairperson
Ed Bott
Jesse Hallett

Guest: Kristy Wright
Kris Singer
Tony Castronova
Diane Castronova
Don Cheney, Law

Linda Moorhouse Absent

Ed Bott called the meeting to order at 7:30 p.m.

Public Hearing - Castronova/Wright

E. Bott - We will reconvene the Public Hearing from last month. There were several items of information that we had to collect. The first one was to determine who owned the right of way, between the two properties and I got the deed, which is a little vague from Kristy's property and the survey. But, as far as the distance, when I talk about a little vague, it says approximately 250ft. on either side and it turned out to be 238ft. and 226ft. But, that's why you have surveys and not just go by deeds. And hers clearing shows that her property ends prior to Pickerel Point Rd., or Honeoye Shore Dr. It's got a couple of different names. So, that took care of that part. I got a statement for Rich Joki. I asked him if he received any drawings, he said he did not recall receiving and drawings or a plot map personally. He said the permit, and I didn't bring this up, because I didn't know anything about it. The permit payment was based on the total square footage, which was approximately 528 sq.ft., which equals one floor. So, the cost for the permit, was only based on a one floor building. I got copies for everyone for that. Did you get copies? (Directing the question to Don Chaney)

D. Chaney - We did, yes. I just want to submit to the board, my client signed an affidavit in regards to when the plans were submitted. So, he got the plans August 26, 2021 from the builder. He had an appointment in his appointment book for that. He came down here August 31 to file the permit, because that was the next time that the town was open. He recalls and we have evidence showing that he had the plans at that point in time and submitted them August 31 with that.

E. Bott - So, the next item was a survey and the deed for Mr. Castronova's property, and I obtained the deed, no one provided this. I thought we were in agreement that was going to happen. On this one, it says Lot B, has a frontage of 150ft. more or less, Honeoye Shore Dr. being 150ft. more or less on the northerly side, 147ft. more or less on the southern side. So that takes

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more or less on three sides. Together with the right of way, subject to various covenants and restrictions of said premises. So, you own the right of way, just so you are aware of that.

T. Castronova - What's the date of that deed?

E. Bott - This is schedule A and it's the deed that was on record at the town, April 15th.

T. Castronova - What year?

E. Bott - 2016.

T. Castronova - Yes, okay.

E. Bott - So, the problem with this, is we can't use it by itself to determine the square footage. Because, then it goes into and unfortunately all the properties that border the lake have this, is the premise that extends to the east line and the premise that extends to the high water line of Honeoye Lake. That's why you have to have the survey. There is no way for me to say how big an area it is without knowing what the actual footage is. And the state determines where that is, we don't. So, we are going to have to have a survey to determine whether or not you are over or under the 30% mark. I spoke to you before about the survey and you said you were going to try to find out.

T. Castronova - I did call the lawyer. We didn't have one done, because I was already part owner of the property. We just did a Quit Claim.

E. Bott - That is not uncommon. Again, the problem is the transfer shows, the Assessor showed me where they had transferred 176ft., but it doesn't say if it's north side, south side, both sides. There is just vague information on that. If your one side is 147ft. and the other is 53ft. and the total on both sides is 176ft., for example, that means the right of way is two different sizes, which could very well be. This part of the deed takes out the size of the right of way in the calculations. Which it has to be deducted anyway. So, that part of it, the only way to resolve that issue, and you may be under 30%. I have no way of knowing that. And that is kind of important. You are going to have to get a survey to determine that. There is no other way around that. That's where we stand on that. One other thing, we did measure the second floor. You were there.

T. Castronova - Yes.

E. Bott - We deducted the 3ft. by 14ft. section that was open for the stairwell and the total footage of that came out to 439.4 rounded to 439. So, your total square footage is 967 sq. ft. Which is well above the 800 sq.ft. needed for a site plan review. So, that's where we stand with the findings of facts. Where we go next is up for discussion and what we can do are several things. One, the permit was not correctly issued, in my opinion. And I am going to move to that fact. The plot

map was grossly inaccurate. The application for 528 sq. ft. was also grossly inaccurate from what really happened. In this case, because the Code Enforcement Officer responded to Kristy's complaint, by saying it was issued correctly, with no violations, well it was not issued correctly. And the finding of fact is in fact a type of appeal. So, that was filed in a timely manner. The board didn't handle it correctly. You were never notified that there was a complaint and the resulting issue to remedy order should be invalid. So, I am going to move tonight that it be invalidated and retroactive back to the date it occurred. I am doing that, because if somebody comes along later, no matter where this case goes, they can't say you were told way back, whenever this first came in that this was something that you had to do. They can't say, well now you lost your appeal goes back to that time in point and you are going to be held accountable. I don't think that is right. You were never notified, okay?

T. Castronova - Yes.

E. Bott - That is one thing that I am going to request the board do, to eliminate that. So, after that it comes down to making sure the rest of the stuff goes down the way it should have. We can table this again to get your survey in. I am not going to let this continue on forever. We can move that the permit be vacated and then you can reapply correctly. You may be fine, you may be ok, we don't know about the variance. You can't get a new permit though, until you can prove that you are not over the 30%. If you are over the 30%, then you would have to come back to this board and make an appeal for a ruling on that. Once that occurs, whether or not that is even necessary, I can't even tell you if it is right now because we don't know what the square footage of your property is. We can alleviate whatever the right of way is doing. This is the part that is important. Without knowing where the high water mark is, I can't tell you what your square footage is. You can't tell me and you are going to have to get that information. Okay?

T. Castronova - Okay.

E. Bott - So, my first thing is, I am going to make a motion that we affirm Kristy Wright's appeal to the point that this application, or this permit was not properly issued. Can I have a second?

D. Horning - I will second it.

E. Bott - Does anyone have anything to say before we vote on that?

T. Castronova - I don't know.

D. Cheney - So, our appeal is that the stop work order was incorrectly issued. So, that's what our appeal is.

E. Bott - We are going to get to yours.

D. Cheney - As far as the other appeal and the 30%, that's their burden to prove that to you. If you are saying here tonight that you don't know, it's not our burden. The code officer said we are not. That was part of their appeal that we were over the 30% and the code officer said, no, you are not. They appealed, they came here, it's their job to prove that to you. If they haven't proven that to you, then you should deny that part of their appeal. The other part of their appeal was the set backs, which if they haven't proven that to you, you should deny that part of their appeal. The rest of that stuff about site plan wasn't part of their appeal. They did not ask the Code Enforcement Officer, that this required site plan review. There is only limited items in there that they actually asked for. You can't rule on things that he hasn't ruled on. He hasn't said, they haven't asked, he hasn't determined. So, you shouldn't be making rulings for which you don't have jurisdiction over. The things appealed Steve, are the things that he said this permit was issued properly, I think they are beyond the time limit. But, that is a legal question.

S. Smith - Well, the permit was issued for 528 sq. ft. Now, you are up to 800 and something, so you can't tell me.

E. Bott - The basis that I am using is the fact that he didn't address those issues. He just made a blanket statement and said that the appeal was issued correctly and it's not.

D. Cheney - So, in their appeal, they list it out. They said the set backs were incorrect, we are over 30% lot coverage and then there was a statement about blocking lake views.

E. Bott - That's your position.

D. Cheney - That's the stuff they appealed. That's factual, that's what's in there. That's what the Code Enforcement Officer ruled on, they didn't ask him about square footage. They put that in their appeal to you, but you don't have jurisdiction for that. They can only appeal what they asked him to rule on. Now, if they ask him to rule on other things, then he can rule on it, then they can appeal to you, or he could say alright you're right.

E. Bott - I think they already did that, when they issued the stop work order. They found that there were errors in the application. And the errors are gross misinformation. The lot size plot was grossly wrong and so was the square footage.

D. Castronova - I have a question. At the last meeting, you had said they should not have, they weren't supposed to make a ruling on a code.

E. Bott - So, that was the order to remedy, okay?

D. Castronova - So, they did that and Jesse said, first of all the size of the building on the lot, the downstairs was never an issue. Jesse said that even without the engineer drawings, we did

have a drawing, a hand made drawing that was attached to the application. So, they did know what size that was. He also said that you can't say go ahead and build that, then after we build it, say you can't have it.

E. Bott - So, my position on that is, two wrongs don't make a right. You knew you were putting in a two story building, you applied for a permit for a 10ft. building, you were charged for a 10ft. building, for one floor.

D. Castronova - We would not have known that we were charged that, we don't know how you calculate that.

E. Bott - I didn't know that either, but that verifies the fact that they were unaware that you were putting in a two story building. You applied for a 10ft. tall building. That's not what you built.

D. Castronova - We sent the drawing with it. We aren't officials, we gave what we thought was correct.

E. Bott - I am going by the documentation that we have. They issued the order to remedy, that was improperly issued, that is why I said I am going to move tonight that it be revoked, retroactive back to the date that they did it, because it should not have been done without you being notified and having the meeting in the first place. That's to alleviate you from having any liability from basically tearing the building down. It's not done and we are not through with this. I want to alleviate any liability that you have because that was done improperly.

D. Castronova - So, does that mean we can pour the floor?

E. Bott - No.

D. Cheney - If you grant our appeal and reinstate our building permit, then we can build.

E. Bott - If that happens. And I am going to move that not happen.

D. Cheney - You can't grant our appeal, then take it away from us.

E. Bott - I am not granting your appeal, but that one part was improperly done.

D. Cheney - That's our appeal. We are saying it was issued improperly.

E. Bott - The stop work order was done by the Code Enforcement Officer and that was not done improperly. Because, they found errors in your application. And they were honest findings, ok?

D. Cheney - I am not sure I follow.

E. Bott - It's pretty simple, really. You applied for something and you used incorrect data, grossly inaccurate data that was discovered at the first discussion about the thing. The Code Enforcement Officer issued the stop work order, when they found that things weren't right. The Zoning Board of Appeals issued the order to remedy. That was done improperly. They are two separate things.

D. Castronova - They inspected the property twice after that. We had to pass inspection to get to where we were in March.

E. Bott - There are several layers to this, ok? You are going to have to provide a survey to get your permit again. It's going to have to happen, because it has to be determined. If you're ok, good. If you redo your permit and it's reviewed by the Planning Board and they approve the building the way it is, you don't have to come back here again. And, you are all set, but the paperwork was not filed correctly. And, like I said, it was grossly inaccurate. People didn't catch the errors until after the discussion started. Those were honest discoveries. That's why I am taking this one step at a time. The last time, we asked for a survey because we could tell there was a big discussion about who owned the right of way. We needed to know how much square footage you have to make that 30% determination. Nobody still knows. You can't tell from the deeds. We just know that from your deed, you own it. But, it's irrelevant based on these sizes here and this is why you have to have the survey to show what that is. I can't tell you because it says high water mark, but there are no numbers there. I can't even do the calculations to say if you are over or under. You may have room to put that building in, I don't know. I cannot tell you that at this point in time. The best way to do that is to go back to the beginning and file the paperwork correctly, in my opinion. The board will have to rule on that. Those are the steps we are going to take tonight. We have all the documentation, this whole thing is filled with the information and your attorney has added more stuff that will go into the packet. Is there any more discussion about Kristy's appeal?

J. Hallett - Not about the appeal, but I do have a comment about the permit and the application for the permit. So, it's 24 by 24 by 10, it doesn't specify which way the peaked roof is oriented. So, for the benefit of the doubt, let's say it's gables along the 22 and the peak is 24 wide. Minimum would be a 6-12 pitch, which would bring us down to about a 3 ½ ft. sidewall. How did we issue a permit for a building with a 3 ½ ft. sidewall?

E. Bott - We looked at it, I don't believe it was anywhere near that, when we got up there and looked.

J. Hallett - That shouldn't even be allowed to be built.

E. Bott - So, all in favor of granting Kristy Wright her appeal? All in favor. All right, that is carried. My second motion is that we revoke the order to remedy, that was incorrectly issued.

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They were not given their constitutional rights to review this process. I want to find the actual date that was issued. March 9th.

K. Singer - That was the date of the meeting. I think it happened a few days after that.

E. Bott - It had to be the meeting.

S. Seeley - March 9th was the meeting, where it was decided that it should be done.

E. Bott - I move that the order to remedy that was issued on March 9th be revoked, effective back to that date. J. Hallett seconded, all in favor.

E. Bott - So, now, where do we go from here? In my opinion, the best way to handle this is to revoke the building permit in its entirety and have it reissued with the correct information. You are going to need a survey to find out if it is under 30%. If it is, you don't have to come back to this board again. We already know that the correct footage for the building is over 800 sq. ft., which means you would have to go through a Planning Board review to determine whether they would accept the building the way you have it. If they do accept it, then the building will stand the way it is, provided all these other things are met. So, that is my opinion as to how we should proceed with this. That's up to the board.

D. Cheney - I don't think anyone has asked you for that, that kind of relief. Revoking a permit is Code Enforcement Officer.

E. Bott - We have the same authority as the Code Enforcement Officer.

D. Cheney - No, you don't.

E. Bott - Yes, we do.

D. Cheney - You can take any action you want, you can't revoke a permit. This code officer issued it.

E. Bott - Based on the appeal, the permit was improperly issued, that gives us the grounds to do that.

D. Cheney - No, he can revoke it, if he believes you are correct. He already said you are not, because that was his opinion. You can't revoke permits as the Zoning Board of Appeals. You are not the Code Enforcement Officer.

E. Bott - My understanding is, we have the same authority as the Code Enforcement Officer. And

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that is why we have been directed through our legal counsel as well.

D. Cheney - Obviously, I can't stop you from doing anything.

D. Castronova - So, we have to apply for a new permit? You saying no and we have a \$27000.00 building standing on our property. Who pays for all this?

E. Bott - That's outside of us, not outside the town. There were mistakes made clearly on both sides, alright? But, it was based on information that was inaccurate to start with. There was some follow up and someone should have realized this wasn't one story.

D. Castronova - When they came down and inspected it, they should have seen.

E. Bott - We have that in all the documentation.

J. Hallett - Do they have a certificate of occupancy on the building?

E. Bott - No.

D. Castronova - There's no occupancy.

K. Singer - Certificate of compliance.

E. Bott - You get a C of C when it's done and it hasn't been issued.

D. Castronova - We can't finish it. Seriously, financially, this is serious. My husband has cancer, that's why we built it.

E. Bott - Please understand, we are taking this very seriously. That's why we are taking the time to get to the exact details. So that everybody has exact information. So far, neither side has been able to give total information, until we ask for it, okay? Unfortunately, to this point, if that plot map had been accurate or closer to being accurate.

T. Castronova - What plot map?

E. Bott - The plot map, where you claimed that you have 176ft. and the right of way is on the outside of it. We talked about it at the last meeting.

T. Castronova - What, the diagram I gave you.

E. Bott - We talked about that explicitly at the last meeting, where you said the rear lot line was

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176ft. and it is listed that Pickerel Point Rd. is outside your lot survey. The deed clearly shows that is not the case.

T. Castronova - I must have gotten that from the deed I think, I don't even know. I didn't just pull it out of my butt.

E. Bott - There's a transfer document that the assessor showed, where there is 176ft. listed. Again, it just shows 176, so I don't know if it's 176 on both sides, that's unclear, ok?

T. Castronova - Okay.

E. Bott - We had this discussion in the beginning, nobody really knows how wide the right of way is, but your deed, these measurements here, if surveyed will eliminate the whole right of way issue, even though you own it. That has to be deducted from the total footage anyhow. In this case, it should have been shown inside the box and listed as size only being 150 and 147 and we don't know what the back one is.

T. Castronova - All I can say is whatever information I had, I filled it out to the best of my knowledge. Isn't that your job to know?

E. Bott - It's your job to provide accurate information and your deed, which I got a copy of it. You haven't had it surveyed. That's not completely unusual. I worked with a landowner last week that hadn't had a survey since 1883. People do that, I don't know why, but they do that.

T. Castronova - I haven't had a survey since 1883?

E. Bott - No, no, I said I worked with a landowner that had not had one since 1883 and I was the only one that knew where their land was. So, it's not completely unusual. For your own protection. I don't know why people don't get surveys, especially what you are paying for taxes down there.

T. Castronova - Wouldn't there be a record of it somewhere, at the county office or something.

D. Horning - The county would have it.

E. Bott - Not everybody files it with the county.

K. Singer - Depending on how long ago it was, it may not have been filed. They are required to be filed now.

D. Horning - That's true.

E. Bott - I actually went over and filed one of my deeds with the county this spring, because their tax map showed my property in the wrong place. They didn't have a copy of mine and that was done sometime in the 80's or 90's. It's a requirement now, but it wasn't that long ago, it wasn't. Leave it up to the other board members, what do you feel about what our next step should be? I stated what I think we should do. It's up to you guys to discuss it.

J. Hallett - I have a question. So, the statement from Rich Joki, states that he does not recall and the affidavit from Castronovas' states that they definitely do recall that this drawing and this print was submitted with this application. In my mind, it is very important to know how are we taking that as, was it, or wasn't it submitted with that application?

E. Bott - Another thing was, you said you were going to provide a copy of the canceled check.

T. Castronova - I do have a copy of the check.

E. Bott - One of the things that came up is when people had information or didn't have information. So, if you have a copy of that check, we talked about getting that. Because that would show when you paid for it. If you don't pay for it, it's not actually an application until there is a payment with it.

D. Castronova - So, Kris was saying last time that you pay for it when you get your permit. I think it was on 11/3. Just a question on that, because Steve you said you didn't get that until later, but you haven't said when, later.

T. Castronova - Who gave it to you, I know I didn't?

D. Castronova - So, exactly when later after we got the permit, did you receive the drawings?

S. Smith - Your guy from Finger Lakes, I believe it is. He gave them to me in the driveway.

D. Castronova - And, when would that have been?

S. Smith - After the trusses were up. He said, here's your truss plan.

T. Castronova - Let me ask you this. You can't issue a building permit without some kind of plans, it's just not done. You must have had it before you issued the permit. Would you give me a permit with just an application and no drawings or nothing?

S. Smith - You said at the last meeting that you were dealing with my Deputy?

T. Castronova - Absolutely, the whole time. I never saw you at all.

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S. Smith - How can I say if I received the plans from you?

T. Castronova - You didn't get them from me, because I never saw you.

S. Smith - Exactly, that's my point.

T. Castronova - I gave them to Rich.

D. Castronova - So, why would the town, the Zoning Board issue a permit on such a major...

E. Bott - The Zoning Board doesn't issue the permits.

D. Castronova - Okay, whoever issues them. For someone to just have Joe Moe walk with whatever information without verifying any of it. The people applying for these permits aren't familiar with all the codes and stuff. Isn't that the job of that code enforcement person to look at the information, verify it's correct, get the drawings and issue the permit. You just wouldn't have given us a permit based on our word, is what I am saying. What is your policy on that? So, Joe Blow walks in and goes, here's our land, we are going to build this, this is how big we say it is and you go ok, there you go, go ahead. And then later on have it blow up. What is your, you must have a process. From what I understand, those engineer drawings were part of that, why would you have given us a permit based on our word.

S. Smith - In the first place, there was no engineer drawings.

D. Castronova - What is that? Pardon my misspeaking. There they are though. Would you have not needed some sort of proof of what we were applying for, before you said go ahead?

S. Smith - You applied for a 24 by 24 by 10 garage. That's what you applied for.

D. Castronova - And then with the size of the downstairs, both Kris in the meeting that we weren't invited to and Jesse said those were right there right from the start. I just don't understand how this whole thing is getting turned around. We are responsible for all of this and you are responsible for none.

E. Bott - First of all, no one is saying that.

D. Castronova - It's starting to feel like, I mean it's been a year since we got that permit. This is unbelievable. I'm done, go ahead.

E. Bott - That's ok, you're afforded to say your peace.

D. Castronova - I got to tell you, this is unbelievable. I just can't even believe this is happening the way that it is. It seems very one sided. Okay, I'm done, go ahead, sorry.

J. Hallett - I would really like to know, either the permit was issued knowing about those two drawings, whatever you want to call them, one was an engineer drawing, this is a sketch and it was known that it was clearly a two story gambrel barn or it was issued with no drawings. I believe we are supposed to require drawings for a permit. Is there a third situation?

E. Bott - Well, the third one is, I don't think someone compared point A to point B. And that is, the application says 24 by 24 by 10 and those drawings don't show that. The plot map shows that Pickerel Point is outside the area and it's inside the area.

J. Hallett - Are we as the Zoning Board able to go back and pull a permit just because the town screwed up issuing it?

E. Bott - Well, the information that was given was inaccurate.

J. Hallett - Yes, it definitely was inaccurate.

E. Bott - We don't have to do that. That is one of the options that I am proposing. Our attorney said we have the authority as the Zoning Board, we have the same authority that the CEO does. If they had done it correctly, we would have been able to issue an order to remedy, if that was decided, but they didn't do it correctly. So, that is why I wanted to make sure that was revoked back to the time it was issued, so nobody can go back to these guys again and say they are liable for something because that happened, because that was done wrong. The Code Enforcement Officer issued a stop work order and that was separate from us and he has a right to do that.

D. Horning - It all stems from the error by the Code Enforcement Office.

E. Bott - Errors on both sides.

D. Horning - Yes.

E. Bott - Like I said, two wrongs don't make a right. So, by issuing a new permit, that can be done correctly, they have to show that they are inside the 30%, that's on them.

D. Horning - I have another question. Why did you wait, the permit was issued in August and yet it was not paid for until November?

E. Bott - It wasn't issued, it was applied for.

D. Horning - It was applied for, okay.

D. Castronova - They has our application for two months, then after they approved us, we didn't even do the excavation until the end of December. So, even after the permit was issued, there was still months where you could have come and said you know what we got out plans and the drawings, something doesn't match. There were months and months where this could have been caught, before we built the building.

E. Bott - I am not arguing that point.

T. Castronova - If you had said from the start, no, you can't do this, it's too big. I would have said ok, we will redesign it or whatever to make it work. But, that didn't happen until the building was up.

D. Castronova - And also, once the complaint came in, there was still another month, where we could have stopped and at least it would have been less to take down, or to alter. But, everybody just watched us build it and then inspected it and passed the inspections. And right before we want to pour the floor, we have to stop, so he can't move the stuff out of his shop.

J. Hallett - What inspections have been done on it?

E. Bott - Rich detailed, it's in the file there, he detailed some inspection he had complaints about, I know that.

J. Hallett - What stage is the building in on the last inspection?

E. Bott - I have no idea.

D. Castronova - There was a punch list.

E. Bott - There was a check list.

T. Castronova - The very last one was when Rich came down and I actually went through the building with him. He made a list of things to correct. Never said at that time, there was a complaint or that we might have to stop work on it.

J. Hallett - At that point was the building roofed?

D. Castronova - Yes.

T. Castronova - It was done accept, you know.

D. Castronova - And even still, they still did not inform us that there was a complaint. We did not have any knowledge of a complaint. This is the only thing I will say on this, Kris has the knowledge of all the codes. They could have said we have an issue with this. We are very approachable to Kristy and she could have walked across the street instead of across the lawn and said I understand this is happening, but I have an issue with it can you stop. There was a point when it was just sticks and we could have stopped. Nobody, not this side, not this side said one word that there was a problem. We did not do this just blatantly, we thought we were doing it correctly. We are just regular people. We thought we were doing it correctly. Nobody stopped us until it was too late.

J. Hallett - Do we have responsibility to notify landowners if there is a complaint on their property?

E. Bott - So, here is what didn't happen. When the first appeal came in, before any decision was made, so we had our first preliminary meeting where you get all the information, before that second meeting, when we should have had a Public Hearing and that's when they would get notified. That did not happen, that part was incorrect. That is why I said I wanted that order to remedy removed retroactive to that date, because we did not follow constitutional law for that matter on that part. The rest of it was a discovery that this information was inaccurate and it wasn't until our last meeting that we discovered that they had the plot diagram inaccurate, because as Mr. Castronova got up here and testified that this was correct. When I got the deed, then I found out that this wasn't right. That is why I spent the time trying to find out who owns the right of way. Nobody knew, neither side knew who owned the right of way. They said they didn't, you said you didn't, turns out you do, they don't. And now we have the data to show that.

K. Singer - Ed, I just want to correct one thing. They are absolutely right, the lower floor, the one floor story sat there. I questioned the 30% lot coverage back in December when the back filling started. Steve looked at the paperwork that was there and came back and told me that it wasn't over the 30%. It was only the first story that was there, just the side walls and the frame of the first story. The builders were not there for almost two weeks, I guess there was illness, covid issues right in January. February 3rd is when the showed back up and it was that day when I got home, Kristy works from home, when I got home those trusses were up. That was a Thursday. Kristy called me either that night or Friday morning and said what do I do? That's when I told her to get the complaint form. There is nobody in the Code Enforcement Office on Friday, Saturday, Sunday, Monday. Between Friday and Monday, they basically finished the building. Before anyone came down to look at it for the complaint. We assumed when we saw the first floor, it was going to have a pitched roof on it.

T. Castronova - Kris, those trusses were sitting at the end of the road.

K. Singer - I don't go wandering around the end of the road, they were all covered up.

K. Wright - Chad was also having construction going on. I thought that had to do with Chad.

D. Castronova - So, with all the knowledge and all the connections, ok? It's our understanding that she had 60 days from the time the permit was issued to file a complaint. They have acknowledged that they knew a building was going up and Kris just acknowledged that everything was fine. So, with all of that, she should have known that she had that time.

E. Bott - The ruling that they did fell within that time frame. By February 3rd, they had filed a complaint. People get permits, you don't know what they are building. Once the second story went up, that's when they realized they had a problem.

D. Castronova - But, on that day, had she walked over and said, that's my only point.

D. Cheney - This will all be invalidated, because it was not within the 60 days and they clearly had 60 day window.

E. Bott - Case law states otherwise. You and the Town's attorney will be dealing with that kind of thing. There is a way to make this so that we can know for sure if you're over or under the 30%. There is a procedure to handle that situation. We have a procedure to handle the size of the building. That just goes to the Planning Board. If you come out under 30%, then that is not an issue. If the Planning Board says the structure stands and they are okay with it, then there is no further issue. I don't know how it is going to pan out. If the Planning Board turns it down, then you can appeal back to us again. That is just how the procedures are set up. They didn't follow procedure initially, they did file a complaint in a timely manner, when they saw the second floor. That follows case law on that. That's what I can tell you. What happens next is how we decide to proceed with the next part of this. Do we revoke the permit, or do we just let the CO revoke the permit, then you start all over again with the proper paperwork, okay? That's where we stand now. You get to decide whether you want an Article 78, or redo the paperwork and see if it comes out in your favor. That's entirely up to you guys. So, that is pretty much where we stand at this point.

D. Castronova - So, what happens to the building, when we apply for a new permit?

E. Bott - That all depends on what comes out of this. If you under the 30%, then you go to the Planning Board, like you should have in the first place, not entirely your fault. Well, it was, because you filled out the paperwork wrong. You applied for a one story building and built a two story building. No matter who should have found that out, when they did, as soon as it came up for review, then the questions arose. We have a Planning Board that is set up to take care of those situations. If they agree with you, okay the building is there, it's not over the height requirement, then the building stands. I don't know what they are going to do, I can't tell you what

they are going to do. I can't even tell you if you are above the 30% and neither can you. And they should have made you prove that once you filed this plot map. By this thing you are not over the 30%, but this is grossly inaccurate by several hundred square feet. A few thousand square feet, okay? That's on you to provide this information correctly. You have your deed. Could the other side have done more due diligence, absolutely. But, that is where we stand right now. So, the next thing is, what do we do with this? I am going to leave it up to the board members as to what you want to do?

D. Horning - I think we should follow what our lawyer told us we should do.

E. Bott - She just said, that's what we can do, she didn't say that is what we should do. She can't tell us what to do, she just told me what we have the authority to do.

D. Horning - I agree with you, because that is the only way we are going to get everything right. So that the building sits there the proper way.

E. Bott - Jesse?

J. Hallett - I don't think it is going to matter in the end, what we do tonight.

E. Bott - It might not. That doesn't mean we can sit and do nothing.

K. Singer - You have to do something to make it go one way or the other.

E. Bott - Yes.

D. Horning - What was your suggestion?

E. Bott - I moved that we revoke the permit and they allowed to get a new one with the corrected information.

D. Horning - Okay, I agree with that.

J. Hallett - Yes.

E. Bott - I move that we revoke the permit and allow them to refile with the corrected information, including not have to pay the whole amount again, because they have already paid for part of it.

D. Horning - I don't think they should have to pay anything.

J. Hallett - Is this actually us revoking the permit or a recommendation for the Code

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Enforcement Officer to revoke the permit?

E. Bott - We could do it either way. If we do it, then we are sure that is what happens.

D. Horning - Okay, revoke the permit and get everything straightened out and then come back.

E. Bott - So, you are going to second my motion? Seconded by D. Horning, all in favor.

D. Horning - It has to be corrected some way.

E. Bott - So, they need to provide a survey, so you know what the square footage is. Or, whoever is going to be in your position. So, that can be determined if you are under the 30%, then it goes to the Planning Board for the final approval of the permit.

S. Smith - It does for the square footage too. When they file the permit for over 800 sq. ft., it automatically goes to the Planning Board.

E. Bott - And then they have to provide surveys for everything there too.

S. Smith - Exactly. The Planning Board will take care of that.

E. Bott - So, that is where we stand.

D. Castronova - So, who is responsible financially if this has to be altered.

E. Bott - Now, you get into insurance companies and the courts.

D. Castronova - We have paid this huge amount of money.

D. Cheney - The Public Hearing is closed and that's that, then.

E. Bott - We haven't closed it yet. I move that we close the Public Hearing, seconded by J. Hallett, all in favor.

Public Hearing concluded at 8:20 p.m.

OLD BUSINESS

E. Bott made a motion to accept the minutes from the September 14, 2022 Public Hearing, seconded by J. Hallett, all in favor.

E. Bott made a motion to adjourn, seconded by J. Hallett all in favor.

The meeting adjourned at 8:45 p.m.

Respectfully,

Stephanie Seeley, Secretary