

ZONING
BOARD

MINUTES

2011

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

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 January 18, 2011, at 6:00 P.M.

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

Member Steinbach was absent. Also present was 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 Board put approval of the Minutes of the December 2010 meeting over to the next meeting.

The next item of business was further consideration of the Request for a Special Use Permit of A & S DIESEL SERVICE, INC., owner-applicant, dated September 30, 2010, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction and operation of a filling station on property located at 850 Hoosick Road, in the Town of Brunswick, because a filling station is a special use in a B-15 District only allowed by way of a special use permit issued by the Zoning Board of Appeals. Member Schmidt recused himself from the matter and left the meeting room.

Gary Joy, the owner of the A & S Diesel property appeared along with Craig Cullum, an employee of John Ray & Sons. Attorney Cioffi stated that this application was not the typical application for a filling station that comes before the Board. First, he noted, the application involves only a single fuel pump and no pump islands. Second, the pump is not to be located adjacent to the road; rather it is to be located in the rear of the building. For those reasons, the application does not meet the strict requirements contained in the Zoning Ordinance for a filling station. After some discussion, the consensus of the Board was that the deviations from the strict technical requirements was not a problem in this case. There were no further questions from the Board and the applicant had nothing additional to present.

The Chairman made a motion to classify the matter an unlisted action under SEQRA. Member Trzcinski seconded. The motion carried 3 - 0. Attorney Cioffi briefly reviewed Part 1 of

the short form EAF with the Board. The Board then completed Part 2 of the EAF with the assistance of Attorney Cioffi. No significant environmental impacts were noted. Member Trzcinski made a motion to issue a Negative Declaration under SEQRA. Member Cipperly seconded. The motion carried 3 - 0.

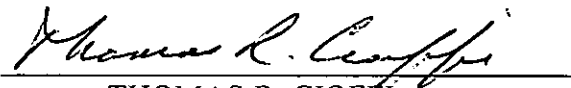
The Board then considered whether the application satisfies the criteria for a special use permit for a filling station as set forth in the Zoning Ordinance and in state law. The Board considered and discussed each of the statutory criteria and found that all had been satisfied. The Chairman then offered a Resolution approving and granting the special use permit as requested. Member Cipperly seconded. The Resolution carried 3 - 0. The Board advised the applicants that they would need to obtain an amendment to the current site plan.

Member Schmidt then returned to the meeting room. The Board determined that the next meeting would be held on February 28, 2011, due to the Association of Towns Annual Meeting.

There being no further business, Member Trzcinski made a motion to adjourn. Member Cipperly seconded. The motion carried 4 - 0.

Dated: Brunswick, N.Y.
February 7, 2011

Respectfully submitted,



THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

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 February 28, 2011, at 6:00 P.M.

Present at the meeting were: E. John Schmidt, Member
Mark Cipperly, Member
Caroline Trzcinski, Member
Martin Steinbach, 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 December 2010 and January 2011 Minutes. Member Trzcinski made a motion to approve both sets of Minutes without changes. Member Steinbach seconded. The motion carried 5 - 0.

The next item of business was consideration of an updated referral recommendation to the Town Board on the Berkshire Properties LLC planned development district application regarding property located at Hoosick Road and Betts Road. Marcia Doyle, Esq., and Tracy Gaylord appeared for Berkshire Properties. They noted that since this matter was last before the Board, certain changes have been made. Three (3) additional residential building lots were added from newly acquired property. There are now ten (10) residential lots in total proposed. In addition, the access road into the project has been re-contoured due to the purchase of additional property. Other than that, the project is generally the same as it was when it was reviewed by this Board in September 2009.

Member Trzcinski asked where Cynthia Robinson, who is a vocal opponent of the project, resides. Her lot was pointed out by Ms. Gaylord. Ms. Gaylord stated that there had been discussions regarding Berkshire Properties purchasing Ms. Robinson's property, but they could not agree to a price. The additional property to be gained would not substantially enhance the project, other than providing some additional parking. The proposed houses in the project are still proposed to be served by individual wells and septic systems. They feel that bringing in water and sewer would be cost prohibitive. The Chairman also mentioned Ms. Robinson's concerns. Ms. Gaylord stated that Berkshire is in the process of addressing all of Ms. Robinson's comments and concerns, as part of the SEQRA process. For example, they are rearranging some of the parking spaces so the headlights of vehicles would not be pointing into her home. They are also considering berms and

plantings for screening purposes. Ms Gaylord noted that most of the commercial parts of the proposal are located on land which is currently zoned commercial, except for some of the parking spaces.

Ms. Gaylord also stated that the actual uses and tenants in the commercial buildings have not yet been finalized. They are looking for a chain restaurant for the smaller building. For the larger building, they are looking at a mix of office/professional and retail.

Chairman Hannan asked whether anyone from the public was present and wanted to comment. No one from the public was present.

Attorney Cioffi read the core of the recommendation regarding this project that the Board made on September 21, 2009. Specifically, at that time, the Board stated as follows:

“Based on the concept plan and general layout presented to this Board, as well as the other information provided to date, it is the sense of this Board that the general concept plan and layout of uses for the proposed PDD is favorable and an appropriate use of the property. The Board views the use of the Route 7 frontage for commercial applications and the rear of the site at the northern end of Betts Road for single family residential purposes to be good planning and in general harmony with the Comprehensive Plan. Additionally, the dedication of five (5) acres of land for open space and recreational uses can only be viewed as positive.”

Attorney Cioffi stated that the Board had to consider whether that generally positive recommendation needed to be changed or embellished. After some additional discussion, Member Trzcinski offered the following Resolution:

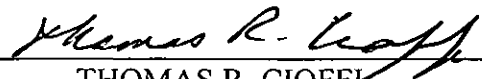
Be it Resolved, with respect to the application for a planned development district filed by Berkshire Properties LLC with respect to property located on Hoosick Road and Betts Road, based on the updated information provided, the Zoning Board of Appeals sees no reason to disturb the generally positive recommendation it made to the Town Board regarding this application on September 21, 2009.

The Chairman seconded. The Resolution carried 5 - 0.

There being no further business, Member Trzcinski made a motion to adjourn. Member Steinbach seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
March 7, 2011

Respectfully submitted,


THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

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 March 21, 2011, at 6:00 P.M.

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

Members Steinbach and Cipperly were absent. 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.

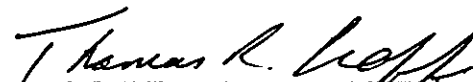
The Chairman called the Regular Meeting to order at 6:00 P.M.

The first item of business was approval of the February 2011 Minutes. Member Trzcinski made a motion to approve the Minutes without changes. Member Schmidt seconded. The motion carried 3 - 0.

There being no further business, Member Schmidt made a motion to adjourn. Member Trzcinski seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
April 2, 2011

Respectfully submitted,



THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

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 April 18, 2011, at 6:00 P.M.

Present at the meeting were: E. John Schmidt, Member
Mark Cipperly, Member
Caroline Trzcinski, Member
Martin Steinbach, 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 March 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 MICHAEL HENNESSY, owner-applicant, dated March 21, 2011, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a garage addition to the existing residence on a lot located at 429 Moonlawn Road, 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 9 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Michael Hennessy appeared. He stated that he wants to build a small garage for his wife's car. It will be attached to their existing garage. It will blend right in. He can't comply with the 15 foot setback. There is a pine tree that will have to come down. Member Schmidt stated that he didn't see anywhere else on the property that it could go.

The Chairman asked for public comment. Klaus Kowalzik, 425 Moonlawn Road, the adjoining property owner most impacted, stated that he has no objection. Mr. Kreiger stated that the referral to County Planning had come back indicating that local considerations should prevail. Mr. Kreiger also mentioned that another neighbor, Mrs. Christian, 402 Moonlawn Road had called and stated that she had no objection.

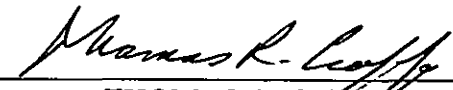
Member Trzcinski made a motion to classify this matter a Type 2 action under SEQRA.

Member Schmidt seconded. The motion carried 5 - 0. Member Steinbach then offered a Resolution approving the variance as requested. Member Cipperly seconded. The motion carried 5 - 0.

There being no further business, Member Trzcinski made a motion to adjourn. Member Steinbach seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
May 7, 2011

Respectfully submitted,



THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

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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 May 16, 2011, at 6:00 P.M.

Present at the meeting were: E. John Schmidt, Member
Mark Cipperly, Member
Caroline Trzcinski, Member
Martin Steinbach, 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 April, 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 the appeal and petition of WAL-MART REAL ESTATE BUSINESS TRUST, owner-applicant, dated April 11, 2011, for variances pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the proposed Wal-Mart Supercenter expansion at 760 Hoosick Road, in the Town of Brunswick, because the proposed signage

1. violates the maximum permitted sign area for the store of 300 sq. ft. in that 667 sq. ft. is proposed; and
2. violates the maximum square footage permitted for a freestanding sign of 35 sq. ft. per side in that 110 sq. ft. per side is proposed; and
3. violates the maximum permitted number of signs for the store of two (2), in that six (6) signs are proposed.

Attorney Cioffi read the Notice of Public Hearing aloud. Also on the agenda is consideration of a referral from the Town Board regarding Wal-Mart's pending request to amend its Planned Development District designation in connection with the proposed Super Center expansion at its existing location.

Present on behalf of Wal-Mart were Mary Elizabeth Slevin, Esq., Adam Fishel, P.E., Project Manager, and Charles Jordan, Architect, of APD Engineering & Architecture, PLLC. Attorney Slevin stated that the original PDD designation under which the Wal-Mart store was built was granted in 1991, when a different retailer was involved. In 1995, amendments to the PDD specific to Wal-mart were made. Wal-mart now seeks an amendment to the existing PDD in connection with the proposed Super Center expansion. Additionally, she stated, sign variances are requested for the expanded building. She stated that although she could not find any variances on record with regard to the signage on the existing building, the current signage does violate the standards.

Attorney Cioffi noted that a May 4, 2011, letter from Kelly Pronti, Esq., submitted in support of the variances, appears to be at odds with the variances requested in the application. Attorney Slevin agreed and stated that Ms. Pronti's letter refers to sign standards which had been subsequently superseded by the Town. Attorney Slevin stated that the letter would be redone.

Adam Fishel stated that Wal-mart is looking to expand its existing store. The Hoosick Road entrance will be reconfigured. The McChesney Avenue entrance will remain the same. The proposed PDD amendment includes the DiGiovanni parcel across the street from the store on McChesney Avenue, which is to be used for stormwater management and wetlands mitigation. The existing pond on that property will be moved. The DiGiovanni parcel will be used to help meet green space requirements. Some of the green space near the Hoosick Road entrance is proposed to be lost to add parking spaces. Mr. Fishel stated that total green space will be at 34% under the proposal. The current plan allows for 32% green space. The Board expressed concern over the loss of green space on Hoosick Road. Mr. Fishel noted that the proposed pylon sign will include decorative plantings. The proposed Super Center will not have a Tire & Lube. It will have a full grocery section.

In regard to the sign variances, Architect Jordan stated that the existing facade of the building will be changed to add two new vestibules. There will be signs for "Market", "Outdoor Living" and "Home & Pharmacy". The Wal-mart sign in the middle will be about 290 sq.ft. The proposed total signage on the building only, without the pylon sign, is about 508 sq. ft. The free-standing pylon sign is needed because motorists cannot currently see the building or the signage on the building until they are past it. The pylon sign is now requested to be 95 sq. ft. per side.

Attorney Cioffi asked Mr. Kreiger to research exactly what signage is currently allowed for the existing building, and whether any of it is the result of variances.

The Chairman then asked for public comment. Dorothy Murray, 126 McChesney Avenue, stated that the Town has required Wal-mart to make adjustments over the years for things such as lighting, noise, delivery trucks, delivery hours, etc., for the benefit of persons living nearby. She asked whether having a grocery department will mean that there will now be overnight deliveries. She is concerned that there will be an increase in trash and trash pick-up. She is concerned about the loss of green space and the use of the DiGiovanni parcel to meet the requirement.

Did Maly, Jr., 5 Riccardi Lane, stated that you can't see the existing signage on the building well from Hoosick Road. He also noted that this proposal does not look like a Super Center, just a large Wal-mart. There is no Tire & Lube and no gas station.

The Chairman said that he is concerned about the loss of green space in the front and of the use of the DiGiovanni parcel to satisfy the green space requirement in part. He does appreciate the need for growth. Noise, lighting, truck deliveries and trash pick-up are certainly issues. Attorney Slevin stated that she will bring the concerns of the neighbors back to Wal-mart. Wal-mart wants to be a good neighbor. This project will also alleviate a current flooding problem at McChesney Avenue because significant changes are being proposed for the culverting. She understands the green space concerns, but there is just not enough space for parking along Route 7 unless some of the current green space is used. This is one of the reasons why Wal-mart was considering a new location rather than expanding. This proposal is the only alternative available.

Member Trzcinski said that she is concerned about the pylon sign. It is too high. It should be no higher than the highest sign currently on Route 7. Mr. Fishel stated that the sign has to be high so that people unfamiliar with the area will be able to discern where the Wal-mart is. It is a safety concern. Member Trzcinski stated that the sign does not need to be 30 feet high.

Members Steinbach and Cipperly stated that truck traffic is an issue. Mr. Fishel acknowledged that it was a concern. Wal-mart trucks are not allowed to use the McChesney Avenue entrance, but Wal-mart cannot control what other trucks do. The Chairman reiterated that green space in the front, truck traffic and trash pick-up are issues of concern. Margaret Maly, 5 Riccardi Lane, stated that she is concerned that the expansion will increase traffic. It is hard for her to get out of Riccardi Lane as it is. She is also concerned that green space will be lost from across the creek. Also, that the expansion will affect the flow of water. Mr. Fishel stated that they are not touching anything beyond Wal-mart's property line. The expansion will not effect drainage in any way. They do need to move the pond so it can drain into the wetlands area to provide water. Any additional traffic should be minimal.

Attorney Cioffi stated that the Board could not act on the sign variances at this time because the Town Board had declared itself lead agency under SEQRA and no SEQRA determination has been made. Attorney Slevin agreed but asked that the Board act on the PDD referral at this time. Attorney Cioffi stated that the Board usually does written decisions on referrals. It was left that Wal-mart would return to provide additional information if required by the Board. Other wise, the Board will issue a decision on the referral in due course.

The next item of business was a letter from Charles Alund requesting a rehearing regarding a decision issued by this Board pertaining to a variance application for a shed at 63 North Langmore Lane. Attorney Cioffi read the letter. The decision was issued in October, 2010. Mr. Keiger stated that Mr. Alund is seeking a change in the decision. Attorney Cioffi read Town Law, Section 267-a, subd. 12., which deals with rehearings, aloud. He then explained that the procedure is generally as follows: In order for a rehearing to occur, a Board member must make a motion for a rehearing. Then, there must be a second. Unless the rehearing motion passes unanimously, the rehearing will not occur. If the rehearing motion does pass unanimously, a new hearing must be held on the same notice requirements as the original hearing. Any decision after such rehearing to reverse, annul or modify the original order must also be by unanimous vote.


After some discussion, the Chairman made a motion to grant the request for a rehearing. Member Schmidt seconded. The matter was put to a roll call vote. Members Steinbach and

Trzcinski voted in the negative while the others voted in the affirmative. There being no unanimous vote to grant the rehearing, the motion was declared defeated.

There being no further business, Member Trzcinski made a motion to adjourn. Member Steinbach seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
May 28, 2011

Respectfully submitted,



THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180
Phone: (518) 279-3461 -- Fax: (518) 279-4352

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 June 20, 2011, at 6:00 P.M.

Present at the meeting were: Caroline Trzcinski, Member
Martin Steinbach, 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 May, 2011 Minutes. Member Trzcinski made a motion to approve the Minutes without changes. Member Steinbach seconded. The motion carried 3 - 0.

Chairman Hannan stated that he received a letter from Theresa Backner, Esq., representing Oakwood Property Management LLC, dated June 14, 2011, inquiring as to when the Board would hear Oakwood's appeal of the Notice of Violation issued by Mr. Kreiger last year now that the Memorandum of Understanding between the Town and Oakwood which stayed that proceeding is no longer effective. Christopher McDonald, from Ms. Backner's office, was present. Chairman Hannan stated that the appeal would be heard on July 18, 2011, at 6:00 P.M.. He also stated that he would be recusing himself from further involvement in the appeal due to an existing business relationship involving Oakwood. He also noted that Member Steinbach had already recused himself. Attorney Cioffi will send out the appropriate notice and arrange for its publication.

The next item of business was consideration of the application of WAL-MART REAL ESTATE BUSINESS TRUST to amend its Planned Development District designation for its existing Store located at 760 Hoosick Road to allow a proposed Super Center expansion at that site. The matter is currently before the Town Board, which has referred the issue to this Board for a recommendation. Present on behalf of Wal-Mart was Mary Elizabeth Slevin, Esq.

Attorney Cioffi stated that a the Board Members have before them a draft Response to Referral as well as a draft Resolution adopting the same. Attorney Cioffi noted that the Board Members had been provided with the draft Response to Referral well in advance of the meeting. The draft Response provides for a generally favorable recommendation, subject to some qualifications. The Chairman asked whether anyone wished to offer the Resolution. Member Trzcinski offered the

Resolution. Member Steinbach seconded. The matter was put to a roll call vote and all Members present voted in the affirmative. The Resolution was declared duly adopted.

The next item of business was the appeal and petition of SCOTT GULLIE, owner-applicant, dated May 13, 2011, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of an above-ground swimming pool on a lot located at 28 Greene Street, in the Town of Brunswick, because the proposed construction violates the rear yard setback in an R-9 District in that 20 feet is required and 3 feet is proposed, and also violates the side yard setback in that 10 feet is required and 8 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud. There was no appearance by the applicant. Member Steinbach made a motion to put the matter over to the July 18 meeting. Member Trzcinski seconded. The motion carried 3 - 0.

The Chairman asked whether anyone present wished to speak. Kevin Sharpe, Cropseyville, said that he purchased property in 2001 near the Callanan Industries mine. In 2002, Callanan purchased another parcel of 40 acres located between his parcel and the existing mine. That parcel is zoned agricultural, but Callanan is mining on it. Callanan is quarrying within 25 feet of his parcel. DEC is aware of this. Mr. Sharpe felt that there is a zoning violation and asked whether the Board could do anything about it. Attorney Cioffi stated that this was the first he had heard of it and neither he nor the Board could comment until the matter was reviewed. Mr. Kreiger stated that he would look into it and advise.

Michael Schongar, Lindsay Drive, asked a procedural question about quorum and voting requirements for the Board. He also stated that the Board should uphold the Notice of Violation issued in connection with the activities of Oakwood Properties LLC.

There being no further business, Member Steinbach made a motion to adjourn. Member Trzcinski seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
June 27, 2011

Respectfully submitted,



THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

REGULAR MEETING

June 20, 2011

RESOLUTION ADOPTING DETERMINATION

WHEREAS, an application having been filed by the Wal-Mart Real Estate Business Trust seeking to amend the existing Brunswick Square Planned Development District in which the existing Wal-Mart Store located at 620 Hoosick Road operates; and

WHEREAS, the Town Board having referred the application to this Board for comment;
and

WHEREAS, the Board having caused to be prepared a written Response to Referral with respect to the said referral, which is annexed hereto; now, therefore, after due deliberation

BE IT RESOLVED, that the annexed Response to Referral be and hereby is approved and adopted in all respects.

The foregoing Resolution which was offered by Member Trzcinski and seconded by Member Steinbach, was duly put to a roll call vote as follows:

MEMBER CIPPERLY	VOTING	Absent
MEMBER SCHMIDT	VOTING	Absent
MEMBER STEINBACH	VOTING	Aye
MEMBER TRZCINSKI	VOTING	Aye
CHAIRMAN HANNAN	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

Dated: June 20, 2011

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Application of

WAL-MART REAL ESTATE BUSINESS TRUST

Applicant

RESPONSE TO
REFERRAL

For the Amendment of the Brunswick Square Planned
Development District Under the Zoning Ordinance of the TOWN
OF BRUNSWICK

The Town Board has received an application from the Wal-Mart Real Estate Business Trust seeking to amend the existing Brunswick Square Planned Development District in which the existing Wal-Mart Store located at 620 Hoosick Road operates. Essentially, the applicant is seeking to expand the existing Store into a "Super Center", to include the offering for sale of a full line of groceries. The Tire & Lube operation at the existing Store would be discontinued. Various physical changes to the site are proposed, including a revised landscaping plan along Hoosick Road and changes to the berm and greenspace area near the southern portion of the site and entrance onto McChesney Avenue. Pursuant to the Zoning Ordinance, the application has been referred to this Board for comment.

The Zoning Board of Appeals adopts a generally positive recommendation on this proposal, subject to the continuing thorough and careful review of the same by the Town Board which is now ongoing, and, subsequently, by the Planning Board in the context of site plan approval should the project progress to that point. From a zoning perspective, the use of the site is not appreciably changing. The existing Wal-Mart Store has been in operation for over 15 years and is a fixture at this location. The general public and the neighbors who reside nearby have become accustomed to the store and have generally adjusted to its impacts. Expansion of the current store is deemed preferable to building a new store in town at a different location.

All that said, the Board does have some concerns. First, the proposal includes taking some of the existing green space near the Hoosick Road entrance and converting it into parking spaces. This appears to be driven by some inflexible Wal-Mart policy regarding the number of parking spaces it requires at its stores. The Board believes that this proposal should be carefully reviewed and considered by the Town Board and the Planning Board in the context of their respective reviews. The elimination of the green space along the Route 7 entrance will, in the opinion of the Board, have a negative impact on the appearance of the site, and is not in keeping with the rural character of the town, even on its main commercial corridor. Similarly, the Board is concerned that the proposal also involves meeting the project green space requirement, in part, by utilizing the "DiGiovanni" parcel now owned by Wal-Mart, located across the road on McChesney Avenue. Separated by the road, the DiGiovanni parcel "appears" as a separate parcel, and the use of that parcel to satisfy the

greenspace requirement for the store parcel should carefully be examined from an aesthetic and practical standpoint. Careful consideration should also be given to whether the expansion will significantly increase the impacts of the store on adjacent properties. Adding the grocery line may well result in increased deliveries, especially overnight and early morning truck traffic, and increased trash pick-up. These impacts should be carefully considered.

Dated: Brunswick, New York
June 20, 2011

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

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 July 18, 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 June, 2011 Minutes. Member Trzcinski made a motion to approve the Minutes without changes. Member Steinbach seconded. The motion carried 5 - 0.

Attorney Cioffi stated that the appeals of Oakwood Property Management LLC from the Notices of Violation issued by the Code Enforcement Officer which had been noticed for public hearing this evening were being adjourned to the August 15, 2011, meeting to give the Planning Board an opportunity to provide its advisory opinion prior to the public hearings on the appeals as is required by the Zoning Ordinance.

The next item of business was the appeal and petition of SCOTT GULLIE, owner-applicant, dated May 13, 2011, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of an above-ground swimming pool on a lot located at 28 Greene Street, in the Town of Brunswick, because the proposed construction violates the rear yard setback in an R-9 District in that 20 feet is required and 3 feet is proposed, and also violates the side yard setback in that 10 feet is required and 8 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Scott Gullie appeared. Member Trzcinski stated that she went to the site. She feels that the pool could be placed differently on the property to eliminate or reduce the need for variances. She said that certainly the side yard variance is not needed. Attorney Cioffi noted that if a variance is warranted, the Board can only grant the minimum variance necessary to meet the applicant's objective. Mr. Gullie was asked various questions about the plot plan he provided, which appeared

to show a lot of vacant space where the pool could be located away from the property lines. Mr. Gullie stated that he did not show his garage on the plot plan, nor did he show a stone fireplace built by his grandfather. Those things reduce the available area to place the pool. He indicated on the plot plan where those things were located. There was also discussion about turning the pool. Member Steinbach stated that he did not see any need for a side yard variance at all, and the rear variance could be minimized.

There was no public comment for or against the application. Mr. Gullie said he could move the pool away from the rear line, but it would require additional expense for excavating and fill - at least a few hundred dollars. Member Cipperly noted that moving the pool away from the rear line may actually make it stand out more. Member Steinbach said that even if he moved it an additional 5 feet away from the rear line, it would still be a substantial variance. He is not comfortable with it. Member Cipperly stated that there are clearly alternative locations for the pool on the property. Member Schmidt suggested that the matter be put over to the next meeting and that Mr. Gullie report back on the amount of fill needed and possible alternative locations for the pool. Mr. Gullie stated that he wanted to get the pool in right away so his children would have it for this Summer. Attorney Cioffi noted that the Board was prepared to hear this application at the June meeting, but Mr. Gullie did not appear. Member Cipperly made a motion to continue the public hearing. Member Schmidt seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of ANDREW and MONICA MARROCHELLO , owners-applicants, dated June 24, 2011, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of an in-ground swimming pool on a lot located at 31 Spring Landing Blvd., in the Town of Brunswick, because the proposed construction violates the rear yard setback in an R-25 District in that 25 feet is required and 15 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Andrew Marrochello appeared. He stated that they purchased the house 11 years ago and want to put in a pool. Their house is set back a little further from the street than the 3 parallel houses nearby. Their septic system is in the front, and there is a gas line on the side that would need to be moved, and also some trees. The back of the house is the best place for the pool. They also want to put an addition on the back of the house in the future, so that would cut down on the usable area. Member Trzcinski stated that if the pool were simply moved 10 feet closer to the house, there would be no need for a variance. The applicant stated that he wanted to have the option of putting an addition on the rear of his house in the future. He stated that he has a vision for his property and if they are unable to realize that vision, they may decide to move elsewhere.

Attorney Cioffi indicated concern that the need for a variance was being based on some future event which may or may not ever occur. Member Steinbach stated that he was not sure whether the Board could legally do it. Attorney Cioffi stated that he could do some research on the issue. The Chairman asked if anyone from the public wished to comment on the application. There were no comments from the public.

The Chairman asked Attorney Cioffi to read the statutory criteria for area variances. Attorney Cioffi stated that the criteria were as follows: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the

granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The Chairman stated that the applicant may need to modify his request. The variance request is based upon a future event. Mr. Marrochello stated that the plans for having an addition on the rear of the house in the future could be modified - but it may be by new owners. They will not stay. He is not going to change the size or shape of the pool. The Chairman stated that he and his wife own a lot of property adjacent to their home. They, too, have a vision of what they would like to do with it, but they, too, are constrained by the Zoning Ordinance.

After some further discussion, a motion was made and seconded to close the public hearing. The motion carried unanimously. The Chairman stated there would be a written decision. The applicant stated that time should not be wasted doing a written decision. He stated that he could see where this matter was going. He stated he does not meet all of the criteria. He said wished he had been told in advance that he did not meet the criteria so he wouldn't have had to leave the family vacation in Maine to drive here for the hearing. He also wouldn't have gone to the trouble of speaking to neighbors and getting their approval. He asked Mr. Krieger if he could come in tomorrow for a building permit for the pool. Mr. Krieger said he could if the proposal met all of the setbacks.

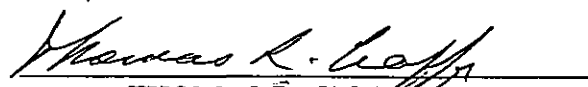
No final action was taken by the Board on the application.

Kevin Sharpe, 5 Woodridge Road, Wynantskill, appeared again regarding his land in Cropsyville near the Callanan Industries mine. In 2002-03, Callanan purchased another parcel of 40 acres located between his parcel and the existing mine. That parcel is zoned agricultural, but Callanan is mining on it. Callanan is quarrying within 25 feet of his parcel. DEC is aware of this. Mr. Kreiger stated that he has been looking into the situation. He has the DEC maps. Attorney Cioffi noted that the Zoning Board of Appeals is not a code enforcing body. It is the Code Enforcement Officer who enforces the Zoning Ordinance. Mr. Sharpe can contact Mr. Kreiger directly to ascertain the status of his investigation into the alleged zoning violation.

There being no further business, Member Steinbach made a motion to adjourn. Member Cipperly seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
July 30, 2011

Respectfully submitted,


THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary

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 in 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

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 September 19, 2011, at 6:00 P.M.

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

Member Steinbach was absent. 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 Chairman noted that the August, 2011 Minutes would be considered for approval at the October meeting.

The next item of business was further consideration of the appeal and petition of WAL-MART REAL ESTATE BUSINESS TRUST, owner-applicant, dated April 11, 2011, for a variances pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the proposed Wal-Mart Supercenter expansion at 760 Hoosick Road. Attorney Mary Beth Slevin and Charles Jordan appeared for the applicant. Attorney Slevin noted that the amendment to the Wal-Mart planned development district to permit the Supercenter expansion had been granted by the Town Board. Site plan approval is pending before the Planning Board. The matter of the signage at the Supercenter needs to be resolved by this Board. Ms. Slevin stated that due to concerns expressed by the Board at an earlier meeting, the application has been amended. The Board had indicated that the proposed pylon sign was too large and excessive in height. The proposal has now been revised to make the pylon sign 20 feet in height and less than 35 sq. ft. in area on each side. Additionally, the applicant realized that it had miscalculated the area of the signage in the original variance application. They are now requesting total signage of 362 sq. ft., including the pylon sign, which is only 62 sq. ft. over the maximum allowed of 300 sq. ft. Ms. Slevin also noted that they wanted the letters on the main Wal-Mart sign to exceed the maximum permitted height of 3 feet. This was shown on the original drawings but no specific request for a variance on that issue was made.

There were no comments from the Board or the public. Attorney Cioffi inquired about the referral to the County. Mr. Kreiger stated that the County had indicated that local considerations

should prevail. It was noted that the SEQRA review had been completed on a coordinated basis in the context of the PDD amendment review. Attorney Cioffi explained that the requested variance concerning the size of the letters on the main sign was not included in the hearing notice. To proceed, he stated, a new hearing notice would need to be prepared and published. It will be heard at the October 17 meeting. Member Trzcinski made a motion to continue this matter to October 17 as well. Member Cipperly 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. There was no appearance by the applicant.

The next item of business was further consideration of 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 noted that he had previously recused himself with respect to this matter and left the hearing room. Member Cipperly assumed the role of Temporary Chairman as he had during the public hearing on the appeals. Attorney Cioffi stated that the public hearing on the appeals had been conducted and closed and that the Board was still within its statutory period to render a decision. He noted, however, that an issue had been raised by the appellant that needed to be addressed by the Board. Specifically, Supervisor Herrington had written and submitted a letter to the Board responding to statements made at the public hearing to the effect that Supervisor Herrington had a conversation with Brendan and Sean Gallivan regarding whether they should purchase the 43 acre parcel of land zoned "Schools and Cemeteries", which is one of the subjects of this proceeding. In its Brief, Oakwood objected to the Supervisor's submission of that letter and stated that either the letter should be rejected by the Board or the public hearing should be reopened to allow Oakwood to respond to the Supervisor Herrington's letter.

Member Cipperly stated that he had read Supervisor Herrington's letter. It was received after the fact, after the public hearing. Member Schmidt stated that he is open to either rejecting the letter or reopening the public hearing on the issue raised in the letter. Attorney Cioffi was asked whether the Board could reopen the public hearing on the single issue of the alleged conversation between Supervisor Herrington and the Gallivans regarding the purchase of the 43 acre parcel. Attorney Cioffi stated that in his opinion, the Board would have the power and discretion to do so.

Attorney Lawrence Schillinger, representing Oakwood, stated that he was reiterating Oakwood's request - either reject the Supervisor's letter or reopen the public hearing. He stated that Oakwood was prepared to have the public hearing reopened. Attorney Andrew Gilchrist, representing the Code Enforcement Officer, stated that he had no objection to reopening the hearing so long as it was limited to the single issue.

Member Trzcinski made a motion to go into private session to ask questions of the Board's attorney. Member Schmidt seconded. The motion carried 3 - 0. The Board went into private session. At the conclusion of the private session, Member Schmidt made a motion to return to Regular Session. Member Trzcinski seconded. The motion carried 3 - 0. Attorney Cioffi noted that legal questions were asked and answered in the private session and no formal action was taken.

Member Trzcinski made a motion to reopen the public hearing on the appeals for the purpose of receiving testimony and evidence from the parties, only, on the sole issue of a conversation which is alleged to have occurred between Sean and Brendan Gallivan and Supervisor Herrington pertaining to the purchase by the Gallivans or one of their companies of the 43 acre parcel zoned "Schools and Cemeteries" which is one of the subjects of the proceeding. Member Schmidt seconded. The motion carried 3 - 0. The hearing on that issue will be held on October 17. A hearing notice will be published.

Harry Esspathiadies, 116 Hickory Court, asked about the procedure for the reopened hearing and also asked for a copy of the letter Supervisor Herrington had submitted to the Board. Attorney Cioffi explained the procedure but stated that he would need to think about the document request and suggested that he could file a FOIL request if he wished. Michael Schongar stated that he wants a copy of the letter as well. If the Gallivans have a copy of the letter, why can't he have it. Attorney Cioffi noted that Oakwood is a party to the appeal and the neighbors residing in North Forty are not. Attorney Cioffi stated that he would give further consideration as to whether the letter was a public document that could be disclosed but wanted to make sure that there were no mistakes made in procedure.

Member Schmidt then made a motion to adjourn. Member Trzcinski seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
September 28, 2011

Respectfully submitted,



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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 October 17, 2011, at 6:00 P.M.

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

Member Steinbach was absent. 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.

As to the August, 2011 Minutes, Member Trzcinski noted that on page 4, 3rd line from the top, the word "new" should read "knew". Also, she noted, that on page 5, third paragraph, eighth line from the bottom, the words "that that" should read "that they". Member Schmidt made a motion to approve the Minutes as corrected. Member Cipperly seconded. The motion carried 4- 0.

As to the September, 2011, Minutes, Member Trzcinski noted that on page 2, sixth line from the top, there is an indication of a 5 - 0 vote on a motion. There were only four members present so the vote should have been 4 - 0. Member Trzcinski made a motion to approve the Minutes as corrected. Member Schmidt seconded. The motion carried 4 - 0.

The next item of business was the appeal and petition of PAT PATTERSON - THE SIGN RESOURCE o/b/o TRACTOR SUPPLY CO. , applicant, dated September 14, 2011, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the Tractor Supply Co. store to be located at 864 Hoosick Road, in the Town of Brunswick, because a maximum of two (2) signs are permitted for the site and three (3) signs are proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Member Cipperly stated that he was recusing himself from this matter and left the meeting room. Fred Early, from Sign Works, 27 Carey Road, Queensberry, stated that his firm was appearing for The Sign Resource. He stated Tractor Supply Co. wants a second wall sign on its building, the same as the existing, approved sign that you see coming east. They are concerned about identification of the business from the west bound approach. Coming west, you go up a grade, and all you see is a block building. People need identification time so they can shift lanes, etc., without

causing traffic problems. The pylon sign is fairly small and mainly identifies the entrance way so people don't try to enter on McChesney Avenue. Mr. Kreiger noted that the Planning Board did not address the third sign issue, but did state that it did not want to see a bare block wall on the building. He also stated that adding the third sign would not exceed the total permitted signage.

The Chairman stated that the main sign on the building is very visible. Mr. Early stated that the problem was the western approach. Reed Bissell, 54 Deepkill Road, stated that this is the ugliest building in Town. The owners were aware of the Sign Law when they came to town. Member Trzcinski said she does not think the third sign is needed and suggested that maybe they could revamp the other signs. Mr. Kreiger said that the pylon sign is already at its maximum. Mr. Early stated that the hardship is the western approach. Making the other sign bigger will not help.

Mike Czornyj, Planning Board member, reiterated that the Planning Board did not say there should be another sign. The Planning Board just stated that they should spruce up the building with a reverse dormer. The Chairman stated that he would like to see the building completed and then decide about the third sign. He wants to hold hearing open. Mr. Early stated that the only issue is line of sight and traffic safety. Mr. Kreiger stated that County Planning had returned the referral stating that local considerations should prevail. Attorney Cioffi asked whether the applicant had submitted an EAF. Mr. Kreiger said he would have them submit one. The Chairman made a motion to continue the public hearing to the next meeting. Member Schmidt seconded. The motion carried 3 - 0.

The next item of business was the appeal and petition of WAL-MART REAL ESTATE BUSINESS TRUST, owner-applicant, dated September 2, 2011, for variances pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the proposed Wal-Mart Supercenter expansion at 760 Hoosick Road, in the Town of Brunswick, because the proposed signage violates the maximum permitted letter height of 3 feet (3') in that three (3) letters are proposed to be 5 feet 6 inches (5' 6") in height and four (4) letters are proposed to be 4 feet 3 and one-quarter inches (4' 3 1/4") in height. Attorney Cioffi read the Notice of Public Hearing aloud.

Mary Beth Slevin, Esq., and Charles Jordan, Architect, appeared for Wal-Mart. Attorney Slevin stated that this is part of the 30,000 sq. ft. expansion of the existing store. There are 8 signs on the existing building. Wal-Mart now proposes 5 signs on the building and one pylon sign. The pylon sign is necessary for traffic coming from the west. The signs on the store are not visible from that direction. Except for the "Wal-Mart" sign on the building, the rest of the signs are directional, showing the location of the various major areas of the store. Mr. Jordan added that there are 3 vestibules in the new store, each identified by a sign. This specific variance involves only the proposed "Wal-Mart" sign on the building. They want the W, L and the T to be 5'6" in height, and the rest of the letters to be 4' 3 1/4" in height.

At Attorney Cioffi's request, Attorney Slevin summarized the relief requested in the two pending variance requests. Wal-Mart is asking that the maximum total signage be increased from 300 sq. ft. to 362 sq. ft. They also request that 6 signs be permitted, rather than 2. Finally, they are requesting to exceed the 3' letter height maximum as indicated above. The pylon sign proposal was modified so a variance is no longer required. Jim Tkaick, Route 2, questioned the pylon sign. He

noted that they are rare for Wal-Marts. Subway probably has the highest sign in town. Reed Bissell stated that why have a law if you are just going to make exceptions to it.

Member Trzcinski stated that she did not think the oversized letters were needed. Member Schmidt stated that the directional signs are convenient and the total square footage requested does not seem out of line. He is concerned about the oversized letters. The Chairman stated that he is also concerned about the oversized letters.

Member Schmidt made a motion to close the public hearing on the sign variance requests. Member Cipperly seconded. The motion carried 4 - 0. A written decision will follow.

The next item of business was further consideration of 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 noted that he had previously recused himself with respect to this matter and left the hearing room. Member Cipperly assumed the role of Temporary Chairman as he had during the public hearing on the appeals. Member Cipperly stated that the public hearing on the appeals was reopened by the Board last month solely for the purpose of receiving testimony and evidence from the parties, only, on the sole issue of a conversation which is alleged to have occurred between Sean and Brendan Gallivan and Supervisor Herrington pertaining to the purchase by the Gallivans or one of their companies of the 43 acre parcel zoned "Schools and Cemeteries", which is one of the parcels involved in this proceeding. Attorney Cioffi read the Notice of Public Hearing pertaining to the reopened public hearing aloud. Member Cipperly reiterated that the public hearing would be limited to receiving evidence and testimony from the appellant and from the Town, only, on the limited issue mentioned previously. He then asked John Henry, Esq., representing the appellants, to proceed.

Attorney Henry stated that the hearing tonight was limited to the one issue. Supervisor Herrington submitted a letter to the Board in the Town's post-hearing submission on the appeals. Appellants responded with an affidavit from Sean Gallivan. They also asked that the hearing be reopened. In addition to the Affidavit from Sean Gallivan, Mr. Henry handed up an Affidavit from Brendan Gallivan pertaining to the alleged conversation they had with Supervisor Herrington.

Attorney Henry stated that the issue is what the Gallivans were told by Supervisor Herrington before they purchased the 43 acre parcel zoned "Schools and Cemeteries". A conversation did take place with the Supervisor. That such a conversation occurred is consistent with the Town putting that parcel in an Empire Zone. Clearly, the Gallivans purchased this property with the full knowledge of the Town. The appeals should be sustained and the Notices of Violation stricken.

Member Trzcinski said she had a problem with the fact that, assuming the conversation did take place as claimed, the Gallivans did not get anything in writing from the Supervisor. They are business savvy people. Attorney Henry countered that they exercised due diligence by going to the Town in the first place. Member Trzcinski also asked why the Gallivans did not make inquiries when the parcel was assessed as if it were zoned Industrial when it was not. Mr. Henry also stated that the "writing" confirming that the conversation between the Gallivans and Supervisor Herrington had taken place is the Empire Zone designation granted by the Town.

Member Cipperly asked what the Gallivans mean when they say they "went to the Town". Attorney Henry stated they were referring to pre-purchase meetings with Supervisor Herrington, and matters pending before the Town Board, Planning Board and the Code Enforcement Officer.

Member Cipperly then recognized Attorney Andrew Gilchrist, representing the Town. Mr. Gilchrist stated that the only ways that property can be used for something for which it is not zoned is to obtain a change in zoning from the Town Board or obtain a use variance from the Zoning Board of Appeals. The Gallivans did neither in this case. They just used the 43 acre parcel zoned "Schools and Cemeteries" for industrial uses to expand its business. Attorney Gilchrist also noted that in 2002, Oakwood went to the Planning Board for site plan approval on its original 5 acre parcel which is zoned Industrial. They also went back to the Planning Board 2 years later to amend its site plan to expand a garage on the property. This begs the question of why Oakwood did not go back to the Planning Board when it expanded its business operations onto the 43 acre parcel and the 26 acre parcel.

Attorney Gilchrist also noted that there were three applications to the State for Empire Zone designation on their properties. One was made by SM Gallivan, Inc. A second was made by another entity. The only Empire Zone application made by Oakwood Property Management was in 2004 and pertained to the 43 acre parcel. The application stated that the reason for seeking the designation was to develop commercial properties for lease to other entities. This had nothing to do with expanding Oakwood's mulch business. Mr. Gilchrist noted that the Affidavit submitted by Brendan Gallivan refers to a second conversation with Supervisor Herrington, this one pertaining to the 26 acre parcel. But only the 43 acre parcel is in an Empire Zone, not the 26 acre parcel.

Mr. Gilchrist stated that credibility was an important issue here. The "writing" that the Gallivans should have obtained from the Town was site plan approval for its expanded operations. Why didn't they do so?


Supervisor Philip Herrington stated that would have been at the public hearing if he knew that his name was going to come up. What the Gallivans have been saying about him and these conversations is totally untrue. In Sean Gallivan's affidavit, he states there was a meeting and a conversation about the purchase of the 43 acre parcel in the topsoil office in the middle cow barn at Herrington Farms. The topsoil office is a very small room. There is one chair in that office. He does not do Town business in that office. They have a nice, large office, with tables, chairs and good lighting at the Farm, which they use for meetings. The Gallivans are claiming that he encouraged them to buy the 43 acre parcel. He has been on the Town Board for 22 years. There is no way he would tell someone to spend thousands of dollars on a piece of land just on his say so. What he always does is to direct the person to the appropriate Board or official of the Town to seek the needed approval. He rarely goes to Planning Board or Zoning Board of Appeals meetings. He does not get involved in those proceedings. He does not try to influence those Boards. To be clear, stated Supervisor Herrington, the meeting alleged to have occurred by the Gallivans never happened.

There being nothing further from the parties, Member Trzcinski made a motion to close the public hearing. Member Schmidt seconded. The motion carried 3 - 0.

Member Schmidt then made a motion to adjourn. Member Trzcinski seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
October 31, 2011

Respectfully submitted,



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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 November 21, 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

Member Steinbach was absent. 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.

As to the October, 2011 Minutes, Member Trzcinski noted that on page 2, 1st full paragraph from the bottom, 8th line from the top of the paragraph, the letter "M" was omitted from the list of letters and should be added. She then made a motion to approve the Minutes as corrected. Member Steinbach seconded. The motion carried 5 - 0.

The next item of business was further consideration of the appeals filed by Oakwood Property Management LLC from Notices of Violation issued by the Code Enforcement Officer in connection with its business activities at 215 Oakwood Avenue. Chairman Hannan and Member Steinbach left the meeting room, having previously recused themselves from the matter. Member Cipperly assumed the Chair. After a brief discussion, Member Trzcinski made a motion to schedule a special meeting for December 5, 2011, at 4:00 P.M., to consider and deliberate on the pending appeals. Member Schmidt seconded. The motion carried 3 - 0.

The next item of business was further consideration of the appeal and petition of PAT PATTERSON - THE SIGN RESOURCE o/b/o TRACTOR SUPPLY CO. , applicant, dated September 14, 2011, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the Tractor Supply Co. store to be located at 864 Hoosick Road, in the Town of Brunswick, because a maximum of two (2) signs are permitted for the site and three (3) signs are proposed. Member Cipperly left the meeting room, having previously recused himself from this matter.

Fred Early, from Sign Works, 27 Carey Road, Queensberry, for The Sign Resource, appeared.

He recapped that Tractor Supply Co. wants a second wall sign on its building, the same as the existing, approved sign that you see coming east. They are concerned about identification of the business from the west bound approach. Coming west, you go up a grade, and all you see is a block building. People need identification time so they can shift lanes, etc., without causing traffic problems. He stated that Trustco Bank has two wall signs as well as a small free-standing sign facing east. It is similar to what is being requested here.

Chairman Hannan suggested that a smaller second sign on the building be considered. Mr. Early stated that a smaller sign would probably work, but he would need to take it back to his principals. Chairman Hannan said that the pylon sign is very visible. Mr. Early said that traffic coming west bound still has a difficult time identifying the building before they are upon it and don't have time to make the lane change to turn into the parking lot. Chairman Hannan noted that the entrance sign and the pylon sign are huge. Member Trzcinski said that people going to Tractor Supply would not normally be impulse shoppers; their trip to the store would normally be planned and they would know where they were going. She is not in favor of a second sign on the building. Member Schmidt said that he would consider a smaller second sign.

Mr. Early noted that a 6'-3" x 20' sign is now proposed. The next size down is 5' x 16'. There may also be a 4' high sign. Mr. Early said she would speak to his principals and obtain schematics for the smaller signs. He will also prepare a short form EAF. Member Steinbach made a motion to continue the public hearing to December 19, 2011. Member Schmidt seconded. The motion carried 4 - 0.

The next item of business was the appeal and petition of GEORGE and DEBBIE MACY, owners- applicants, dated September 30, 2011, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a temporary carport on a lot located at 11 Russell Court, in the Town of Brunswick, because the proposed construction violates the front yard setback for an accessory structure in that 60 feet is required and 31 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

George and Debbie Macy appeared. Mr. Macy said they want a carport and this is the only place they can put it for safety reasons due to the new road. The structure they are proposing is temporary and portable in nature. It is 18' x 21'. The roof will be red to match the siding on the house. It is a two car carport. They only want to have it for 3 - 5 years. They intend to retire in that time frame move from the area. They will take the carport when they move. They would agree that that be a condition of the variance.

Member Schmidt asked whether variances could be temporary. Attorney Cioffi stated that normally variances run with the land. However, he stated, the applicants could probably stipulate that the variance be temporary in nature. Member Cipperly said that the nature of the site does not lend itself to any other alternative. James Mullahey, 9 Russell Court, the next door neighbor, stated that he has no objection. No one else from the public wished to speak.


Member Cipperly made a motion to classify the matter a Type 2 action under SEQRA. Member Trzcinski seconded. The motion carried 5 - 0. The Chairman offered a resolution granting the variance as requested but it would be effective only for the time that the applicants are the owners

of the property. Member Trzcinski seconded. The motion carried 5 - 0.

There being no further business, Member Steinbach made a motion to adjourn. Member Cipperly seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
November 28, 2011

Respectfully submitted,



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DRAFT MINUTES

A Special Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on December 5, 2011, at 4:00 P.M.

Present at the meeting were: Caroline Trzcinski, Member
E. John Schmidt, Member
Mark Cipperly, Member

Chairman Hannan and Member Steinbach were absent as they had recused themselves from consideration of the matter to be discussed at this meeting. Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary and John Kreiger, Code Enforcement Officer.

Temporary Chairman Cipperly called the Meeting to order at 4:05 P.M. He stated that the purpose of the Special Meeting was to deliberate regarding the Board's decision on the appeals of Oakwood Property Management, LLC, from Notices of Violation dated June 10, 2010, and June 21, 2011, issued by the Code Enforcement Officer in connection with Oakwood's business operations at 215 Oakwood Avenue, and to discuss a draft decision which has been distributed to the Board.

Member Trzcinski inquired regarding the meaning of the term "estoppel" as used in the Briefs and other documents that had been submitted to the Board by the parties. Attorney Cioffi explained the meaning of the term. Member Trzcinski said she is concerned that the zoning issue on this property has never been cleared up. She feels the zoning should be changed or clarified. She noted that Oakwood has apparently been paying taxes based on an activity that the land is not zoned for. Member Cipperly stated that he is concerned as well, but that does not mean that Oakwood should not pay taxes based upon what is actually occurring on the property. Member Schmidt noted that the owners knew what they were being taxed for and never challenged it. They were paying taxes based upon what they were actually doing.

Member Cipperly then raised the issue of the part of the later Notice of Violation that alleges that Oakwood could not use the two parcels not zoned A-40 to access its farm operations on the parcel which is zoned A-40. Member Trzcinski stated that she was concerned that such a position on the part of the Town might violate the Town's Right to Farm Law. She is concerned about creating a precedent that farmers could never use land they own which is not zoned A-40 to reach their farmlands. Attorney Cioffi explained that this is a legal point which is addressed in the Briefs and he urged the Members to carefully consider the arguments on this issue raised by the parties and to contact him with any questions.

Member Trzcinski then made a motion to go into private session to review the Right to Farm

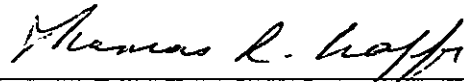
Law with Attorney Cioffi and otherwise ask legal questions. Member Schmidt seconded. The motion carried 3 - 0. Following the private session, Member Trzcinski made a motion to return to regular session. Member Schmidt seconded. The motion carried 3 - 0. Member Cipperly noted that the Board Members had some questions for the Town Attorney. No action was taken in the private session.

Member Schmidt raised the issue of the Empire Zone designations on some of the parcels and the Resolutions concurring in them which had been passed by the Town Board. There was discussion among the Members and Attorney Cioffi on this issue. Member Cipperly raised Oakwood's position that its 2008 proposed site plan, which included all of the parcels, was approved by default because the Planning Board failed to act on the application within the time limited by law. Member Cipperly noted that the Town claims that Oakwood's application was not complete in that it never submitted an Environmental Assessment Form under SEQRA. Attorney Cioffi stated that this issue was addressed in detail by the parties in their Briefs and noted that, generally, an application such as the one in question is not considered complete under State law until SEQRA is complied with.

No one raised any further issues for discussion. Member Trzcinski made a motion to adjourn. Member Schmidt seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
February 18, 2012

Respectfully submitted,



THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

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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 December 19, 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.

As to the November, 2011 Minutes, Member Trzcinski noted that on page 1, it is stated that Member Steinbach was absent. In fact, he arrived late. Also, on page 2, 2nd full paragraph, 2nd line, the word "she" should read "he". She then made a motion to approve the Minutes as corrected. Member Steinbach seconded. The motion carried 5 - 0.

The next item of business was further consideration of the appeals filed by Oakwood Property Management LLC from Notices of Violation dated June 10, 2010, and June 21, 2011, issued by the Code Enforcement Officer in connection with its business activities at 215 Oakwood Avenue. Chairman Hannan and Member Steinbach left the meeting room, having previously recused themselves from the matter. Member Cipperly assumed the Chair. Member Cipperly stated that the matter was on the agenda this evening for the issuance of the Board's Decision on the appeals. He stated that the Board had before it a draft Decision and a draft Resolution adopting the Decision. Member Cipperly stated that he had received three drafts of the Decision, the last one on December 16, and that he had had the opportunity to fully review it. He asked whether the other Members present had received all of the drafts in advance of tonight's meeting and whether they had had an opportunity to review the same. Members Trzcinski and Schmidt acknowledged that they had. Member Cipperly asked whether any of the Members had any questions or wished to discuss the matter further. No one did. Member Cipperly then asked Attorney Cioffi to read the draft Decision aloud.

Attorney Cioffi read the draft Decision aloud. The draft Decision made various findings and

provided that both Notices of Violation were sustained and the appeals denied and dismissed. After the draft Decision was read, Member Steinbach asked whether there was any further discussion. There was none. Member Trzcinski then offered the Resolution Adopting Decision. Member Schmidt seconded the Resolution. The matter was put to a roll call vote with all Members present voting in the affirmative. The Resolution Adopting Decision was declared duly adopted. The Decision and the Resolution Adopting the Decision will be filed separately in the Office of the Town Clerk and are incorporated by reference into these Minutes.

Chairman Hannan and Member Steinbach returned to the meeting room.

The next item of business was issuance of the Board's Decision as regards the appeals and petitions under the Sign Law filed by the Wal-Mart Real Estate Business Trust dated April 11, 2011, and September 2, 2011, in connection with the signage for the Walmart Supercenter expansion at 620 Hoosick Road. Member Hannan stated that the Board had before it a draft Decision and a draft Resolution Adopting the Decision. The Chairman and the other Members acknowledged that they had all received the draft Decision well in advance of this meeting and had had an opportunity to fully review the same. Chairman asked Attorney Cioffi to read the draft Decision aloud.

Attorney Cioffi read the draft Decision aloud. The draft Decision made various findings and essentially provides that the variance to increase the total number of signs from 2 to 6 would be granted, that the variance to increase the total square footage of signage would be granted in part, and that the variance to increase the maximum letter height for the main "Walmart" sign on the building would be denied. After the draft Decision was read, Chairman Hannan asked whether there was any further discussion from Board Members. There was none. He then asked Mary Elizabeth Slevin, Esq., Wal-mart's attorney, whether she wished to say anything. She appealed to the Board to approve the variance regarding exceeding the maximum letter height for the "Walmart" sign on the building. She said that it was mainly a matter of aesthetics and the building would look better with the larger letters. She asked the Board to consider a smaller increase over the maximum letter size than had been proposed.

There was no further discussion from the Board. Member Trzcinski offered the Resolution Adopting Decision. Chairman Hannan seconded. The Resolution was put to a roll call vote and all Members voted in the affirmative. The Resolution was declared duly adopted. The Decision and the Resolution Adopting the Decision will be filed separately in the Office of the Town Clerk and are incorporated by reference into these Minutes.

Member Cipperly then asked to be excused and left the meeting.

The next item of business was the appeal and petition of ELEANOR MONTIEL-OCHOA, applicant, dated November 10, 2011, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a storage barn on a lot located at 520 McChesney Avenue Ext., in the Town of Brunswick, because the proposed construction violates the front setback for an accessory structure in an A-40 District in that 75 feet is required and 20 feet is proposed and also violates the rear setback in that 25 feet is required and 13 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Eleanor Montiel-Ochoa appeared. She stated that they need space for storage and they can't build anywhere else on their property. Most of their land is not flat. The spot proposed is the only space which is large enough and reasonably flat. The proposed barn would be set back further from the road than their existing buildings. Jose Montiel-Ochoa added that they would have to bring in fill to level the area so they can build. They have a business which is run out of the home. Mr. Montiel-Ochoa is a service technician who fixes motors and he has a lot of tools and equipment. They keep them in the garage now, but that means they cannot park a car in there. Mr. Kreiger stated that in his opinion they meet the requirements under the Zoning Ordinance for a Home Occupation.

The Chairman asked whether they had considered renting commercial space. They stated that they had, but that they cannot afford it and have no other employees. Attorney Cioffi stated that they need to file an Environmental Assessment Form because the proposed building and use is not completely residential. This would likely not be a Type 2 action under SEQRA.

Mr. Kreiger added that the County had responded to the referral request under the General Municipal Law by stating that the soils in the area were unstable and recommended that an engineering report be obtained before proceeding. After a brief discussion, Member Schmidt made a motion to adjourn the public hearing to the January 16, 2002, meeting. The Chairman seconded. The motion carried 4 - 0. In the interim, the applicant is to file an EAF and obtain the engineering report recommended by the County.

The next item of business was further consideration of the appeal and petition of PAT PATTERSON - THE SIGN RESOURCE o/b/o TRACTOR SUPPLY CO. , applicant, dated September 14, 2011, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the Tractor Supply Co. store to be located at 864 Hoosick Road, in the Town of Brunswick, because a maximum of two (2) signs are permitted for the site and three (3) signs are proposed.

Fred Early, from Sign Works, 27 Carey Road, Queensberry, for The Sign Resource, appeared. He handed up two proposals for smaller signs as had been requested by the Board. One proposal was to make the sign 17' 3" x 5' 9". The other was to make the sign 15' x 5' 1". The original proposal was 20' x 6' 3". There was a discussion among the Board members as to whether the proposals just reduced the size of the overall white space of the sign but left the letters and logo the same size. It was ultimately determined that the letter and logo sizes were reduced somewhat in the smaller sign proposals. The consensus of the Board was that if an additional sign was to be allowed, it should be the 17' 3" x 5' 9" sign, which appears to have black letters 22 inches in height and a logo 48 inches in height.

The Chairman made a motion to classify the matter an unlisted action under SEQRA. Member Schmidt seconded. The motion carried 4 - 0. Attorney Cioffi then led the Board through the EAF filed by the applicant and the completion of Part 2. No adverse environmental impacts were noted. Member Schmidt made a motion to issue a Negative Declaration under SEQRA. The Chairman seconded. The motion carried 4 - 0.


The Chairman then offered a Resolution approving the variance to permit a third sign for the

premises on the condition that the additional sign be no greater in total area than 99.19 sq. ft, specifically 17' 3" x 5' 9" overall sign size, with black lettering 22 inches in height and a logo height of 48 inches. Member Steinbach seconded. The Resolution was put to a roll call vote. Member Schmidt, Member Steinbach and Chairman Hannan voted in the affirmative. Member Trzcinski voted in the negative. The Resolution was declared duly adopted.

There being no further business, Member Trzcinski made a motion to adjourn. Member Schmidt seconded. The motion carried 4 - 0.

Dated: Brunswick, N.Y.
December 30, 2011

Respectfully submitted,


THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

**RECEIVED
DEC 21 2011
TOWN CLERK**

REGULAR MEETING

December 19, 2011

RESOLUTION ADOPTING DECISION

WHEREAS, appeals and petitions for area variances dated, respectively, April 11, 2011, and September 2, 2011, having been filed by the Wal-Mart Real Estate Business Trust seeking to variances pursuant to the Sign Law of the Town of Brunswick in connection with the proposed signage for the proposed Supercenter expansion of the Wal-Mart Store located at 620 Hoosick Road; and

WHEREAS, the matters having duly come on to be heard at public hearings; and

WHEREAS, the Board having caused to be prepared a written Decision with respect to to the said appeals and petitions, which is annexed hereto; now, therefore, after due deliberation

BE IT RESOLVED, that the annexed Decision be and hereby is approved and adopted in all respects.

The foregoing Resolution, which was offered by Member Trzcinski, and seconded by Chairman Hannan, was duly put to a roll call vote as follows:

MEMBER CIPPERLY	VOTING	Aye
MEMBER SCHMIDT	VOTING	Aye
MEMBER STEINBACH	VOTING	Aye
MEMBER TRZCINSKI	VOTING	Aye
CHAIRMAN HANNAN	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

Dated: December 19, 2011

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Appeals and Petitions of

DECISION

WAL-MART REAL ESTATE BUSINESS TRUST,
Applicant,

For Variances Under and Pursuant to the Sign Law of the Town
of Brunswick

This matter involves two (2) appeals and petitions for variances pursuant to the Sign Law of the Town of Brunswick filed by WAL-MART REAL ESTATE BUSINESS TRUST, owner-applicant, in connection with the signage for the proposed Supercenter expansion of the existing Wal-Mart Store located at 760 Hoosick Road. Initially, the applicant sought variances to exceed the maximum total sign area for the building, to exceed the two-sign limit for the building, and to exceed the maximum allowed square footage for a proposed free-standing sign. The applicant subsequently filed another appeal and petition for a variance to exceed the maximum permitted letter height for the main "Walmart" sign on the building. During the course of the public hearings, the variance requests were "refined" by the applicant. What is now requested are the following variances:

1. To permit a total of six (6) signs, rather than the two (2) signs which are permitted pursuant to the Sign Law; and
2. To permit the maximum total cumulative area of all signs allowed for the store under the Sign Law of 300 sq. ft. to be increased to 362 sq. ft.; and
3. To permit the letters in the main "Walmart" sign on the building to exceed the maximum allowed height of three (3) feet.

Preliminarily, the Board notes that a SEQRA review of the entire, proposed Supercenter expansion project was conducted on a coordinated basis by the Town Board in connection with the amendment of the existing Planned Development District in which the store currently exists and operates to allow the proposed expansion. A negative declaration was issued by the Town Board. No further SEQRA review is therefore required in these matters. As to the referral to the County pursuant to Section 239-m of the General Municipal Law, it was determined that "local considerations should prevail".

Turning to the merits of the applications, the Sign Law of the Town of Brunswick (codified at Chapter 125 of the Brunswick Town Code), specifically Section 125-17, provides that the following criteria must be considered in connection with requests to vary the provisions of the Sign Law:

1. The requested variance must be necessary for the reasonable use of the land and buildings; and
2. The requested variance must be in harmony with the general purposes and intent of the Sign Law; and
3. The requested variances must not be injurious to the neighborhood character or otherwise detrimental to the public welfare; and
4. That the denial of the variance would result in practical difficulty or unnecessary hardship to the owner.

For the purposes of clarity, the three (3) remaining variance requests will be considered separately.

EXCEED MAXIMUM PERMITTED NUMBER OF SIGNS

The applicant asks to have a total of six (6) signs for the store, while the Sign Law permits a maximum of two (2). It is first noted that the existing store has eight (8) signs. The store has been operating for over fifteen (15) years at this point, and there have been no major complaints or issues regarding the existing number of signs, so it would be difficult to conclude that having six (6) signs would be injurious to the neighborhood character or detrimental to the public. The fact that the total area of the six (6) signs now proposed well exceeds the total area of the eight (8) signs on the existing building does not change that conclusion, especially given that the size of the store is being expanded by more than 35,000 sq. ft.

More importantly, it is noted that the major justification for the number of building signs requested is to direct pedestrian and vehicular traffic to the three (3) major entrances and area of the expanded store, i.e., "Market", "Home and Pharmacy", and "Outdoor Living". The Board finds that public safety is one of the primary purposes and goals of the Sign Law. These directional signs will enable and encourage drivers entering the parking lot to park in an appropriate and convenient location depending on what business they need to transact at the store, rather than aimlessly driving around the lot, increasing traffic, and presenting the increased possibility of pedestrian injury and vehicular accidents. For these reasons, the Board finds that the increased number of signs is necessary for the reasonable use of the land and buildings, and that the denial of this request would result in unnecessary hardship and practical difficulty to the applicant.

Considering some of the more traditional criteria for granting area variances is general, the Board also finds that given the size of the expanded store, and the fact that there are already more signs on the existing building than are now requested, the proposed increase in the number of signs is not substantial. Nor does there appear to any feasible alternatives to these proposed directional signs. And, the need for this proposed variance cannot reasonably said to be self-created inasmuch as the reason for the number of signs appears to be substantially safety related.

For the reasons set forth above, the Board concludes that the statutory criteria for this variance have been met.

EXCEED MAXIMUM PERMITTED LETTER HEIGHT ON MAIN IDENTIFIER SIGN

The applicant is requesting to exceed the maximum permitted letter height of three (3) feet on the main "Walmart" identifier sign on the building. They propose that three of the letters be 5' - 6" in height, and four of the letters be 4'-3 1/4" in height.

The only possible justification for this request, other than the obvious desire to have one's logo be as large as possible to stand out for advertising purposes, is for vehicular safety by enabling motorists to identify the store location from a distance. While that might be a valid consideration under other circumstances, it rings a little "hollow" here given the large, free-standing pylon sign being erected at roadside. The store has operated successfully enough to justify a major expansion for many years without letters of this height on the main building sign, so the Board cannot find that the oversized lettering is necessary for the reasonable use of the building or that denying the same would result in unnecessary hardship or practical difficulty. The Board finds that the requested variance is substantial, some of the letters are nearly twice as tall as the law permits. The additional signs being permitted over the number normally allowed, especially the pylon sign, are alternatives to excessively sized letters. And clearly, the need for this variance is self-created. The only viable motivation for the oversized letters is profit-related.

With respect to this request, the Board finds that the statutory variance criteria have not been established.

EXCEED MAXIMUM TOTAL SIGN SQUARE FOOTAGE FOR THE STORE

The applicant is requesting to increase the maximum total permitted signage area for the store from 300 sq. ft. to 362 sq. ft. The Board notes that the store currently has eight (8) signs, with a combined square footage of 226.5 square feet. Currently proposed are six (6) signs with a combined area of 362 sq. ft. Some of the increase is due to the new pylon sign and the needed size of the "directional" signs discussed above to permit them to fulfill their purpose. Some of the increase is due to the proposed size of the letters of the primary identifier sign on the building.

Speaking "globally", the Board does not find the request to exceed the 300 sq. ft. maximum limitation to be unreasonable. As stated above, the building is being substantially expanded, so an increase in the signage is not unreasonable and will not result in a perceived marked increase in the signage. An increase of the magnitude requested will not, in the view of this Board, have a detrimental impact on the neighborhood character or be detrimental to the public. Obviously, there are many commercial uses with their attendant signages in the vicinity, such that this level of total signage will not appear excessive or out of place. Given the magnitude of the expansion, and the size of the resultant building, the increase in the total signage over that normally allowed is not excessive or "substantial". Nor do there appear to be any reasonable alternatives to increasing the maximum permitted signage area.

With respect to this request, the Board finds that the statutory variance criteria have been established to justify an increase over the 300 sq. ft. maximum sign area limitation. That said, since,

as indicated above, the oversized lettering on the main "Walmart" identifier sign will not be permitted, the increase in total sign area will be less than the 62 additional square feet requested. The Code Enforcement Officer has calculated that the total square footage of the signage showed on applicant's revised plans is approximately 344 square feet, if the oversized letters shown on the plans are reduced to the maximum height of 3 feet and the total length of the sign remains the same.

CONCLUSION

Based upon all of the foregoing, the Board hereby rules and decides as follows:

1. The applicants request for a variance to increase the maximum number of signs permitted for the expanded Wal-mart Supercenter store located at 760 Hoosick Road from two (2) to six (6), be and hereby is granted and approved as set forth in applicant's revised plans.
2. The applicants request for a variance to exceed the maximum permitted letter height of 3 feet on the main "Walmart" identifier sign to be located on the expanded Wal-mart Supercenter store located at 760 Hoosick Road be and hereby is denied in all respects.
3. The applicants request for a variance to increase the maximum total permitted signage area for the expanded Wal-mart Supercenter store located at 760 Hoosick Road from 300 sq. ft. to 362 sq. ft., be and hereby is granted to the extent that the maximum total permitted signage area is increased to 344 square feet, and no part thereof shall include letters which exceed the maximum permitted height of 3 feet.

Dated: Brunswick, New York
December 19, 2011

RECEIVED
DEC 21 2011
TOWN CLERK

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

REGULAR MEETING

December 19, 2011

RESOLUTION ADOPTING DECISION

WHEREAS, appeals dated, respectively, June 10, 2010, and June 21, 2011, having been filed by Oakwood Property Management, LLC, in connection with Notices of Violation issued by the Code Enforcement Officer in connection with appellant's business operations on three (3) parcels of land located off Oakwood Avenue, in the Town of Brunswick; to wit: Tax Map Parcel No. 90-1-14, Tax Map Parcel No. Parcel 90-1-13.1, and Tax Map Parcel No. Parcel 90-1-12.2; and

WHEREAS, the matters having been duly consolidated and heard at a public hearing; and

WHEREAS, the Board having caused to be prepared a written Decision with respect to to the said appeals, which is annexed hereto; now, therefore, after due deliberation

BE IT RESOLVED, that the annexed Decision be and hereby is approved and adopted in all respects.

The foregoing Resolution, which was offered by Member Trzcinski, and seconded by Member Schmidt, was duly put to a roll call vote as follows:

MEMBER CIPPERLY	VOTING	Aye
MEMBER SCHMIDT	VOTING	Aye
MEMBER STEINBACH	VOTING	Recused
MEMBER TRZCINSKI	VOTING	Aye
CHAIRMAN HANNAN	VOTING	Recused

The foregoing Resolution was thereupon declared duly adopted.

Dated: December 19, 2011

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Administrative Appeals Filed By

OAKWOOD PROPERTY MANAGEMENT, LLC

DECISION

Appellant

Regarding Notices of Violation Issued by the Town of Brunswick
Code Enforcement Officer dated June 10, 2010, and June 21, 2011

These matters are appeals filed by Oakwood Property Management, LLC (hereinafter "Oakwood" or "appellant") from Notices of Violation dated, respectively, June 10, 2010, and June 21, 2011, issued by the Code Enforcement Officer in connection with Oakwood's operations on three (3) distinct parcels of land located off Oakwood Avenue, in the Town of Brunswick. The three (3) parcels in question may identified by Tax Map No. as follows:

- Parcel 90-1-14 (hereinafter "Parcel 14")
- Parcel 90-1-13.1 (hereinafter "Parcel 13")
- Parcel 90-1-12.2 (hereinafter "Parcel 12")

Referring to the Official Zoning Map of the Town of Brunswick (Brunswick CEO Exhibit 1), Parcel 14 is zoned "Industrial". Parcel 13 is zoned "S&C Schools and Cemeteries", although, as will be discussed in detail below, one of appellant's arguments is that this parcel is un-zoned. Parcel 12 is zoned "A-40 Agricultural".

The appellant, Oakwood Property Management, LLC is the current owner of the three (3) parcels. Some or all of the parcels may have been previously owned by other entities (e.g. S.M. Gallivan, LLC, The Gallivan Corporation, etc.) having some or all of the same principals. Some or all of the business activities which are the basis of these proceedings are and were undertaken by these and other related entities. Except where specifically stated otherwise, where, in this Decision, the Board refers to "appellant" or "Oakwood", it is referring collectively to all of these related entities.

Generally, appellant engages in various commercial and industrial business operations on these three parcels. Such activities include, among others, mulch processing, stockpiling and distribution; topsoil blending and distribution; a commercial landscaping business, a snow plowing business, and truck parking and depot. It also appears from the record that other non-related entities engage in commercial enterprises on appellant's parcels.

The first Notice of Violation, dated June 10, 2010, (see Oakwood Exhibit 1) essentially

alleges that various business activities, including mulch processing, stockpiling and distribution; topsoil blending and distribution; operation of a commercial landscaping enterprise, and truck parking and depot; are being conducted on Parcel 13 and Parcel 12, and that those parcels are not zoned to allow such activities and that, in addition, no site plan approval for those activities on those parcels was obtained by Oakwood pursuant to the Site Plan Review Act. Said Notice of Violation, dated June 10, 2010, also essentially alleges that those same business activities are being conducted on Parcel 14 outside of the bounds and in violation of a site plan for said parcel approved by the Planning Board on April 18, 2002.

The second Notice of Violation, dated June 21, 2011, (see Oakwood Exhibit 2) essentially alleges that to the extent Oakwood claims to be conducting a "farm operation" on Parcel 12, that any use of Parcel 13 or Parcel 14 for the purpose of access of the farm operation violates the Zoning Ordinance because Parcel 13 and Parcel 14 are not zoned for "Agricultural" uses. The Notice of Violation dated June 21, 2011, further alleges that all mulch processing, stockpiling, and/or distribution activities being conducted on Parcel 12, and the manner in which they are being conducted, do not constitute farm operations and therefore violate the Zoning Ordinance. Finally, the Notice of Violation dated June 21, 2011, further alleges that all topsoil blending and/or distribution activities being conducted on Parcel 12, and the manner in which they are being conducted, do not constitute farm operations and therefore violate the Zoning Ordinance.

Oakwood appealed both Notices of Violation to this Board (see Oakwood Exhibit 4 and Exhibit 5) raising various factual and legal defenses.

The appellant's appeal of first Notice of Violation, dated June 10, 2010, was originally scheduled to be heard in September, 2010. Before the merits of the appeal were heard, however, a Memorandum of Agreement, dated October 14, 2010, was entered into by the appellant and the Town, and approved by this Board, which, without getting into a lot of detail, provided for the resolution of all outstanding issues pending between the Town and appellant, including the appeal, on various terms and conditions. The appeal was stayed during the time the Memorandum of Agreement remained in effect. Ultimately, however, on or about June 6, 2011, the appellant advised the Town that it was no longer interested in pursuing the resolution of all outstanding issues in accordance with the Memorandum of Agreement. This resulted in the appeal of the first Notice of Violation being restored to the Board's agenda. On or about June 21, 2011, the Brunswick Code Enforcement Officer issued the second Notice of Violation referred to above. The appeal of the first Notice of Violation dated June 10, 2010, and the appeal of the second Notice of Violation, dated June 21, 2011, ultimately came on to be heard jointly before this Board on August 15, 2011. The public hearing on the appeals was closed on August 15, 2011, subject to a post-hearing Briefing schedule. The public hearing was reopened by this Board on September 19, 2011, when an issue arose regarding the Town's post-hearing submission, which will be discussed in more detail below. The "reopened" public hearing was held and concluded on October 17, 2011. It is noted that prior to the commencement of the public hearing on the two (2) appeals, an Advisory Opinion dated August 4, 2011, was obtained from the Planning Board, as is required by the Zoning Ordinance.

With a few exceptions, the underlying facts are really not substantially in dispute. The basic outline of what happened here is fairly obvious from the record. In 2002, the appellant received Site

Plan Approval to conduct commercial and industrial operations on Parcel 14, which is the first parcel of the three it acquired. At some point subsequently, the appellant acquired Parcel 13 and Parcel 12. Over the years, essentially between 2002 and 2007, the appellant extended its commercial and industrial operations from Parcel 14 onto the adjoining Parcels 13 and 12 without formal approvals from the Town or any site plan amendment for those extensions. During that same period, the Town began to receive complaints from the owners of neighboring residential properties, most notably in the North Forty subdivision, which adjoins the parcels owned by appellant, pertaining to excessive noise and odors emanating from the appellant's operations. The complaints became more and more pronounced as time went on and by 2007 - 2008, the Code Enforcement Officer advised the appellant that its business operations had extended beyond its approved site plan on Parcel 14 and would need to obtain an amended site plan approval. Appellant did apply for an amended site plan approval, but the Planning Board questioned whether Parcel 13 and Parcel 12 were properly zoned for the business activities which had been extended onto those parcels. As a result of the zoning issues, no final action on the amended site plan application was ever taken by the Planning Board. The appellant then filed an application with the Town Board for the establishment of a Planned Development District under the Town's Zoning Ordinance seeking, essentially, to 're-zone' Parcel 13 and Parcel 12 to essentially permit the business operations which had extended thereon to continue. During that process, and in the face of continued complaints and objections from neighboring residential property owners, the Code Enforcement Officer issued the first Notice of Violation mentioned above. Oakwood appealed the Notice of Violation to this Board. Before the appeal was heard, the appellant and the Town entered into a Memorandum of Agreement meant to resolve all outstanding issues between them. Essentially, and put very simply, it was agreed that appellant would remove all industrial activities from Parcel 13 and Parcel 12 and limit them to Parcel 14 and another industrially-zoned parcel it owned. In return, the Town would entertain an application to re-zone Parcel 13 and Parcel 12 to B-6 Commercial, so they could be used for some "light" business activities, but not the industrial type operations then existing there. For whatever reason, the appellant eventually rescinded the Memorandum of Agreement, causing the first Notice of Violation to be reinstated and a second one to be issued. The appeals of both those Notices of Violation are what the Board is now considering.

Based upon the entire record in this proceeding, the Board hereby makes the following factual determinations.

FINDINGS OF FACT

1. Parcel 14, comprising approximately 5.4 acres of land, is zoned "Industrial" (see Official Zoning Map of the Town of Brunswick - Brunswick CEO Exhibit 1).
2. Parcel 13, comprising approximately 43 acres of land, is depicted on the Official Zoning Map of the Town of Brunswick as being zoned "S&C Schools and Cemeteries" (see Brunswick CEO Exhibit 1).
3. Parcel 12, comprising approximately 26 acres of land is zoned "A-40 Agricultural" (see Official Zoning Map of the Town of Brunswick - Brunswick CEO Exhibit 1).

4. On April 18, 2002, the Town of Brunswick Planning Board granted site plan approval to appellant for its mulch operation on Parcel 14 (Brunswick CEO Exhibit 4 (Planning Board Minutes) and Brunswick CEO Exhibit 5 (Site Plan Map)).
5. On August 8, 2002, the Town Board adopted a Resolution supporting and concurring in the application of Rensselaer County to designate certain areas of Rensselaer County as a an Empire Zone. (See Resolution No.4, 2002 -Brunswick CEO Exhibit 13). This Resolution applied only to Parcel 14 (see August 16, 2010 letter to Zoning Board of Appeals from John Henry, Esq., in connection with appellant's appeal from the Notice of Violation dated June 10, 2010 - Oakwood Exhibit 3 .
6. On December 18, 2002, the Town Building Department approved an Application for Excavation Permit submitted by SM Gallivan Corporation on December 18, 2002. The Application applied solely to Parcel 14 and described the existing use and occupancy as "vacant land". The intended purpose was listed as "fill", and the estimated cost was listed as "\$0". A notation on the approved Application indicates that the permit was renewed sometime in 2004. (See approved Application for Excavation Permit - Brunswick CEO Exhibit 6).
7. On June 12, 2003, the Town Board adopted a Resolution supporting and concurring in revisions being proposed by Rensselaer County to the Rensselaer County Empire Zone. (See Resolution No. 36, 2003 -Brunswick CEO Exhibit 13). This Resolution applied only to Parcel 14 (see August 16, 2010 letter to Zoning Board of Appeals from John Henry, Esq., in connection with appellant's appeal from the Notice of Violation dated June 10, 2010 - Oakwood Exhibit 3) .
8. On or about April 27, 2004, appellant filed an application to amend the approved site plan on Parcel 14 to include a new building for an auto repair shop (see Application to Develop - Brunswick CEO Exhibit 8 and Planning Board Minutes April 15, 2004 - Brunswick CEO Exhibit 9).
9. On May 6, 2004, the Planning Board approved an amended site plan for Parcel 14 which added the new auto repair shop building to the existing site plan for that parcel. (See Planning Board Minutes May 6, 2004 - Brunswick CEO Exhibit 10 and Site Plan Map - Brunswick CEO Exhibit 11).
10. On June 7, 2004, the Town Building Department approved an Application for Building Permit in connection with the new auto repair shop building on Parcel 14 (see approved Application for Building Permit - Brunswick CEO Exhibit 12).
11. On December 8, 2005, the Town Board adopted a Resolution supporting and concurring in Rensselaer County's application for re-designation of certain areas within the Town as an Empire Zone. (See Resolution No. 83, 2005 - Brunswick CEO Exhibit 13). This Resolution applied to and included among other parcels, Parcel 14 and Parcel 13.
12. On July 17, 2006, the Town Building Department issued a Certificate of Occupancy for the new auto repair shop building constructed on Parcel 14. (See Certificate of Occupancy - Brunswick CEO Exhibit 12).

13. On June 14, 2007, the Code Enforcement Officer sent a letter to the appellant stating that the Planning Board was concerned that appellant's business activities had expanded beyond the approved site plan, with mulch and vehicles being stored on adjacent parcels of land. The letter stated that use of the adjoining parcels "could be allowed" but that such use must first be approved by the Planning Board through the site plan approval process. (See letter dated June 14, 2007 - Brunswick CEO Exhibit 18).

14. On July 16, 2008, the Code Enforcement Officer sent a letter to appellant stating that they were in violation of their approved site plan in that their business operations had expanded beyond the original site. The letter stated that an appellants would need to apply for an amended site plan depicting the new areas being used for the business and the uses thereon. (See letter dated July 16, 2008 - Brunswick CEO Exhibit 18).

15. Sometime in the latter part of 2008, the appellants did file an application to amend their site plan. The proposed amended site plan was submitted in the form of a map prepared by Harold Berger, P.E. , dated August 7, 2008, entitled "Existing Site Plan" (see Brunswick CEO Exhibit 19). The map indicated that appellant's business operations had expanded beyond Parcel 14 and onto Parcel 13 and Parcel 12, and had also expanded on Parcel 14 beyond the scope approved in the April 2002 Site Plan for that parcel. The appellant's application for a revised site plan first came before the Planning Board on October 2, 2008. (See Planning Board Minutes October 2, 2008 - Brunswick CEO Exhibit 20. At that meeting, the Planning Board placed the matter of the amended site plan on its November 6, 2008, meeting agenda.

16. At the November 6, 2008, meeting of the Planning Board, the Planning Board noted that the matter of appellant's revised site plan application had been adjourned to the December 4, 2008, meeting, at appellant's request, so it could develop additional information. There was also discussion among the Board members of possible zoning issues regarding the expansion of appellant's business onto Parcel 13 and Parcel 12. (See Planning Board Minutes November 6, 2008 - Brunswick CEO Exhibit 21).

17. At the November 20, 2008, meeting of the Planning Board, there was further discussion of zoning issues regarding Parcel 13 and Parcel 12, as well as possible options for the appellant to pursue regarding the zoning issues. (See Planning Board Minutes November 20, 2008 - Brunswick CEO Exhibit 22).

18. At the December 4, 2008, and December 18, 2008, meetings of the Planning Board, there was further discussion regarding zoning compliance issues pertaining to appellant's use of Parcel 13 and Parcel 12 for its business. (See Planning Board Minutes December 4, 2008 - Brunswick CEO Exhibit 23, and Planning Board Minutes December 18, 2008 - Brunswick CEO Exhibit 24).

19. At the January 15, 2009, meeting of the Planning Board, the appellant's application for an amended site plan was adjourned without date, citing zoning compliance issues. (See Planning Board Minutes January 15, 2009 - Brunswick CEO Exhibit 25).

20. There is no record in the files of the Town of Brunswick Building Department regarding the

appellant's application for an amended site plan of a completed Environmental Assessment Form ever having been completed or submitted by appellant. (See Transcript of August 15, 2011, public hearing, page 100).

21. In early March, 2009, a meeting took place at Brunswick Town Hall regarding the expansion of appellant's business and the related zoning issues. Representatives from Rensselaer County, the Town and appellant participated. Zoning issues, issues pertaining to the Empire Zone designations for the involved parcels, and possible options for the appellant to pursue regarding the zoning issues were discussed. (See e-mail from Jack Bonesteel to Robert Pasinella dated March 2, 2009 - Brunswick CEO Exhibit 26).

22. On June 11, 2009, appellant filed an application to the Town for the establishment of a Planned Development District pursuant to the Zoning Ordinance of the Town of Brunswick pertaining to Parcel 13 and Parcel 12. (PDD Application - Brunswick CEO Exhibit 28).

23. Submitted with appellant's Planned Development District Application was a map prepared by Brian R. Holbritter, PLS entitled "Existing Conditions Survey & Site Plan for Oakwood Property Management, LLC". The map depicts all three parcels owned by appellant and clearly shows that appellant's mulch, topsoil and other business operations have extended onto Parcel 13 and Parcel 12. (See Brunswick CEO Exhibit 29).

24. The Planning Board, in its Advisory Opinion provided to this Board in connection with these appeals, found that as of August, 2011, the appellant's business operations on Parcel 14, only, had expanded in numerous respects beyond those approved by the Planning Board in its April 18, 2002, site plan approval for Parcel 14. Additionally, the Planning Board found that as of August, 2011, appellant's industrial operations had expanded onto Parcel 13 and Parcel 12, including grinding, mulch production and storage, topsoil blending, equipment storage, including additional grinders, truck parking, and a coverall storage building, and that the appellant's industrial operations approved for Parcel 14 by way of the April 18, 2002, site plan approval, had also expanded onto Parcel 13 and Parcel 12. (See Planning Board Advisory Opinion dated August 4, 2011). This Board hereby adopts those findings.

As previously stated, with few exceptions, the underlying facts which form the basis of this proceeding are not substantially in dispute. Oakwood's appeals, rather, rest largely on various legal arguments and defenses. These are discussed below.

ZONING OF PARCEL 13

Appellant maintains that the Notices of Violation must be vacated to the extent that they allege that it has violated the Zoning Ordinance by extending its industrial mulch/soil production and distribution activities onto Parcel 13 and by using Parcel 13 as access to its farm operations on Parcel 12.

Appellant alleges, in essence, that Parcel 13 is "un-zoned" and free of zoning restrictions.

Parcel 13 is shown on the Town's Official Zoning Map (see Brunswick CEO Exhibit 1) as being within a "Schools & Cemeteries" zoning district. However, appellant points out, there is no mention of a "Schools & Cemeteries" zoning district in the text of the Zoning Ordinance or in the Schedule of Area and Bulk Regulations referred to therein (see Zoning Ordinance - Oakwood Exhibit No. 5). No permitted or prohibited uses in the Schools and Cemeteries District are specified in the text of the Zoning Ordinance. Appellant claims that, as regards the Schools and Cemeteries zoning, the Zoning Ordinance is, therefore, vague and ambiguous, and must be construed strictly against the Town in favor of the landowner.

The Town counters that the Schools and Cemeteries Zoning District exists by virtue of its inclusion on the Zoning Map, which is specifically mentioned in and incorporated into the Zoning Ordinance. Even in the absence of a "Schedule of Uses", claims the Town, the Schools & Cemeteries zoning district is clear and unambiguous on its face and, drawing on the plain meanings of common terms, restricts property located in those districts to use as either a school or a cemetery.

Certainly, it would have simplified matters greatly if the text of the Zoning Ordinance, and the Schedule of Area and Bulk Regulations referred to therein, contained specific provisions pertaining to the Schools and Cemeteries districts. However, it is clear that in interpreting the Zoning Ordinance, we are required to read all parts of it together and harmonize them to the greatest possible extent. We must give consideration to every part of the Zoning Ordinance and glean the meaning and effect of all of its provisions and wording. *Construction and Interpretation* § 231, McKinney's Statutes. The Zoning Ordinance, specifically at Section 3, clearly and unequivocally includes the Zoning Map. The Zoning Map clearly depicts "Schools and Cemeteries" zoning districts within the Town and the Schools and Cemeteries Zoning District is listed in the Legend with the other zoning districts. The term "Schools and Cemeteries", by the clear and unequivocal meaning of the common terms, sets forth, in our view, clear restrictions of the use of property so-zoned. To disregard the existence of such zoning district, as appellant says we must do, would seem to nullify a portion of the Ordinance duly adopted by this Town, by failing to give any effect whatsoever to the meaning of "Schools and Cemeteries" as it appears on the Zoning Map. Interpreting the "Schools and Cemeteries" zoning to restrict land so-zoned to either schools or cemeteries, on the other hand, would not require us to add any language or terms to the Ordinance which are not already there. We note that in 1958, when the Zoning Ordinance (and Map) were adopted, all of the parcels depicted on the Zoning Map as being within "Schools and Cemeteries" zoning districts actually had existing schools or cemeteries on them, or were vacant land owned by cemetery associations, including Parcel 13. (see Brunswick CEO Exhibit No. 1.; public hearing testimony of CEO John Kreiger,). In our view, it was the intent of the Town Board at that time that the property zoned "Schools and Cemeteries" be restricted in the future to those uses only. That might help explain the lack of more specific use regulations. Certainly, the CEO established at the public hearing that all parcels of land in the Town which are located within Schools and Cemeteries zoning districts are being actually used at the present time as schools or cemeteries or are vacant (see Brunswick CEO Exhibit 36). Appellant counters that not all schools and cemeteries located in the Town are located within Schools and Cemeteries zoning districts. However, the schools mentioned by appellant that are not on parcels zoned Schools and Cemeteries are properly zoned as they are permitted principal uses in the zoning districts in which they are located under the Zoning Ordinance. As to the cemeteries pointed to by appellant, which are not in Schools and Cemeteries Districts, they

are small, family burial plots, less than one acre in size, which contain headstones dating back to the late 1800s (see Brunswick CEO Exhibit No. 37). Those family burial plots clearly pre-dated the adoption of the Zoning Ordinance and would, under the terms of the Zoning Ordinance, constitute and be permitted as prior, non-conforming uses.

Based on all of the foregoing, we find and determine that Parcel 13 is located within an area depicted on the official Zoning Map as a Schools and Cemeteries zoning district, and is therefore zoned Schools and Cemeteries. We further find and determine that the only permitted uses on Parcel 13 are schools or cemeteries, and that to the extent that the appellant has extended its commercial/industrial mulch and soil production and distribution operations onto Parcel 13 from Parcel 14, it is in violation of the Zoning Ordinance.

ZONING OF PARCEL 12

Parcel 12 is clearly located within an A-40 Agricultural zoning district. Importantly, and we will come back to this later, in its written appeal to the first Notice of Violation, issued in June 2010, appellant states that Parcel 12 is either zoned "Schools and Cemeteries" and there are therefore no restrictions on its use, or is un-zoned (see Oakwood Exhibit No. 3 - page 6-7, letter from John J Henry, Esq., dated August 6, 2010, submitted in support of the appeal). In the subsequent appeal, and in its presentation at the August 15, 2011, public hearing, appellant appears to now acknowledge that Parcel 12 is zoned A-40.

In any case, Parcel 12, clearly zoned A-40 on the Zoning Map, may have a farm on it as a permitted principal use. The term "farm" is defined in the Zoning Ordinance as "Any parcel of land containing at least five (5) acres which is used for gain in the raising of agricultural products, livestock, poultry, and dairy products". (See Zoning Ordinance, Oakwood Exhibit No. 5). There is, however, no definition in the Zoning Ordinance for the term "agricultural products" or even "agricultural" or "agriculture". Looking at the standard dictionary definition for the term "agriculture", it is defined as "the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products; farming" (see Brunswick CEO Exhibit No. 34). Moreover, the Agriculture & Markets Law, at Section 301, defines "agricultural production" as the production for commercial purposes of all crops, livestock and livestock products. The term "farm operation, is defined in that same statute as "the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including ... compost, mulch or other biomass crops ...". That same statute defines "compost, mulch or other organic biomass crops" as the following:

- (1) the "on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste" ; and
- (2) the "on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste"; and

(3) the “on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation”

So, considering all the above, the appellant may “farm” and conduct “farm operations” on Parcel 12. There is certainly indication in the record that there are or will be livestock (beef cows) raised on Parcel 12. The bigger issue, of course, is the appellant’s mulch production, storage and distribution activities, and its topsoil production and distribution operations, which appellant has extended onto Parcel 12 from Parcel 14, and are ongoing now. Appellant would have us rule that those activities constitute “farming”, a “farm operation”, or “agriculture”, and that the same are permitted principal uses on Parcel 12. In our view, however, based on the definition contained in the Agriculture and Markets Law, appellants’ mulch production and processing operations do not constitute a “farm operation”. By its own admission, appellant does not grow or produce all of the organic material it uses in its mulch operation. In fact, according to one of appellant’s principals, the mulch it makes and sells is not created with any materials grown or produced on-site (see Brunswick CEO Exhibit No. 40). It appears clear from the record that appellant’s mulch production, storage and distribution activities, on all of its parcels, are intended for the production of mulch for use off-site through commercial sale. Similarly, based upon the definitions and analysis set forth above, we find that appellant’s topsoil blending and distribution activities on Parcel 12 do not constitute “farming” or a “farm operation”.

We are persuaded, as claimed by the CEO, that appellant is seeking to characterize its mulch and soil production operations which have extended onto Parcel 12 as “farming”, a “farm operation”, or “agriculture” in a belated and transparent attempt to avoid legitimate zoning (and site plan) restrictions and the enforcement thereof. As previously alluded to, the Board need only look at the first appeal, which asserts that Parcel 12 is either zoned Schools and Cemeteries, and therefore free of any restrictions, or effectively un-zoned. Clearly, at some point between the first appeal and the second appeal, the appellant realized that Parcel 12 is located in an A-40 District and concocted this elaborate plan to characterize its mulch operations on Parcel 12 as “farming” or a “farm operation”. It appears clear that the farming activities (i.e., the beef cows) on Parcel 12 are of recent vintage, sometime after April 2011. (See Brunswick CEO Exhibit 38 and Exhibit 40). We reject this characterization and determine that while appellant may farm and conduct farm operations, and engage in any other use permitted in an A-40 District on Parcel 12, that the on-going mulch and soil production and distribution operations on that parcel do not constitute “farming” or a “farm operation”.

THE ACCESS ROAD TO PARCEL 12

The second Notice of Violation states that appellant is violating the Zoning Ordinance by utilizing an existing private access road that extends over Parcel 14 and Parcel 13 to gain access to its farm operations on Parcel 12. The CEO bases that contention on case law which holds that, as a general proposition, the use of land in one zoning district for an access road to another zoning district is prohibited where the road would provide access to uses that themselves would be barred if they had been located in the first district (*BBJ Associates v Zoning Board of Appeals of the Town of Kent*, 65 A.D.3d 154 (2nd Dept. 2009)). The theory is that the access road is to be considered an integral part of the use to which the road provides access, and is therefore a use appurtenant to the

use to which the road provides access itself. Put another way, the use to which the access road leads must be a permitted use in the zoning district or districts over which the access road extends (see *Partition Street Corp. v Zoning Bd. Of Appeals of City of Rensselaer*, 302 A.D. 2d 65 (3rd Dept. 2002)).

Here, by appellant's own statement, it is using the existing road which extends over Parcel 14 and Parcel 13 to access its claimed farm operations on Parcel 12. So, under the rule espoused in the cases cited above, the use of the existing road extending across Parcel 14 and Parcel 13 to access the farm operations on Parcel 12 constitutes a "farm" use. However, neither Parcel 14, zoned Industrial, nor Parcel 13, zoned Schools & Cemeteries, allow farming as a permitted use. Therefore, we find, appellant's use of Parcel 14 and Parcel 13 for access to and from its claimed farm operation on Parcel 12 violates the Zoning Ordinance.

At first blush, this might be viewed as a rather harsh result. It is easy to perceive a situation where a farm may consist of lands zoned both A-40 Agricultural, and say, R-40 Residential, and that a farmer may need to travel over his R-40 land to access a field located in his A-40 land because there is no other access. We first note that, here, the existing private access road in question is part of appellant's approved site plan for its industrial mulch production and distribution operation on Parcel 14. Appellant went before the Planning Board in 2002 and stated that this road was part of its industrial/commercial mulch operation. Second, we note that Parcel 12 has direct road frontage on Oakwood Avenue, so Parcel 12, and the farm operations thereon, would not be landlocked. Third, as stated above by this Board, the record indicates that the appellant's claim that farm operations exist on Parcel 12 is of very recent vintage and more of an attempt to circumvent zoning restriction than real farming. In this case, under the present circumstances, we feel constrained to follow the rule espoused in the cases cited above. In a different case, we might feel compelled to rule otherwise, especially where the rule resulted in a particularly harsh result. The Town of Brunswick has a Right to Farm Law which we take very seriously.

DEFAULT SITE PLAN APPROVAL

Appellant maintains that the Notice of Violation dated June 10, 2010, must be vacated insofar as it alleges that appellant has violated the Site Plan Review Act by way of its business operations on all three parcels. More specifically, appellant maintains that the application for an amended site plan which it filed in October, 2008, which depicted applicant's industrial and commercial operations on all three parcels, was approved by default pursuant to Town of Brunswick Site Plan Review Act, Part III, Section 4(D), when the Planning Board failed to act on its site plan application within 45 days of its submission. Appellant is quite correct that the Site Plan Review Act provides for default approval of a site plan where the Planning Board fails to act on it within 45 days of the receipt of a complete application.

However, we disagree that a default approval occurred in this case. We first note that the Minutes of the Planning Board Meeting held on November 6, 2008 (Brunswick CEO Exhibit 21) clearly indicate that the site plan application was incomplete and that the matter was being adjourned at appellant's request so it could obtain additional information. The Minutes of the subsequent

meetings at which the amended site plan application was reviewed or discussed to not reflect that this additional information was ever provided (Brunswick CEO Exhibits 22, 23, 24, 25). Nor does the record in this matter indicate that appellant filed an Environmental Assessment Form with respect to the application. The Building Department has no record of receiving the form. Appellant has not come forward with a copy or proof that the same was filed. While, as appellant points out, Part III, Section 3A of the Site Plan Review Act does not list an Environmental Assessment Form as one of the requirements of a completed application, the EAF is required under state law, to wit: the State Environmental Quality Review Act. The Planning Board could not lawfully have acted on the application absent the EAF and a SEQRA determination of significance. Therefore, we find that the application was not complete as a matter of law.

Moreover, the record is clear that the reason that the Planning Board did not finally act on the application was because of very valid concerns regarding the zoning of Parcel 13 and Parcel 12, which are issues in these appeals. The Planning Board was constrained by law from acting on a site plan amendment which contained uses of land which violate the Zoning Ordinance. In our view, it was justified in not acting until its concerns about zoning were addressed. While appellant is correct that it is not the role of the Planning Board to interpret the Zoning Ordinance or make determinations regarding zoning, by the point in the process at which the amended site plan application was pending before the Planning Board, the Code Enforcement Officer had already determined that Oakwood's operations on Parcel 13 and Parcel 12 violated the Zoning Ordinance (see Planning Board Minutes November 20, 2008, page 5. - Brunswick CEO Exhibit 22). We also note that Part III, Section 1 of the site Plan Review Act provides that "Prior to submission of an application for site plan review, applicant must have received any required approval from the Zoning Board of Appeals". Clearly, the intent of the law is that all zoning issues be resolved before the site plan is considered by the Planning Board.

SITE PLAN APPROVAL FOR ALL PARCELS

Appellant's commercial/industrial mulch and soil production and distribution activities occurring on Parcel 14, while not violative of the Industrial zoning on that parcel, are clearly subject to site plan review. Appellant concedes as much, having filed for and obtained site plan approval for its operations on Parcel 14 in 2002. The Board has determined above that appellant's commercial/industrial mulch and soil production and distribution activities which are now occurring on Parcel 13 and Parcel 12 violate the Zoning Ordinance. We have further determined that there was no default approval of the appellant's October, 2008, application for an amended site plan regarding its activities on all three parcels in question. As alleged in the June 10, 2010, Notice of Violation, we find ample support in the record that the appellant has violated the Site Plan Review Act by virtue of its activities on all three parcels since the approval of the site plan for Parcel 14, only, in 2002. Specifically, we find, as indicated in the Findings of Fact enumerated above, that appellant's commercial/industrial activities on Parcel 14 alone have extended well beyond the bounds of the approved 2002 site plan. Further, we find, as indicated in the Findings of Fact enumerated above, that appellant's commercial/industrial activities have extended onto Parcel 13 and Parcel 12, for which parcels there is no approved site plan.

Appellant, it appears, seeks to defend its lack of site plan approval for Parcel 12, by claiming that the activities being conducted thereon are not subject to site plan review. Appellant is correct that "general farming" occurring on Parcel 12 are exempt from site plan review (see Site Plan Review Act, Part II, Section 1). This Board has already determined above, however, that the mulch and soil production and distribution activities occurring on Parcel 12 are not "farming", or "farm operations, or "agriculture". There is, it appears, some farming occurring on Parcel 12 (e.g., the beef cows) and to that extent, site plan review would not be required. Similarly, if appellant were engaged in nursery operations, site plan review for those operations would be exempt from site plan review as well (see Site Plan Review Act, Part II, Section 1). There is no indication in the record that appellant is engaged in nursery operations, which traditionally involve the raising of young trees and other plants for transplanting, for sale or for experimental study. Appellant does claim, variously, that it is engaged in "silviculture" or "forestry". These terms are not defined in the Zoning Ordinance or the Site Plan Review Act. Looking at the dictionary definitions, "silviculture" is defined as a "branch of forestry dealing with the development and care of forests" (see Brunswick CEO Exhibit 32). "Forestry" is defined as "the management of growing timber" (see Brunswick CEO Exhibit 33). None of the activities being engaged in by the appellants on any of the parcels appear to match any of those definitions. Surely, appellant cannot realistically contend that clear cutting these parcels in preparation for extending its industrial and commercial operations onto them, and even using the timber to make mulch, constitutes forestry or silviculture, and therefore exempts from site plan review everything else they do on those parcels. There is no indication, for example, that appellant replanted any of the trees it cut down on these parcels, or did anything to develop or care for the forests. In any event, neither silviculture or forestry operations are exempt from site plan review under the site Plan Review Act; only farming and nursery operations are exempt. Appellant urges that silviculture and forestry are analogous to farming. We disagree. "Farming" is defined as the practice of agriculture, which, in turn, is defined as the "science, art or practice of cultivating the soil, producing crops, and raising livestock..." (See Brunswick CEO Exhibit 34). There appears to be no overlap between "farming" and forestry or silviculture.

In our view, appellant's industrial/commercial mulch and soil production and distribution operations on all three parcels are subject to the Site Plan Review Act.

ADMINISTRATIVE RES JUDICATA AND ESTOPPEL

Appellants urge this Board to vacate the Notices of Violation on the ground of administrative res judicata and collateral estoppel. They urge specific bases in support of that claim. The most important of these are as follows:

1. The Code Enforcement Officer granted appellants various permits over the years for development of Parcel 13 and Parcel 12 for use in appellant's business, so the Town was aware of the use of these parcels for appellant's business and tacitly approved the same.

2. The Town passed several Resolutions supporting the County's application to include Parcel 13 and Parcel 14 in New York State Empire Zone designations. This means that the Town necessarily considered Parcel 13 as properly zoned for commercial and industrial uses.

3. The Town Supervisor met with two of the principals of appellant before appellant purchased Parcel 13 and the Supervisor encouraged them to purchase Parcel 13 to use in their business.

4. That when the Code Enforcement Officer wrote letters to appellant dated June 14, 2007, and July 16, 2008, advising that its business had expanded beyond the scope of the approved site plan, he indicated that the expanded use could be allowed if appellant applied for an amended site plan. This means that the Town tacitly admitted that Parcel 13 and Parcel 12 were properly zoned for use in appellant's business.

5. That the Town assesses and taxes Parcel 13 and Parcel 12 as "Industrial", and therefore should be bound to permit such uses on those parcels.

This Board does not believe that the doctrine of administrative res judicata applies here. That doctrine applies, in our view, only to adjudicative or quasi-judicial determinations that are final and binding (see *Delamater v Schweiker*, 721 F.2d. 50 (2d Cir. 1983), *Jason B. v Novello*, 12 N.Y. 3d 107 (2009)). None of the above bases for appellant's claim of administrative res judicata were the result of adjudicative or quasi-judicial action by the Town. The doctrine of equitable estoppel could, in some cases, be applied. However, the bar appears to be fairly high. The law appears to be clear in New York that a mistake or erroneous issuance of a permit does not estop a municipality from correcting errors, even where there are harsh results (*Patgin Carriages Co. Inc. v NYC Department of Health*, 2010 WL 109373 (N.Y. County Ct. 2010), *Matter of Parkview Assoc. v City of New York*, 71 N.Y. 2d 274 (1988)). The Third Department, in the case of *Twin Town Little League Inc. v Town of Poestenkill*, 249 A.D. 2d 811 (1998) ruled that the doctrine of estoppel is generally not invoked against a municipal agency and when it is, the courts must construe its application very strictly. Even where, stated the Court in *Twin Town Little League Inc.*, a property owner relies on erroneous advice of town officials to its detriment, the doctrine will not be applied to estop a municipality from enforcing its laws, because the landowners are required to use their own due diligence in ensuring that their actions are not violating municipal laws and ordinances. The facts of the *Twin Town Little League Inc.* are instructive. In that case, officials from the Little League asked the Town Building Inspector whether they needed any permits or approvals to install lights at the Little League field for night games. They were told by the Building Inspector that no permits or approvals of any kind were required. So the Little League installed lights and used them for a season. Later, following complaints from neighbors, the Town contacted the Little League and informed them that an area variance and site plan approval were required for installation and use of the lights. The Little League sued the Town, claiming the Town was estopped from enforcing its laws, because it had told the Little League that no permits or approvals were required and the Little League relied on that advice and installed the lights. The Court, nonetheless, ruled that the doctrine of equitable estoppel did not apply and that the town could enforce its laws as against the Little League, because the Little League could have determined on its own, using due diligence, that certain permits and approvals were required for the lights.

The Board will now review appellant's claims of equitable estoppel in this case in light of the case law cited above.

Appellant alleges in its appeal that "between 2002 and 2004, the Code Enforcement Officer issued permits and certificates of occupancy and compliance to Oakwood concerning its use of the parcels" (see Oakwood Appeal, p. 9). An examination of the record is instructive. The record shows that a fill permit was issued by the Brunswick CEO (see finding of Fact No. 6, above, and Brunswick CEO Exhibit No. 6). By its terms, the approved fill permit application applies to Parcel 14, not Parcel 13 or Parcel 12. There is a specific reference in the application to Parcel 14's Tax Map No. Moreover, the application lists the use of the property to be filled as "vacant land", not "mulch business" or anything like that. Appellant claims that the Brunswick CEO well-knew that this application was intended to apply to Parcel 13, not Parcel 14. Further, appellant claims to have provided the CEO with a map showing the areas to be filled, and that it was Parcel 13, not Parcel 14. The Board finds no factual support in the record for those claims. The documentary evidence is clear and unequivocal on its face. If the fill permit was being requested for Parcel 13, why did the application reference only Parcel 14? At the very least, based upon the conflicting claims, it is certainly not clear on this record that the Brunswick CEO intended this permit to apply to Parcel 13. If appellant provided inaccurate and misleading information in its application, how can it claim to have justifiably relied on the CEO's issuance of the permit?

A further examination of the record indicates that the only building permit issued in this time frame to Oakwood by the CEO was for the construction of an addition to an existing automotive garage building on Parcel 14 (see Finding of Fact No. 10, above, and Brunswick CEO Exhibit 12), for which site plan approval had been applied for and granted by the Planning Board.. The record further reflects that a Certificate of Occupancy was subsequently issued for the expanded garage building (see Finding of Fact No. 12 and Brunswick CEO Exhibit No. 12). The issuance of these permits is probative of nothing on this issue. The garage expansion was on Parcel 14, where there is no zoning issue (except as regards the access road to Parcel 12). The expansion was also part of an approved amended site plan for Parcel 14.

So, what appears from the documentary record, at least, is a few permits issued by the Town, all pertaining to Parcel 14, which is zoned for Industrial uses and had an approved site plan. There is no record of any permits or approvals being issued for Parcel 13 or Parcel 12 which relate to the industrial and commercial operation now ongoing on those parcels.

The Town Board did, indeed, pass resolutions supporting and concurring in placing parcels of land owned by appellant into an Empire Zone. The first two Resolutions applied only to Parcel 14, which is clearly zoned "Industrial". It was not until December 18, 2005, that the Town Board passed an Empire Zone resolution which applied to Parcel 13, as well as Parcel 14. No Empire Zone resolution was enacted by the Town with respect to Parcel 12. Appellant argues that since the purpose of the Empire Zone program was to encourage commercial and industrial enterprises, by proposing to include Parcel 13 in the Empire Zone, the Town Board is admitting that it considered the property properly zoned for commercial and industrial uses. We disagree. First, it was Rensselaer County, not the Town of Brunswick, in every case, which was applying to the State for inclusion of appellant's parcels in the County Empire Zone. The Town resolutions "supported and concurred" in the designations. It appears clear from the record that the Resolutions enacted by the Town Board were "format resolutions" prepared by the County, which the County asked the Town to adopt (see Brunswick CEO Exhibit 13). The first two Empire Zone Resolutions, which apply only

to Parcel 14, are, again, probative of nothing as regards this issue. Parcel 14 is zoned Industrial. The Resolution pertaining as well to Parcel 13 is another matter, since the Town maintains that Parcel 13 is not zoned for commercial or industrial uses. The County appears to take the position, however, that it was the Town, not the County, that was behind inclusion of Parcel 13 in the Empire Zone (see testimony of Jay Sherman, Rensselaer County Empire Zone Coordinator Tr. 135 - 138; Memorandum to Town of Brunswick Zoning Board of Appeals from Robert Pasinella, Executive Director, Rensselaer County Bureau of Economic Development and Planning, dated August 8, 2010 - Oakwood Exhibit No. 25). One would think, however, as the actual "applicant" for the Empire Zone designation, that the County would want to be sure that the land being proposed for inclusion in an Empire Zone meets all of the statutory criteria. Section 958 of the General Municipal Law sets forth the criteria for designation an area as an Empire Zone. One of the criteria, set forth as General Municipal Law, Section 958(a)(iv), states as follows:

(iv) if such area is governed by zoning laws or other laws or regulations governing land use, such laws or regulations must allow at least twenty-five percent of such area to be used for commercial or industrial activity;

So, contrary to appellant's, and the County's suggestion, not all land placed in an Empire Zone must be zoned for commercial or industrial activity. Rather, only 25% of the area proposed to be placed in the Empire Zone must be so zoned. Looking at Mr. Pasinella's Memorandum to this Board, mentioned above (see Oakwood Exhibit No. 25), he states that the Town has 176 Empire Zone acres and that 64 acres are zoned industrial and 112 acres are zoned Schools & Cemeteries. It would seem then, that well over 25% of the area in the Town of Brunswick included in the Empire Zone is zoned Industrial, which meets the statutory zoning criteria in the General Municipal Law. It appears that the County and the appellant are of the mind that it was the Town's duty, if Parcel 13 was to go into the Empire Zone, to either ignore the zoning and let appellant do as it wished, or re-zone the property on its own. They ignore the more logical alternative which would be for appellant to have applied to the Town Board to re-zone the property, since it owned the property, was seeking to use it for gain, and would be the entity that most directly benefitted from the re-zoning.

In any case, on this record, there is no proof that either the County or the Town violated the Empire Zone legislation or regulations by, respectively, applying for and concurring in, inclusion of Parcel 13, zoned Schools & Cemeteries, in the Empire Zone. Concurring in the County's application for the Empire Zone designation for Parcel 13, cannot, on this record, be realistically read as any sort of tacit admission that Parcel 13 was zoned for commercial and/or industrial use or permission that it be used for such purposes. Certainly, both the County and the Town could have done better here. The County could have investigated the zoning of Parcel 13 before including it in the Empire Zone designation application. To the contrary, Empire Zone Coordinator Jay Sherman stated at a Planning Board meeting that Rensselaer County "does not get involved" in whether or not the Empire Zone projects are "zoned correctly". The Town could also have investigated the same issue before it passed its concurring resolution. And last, but certainly not least, appellant must bear some of the responsibility as well. Appellant is a substantial business and its principals are experienced business people. It is difficult to believe that they were not well aware of Parcel 13's actual zoning when they purchased it and when it was included in an Empire Zone application. Savvy business people do not purchase property they intend to use in a business without knowing the zoning of the property. We

also note that the applicant has been something less than consistent about its proposed use of the property as regards its own application for "approval" as a Empire Zone Business Enterprise. Appellant claimed at the public hearing that the Town's actions in supporting the inclusion of the parcels into an Empire Zone constitute a tacit admission that its industrial/commercial mulch and soil operations were acceptable land uses on all of the parcels. Yet in reviewing Oakwood's Application for Joint Certification of an Empire Zone Business Enterprise, executed by one of its principals on January 12, 2004, it stated that the intended use of the subject property was "for developing and building structure(s) suitable to attract new companies to lease from OPM, LLC" (See Brunswick CEO Exhibit 17). There is no mention in the application of mulch, soil, etc.

One of the few real factual issues that arose in the course of this matter was the appellant's claim that two of its principals had met with Supervisor Herrington at his family farm before purchasing Parcel 13. This issue was the reason why the public hearing in this matter was reopened after it had been closed on August 15, 2011. Supervisor Herrington did not speak at or attend the public hearing on August 15, 2011. After hearing about the claims made by appellant's principals at the public hearing, he felt compelled to respond by letter made a part of the Town's post-hearing submission. Appellant objected to the Supervisor's letter being made part of the record unless the hearing was reopened so it could respond. Ultimately, this Board reopened the public hearing on that one issue.

As to the merits of this issue, appellant's principals more specifically allege that they told Supervisor Herrington that they intended to use this parcel (Parcel 13), if purchased, to extend their mulch production and distribution business beyond Parcel 14. They further claim that Supervisor Herrington encouraged them to go forward, purchase the parcel and extend their business. Supervisor Herrington, for his part, categorically denies that such a meeting ever took place, and states that he never spoke with appellant's principals about purchasing Parcel 13 or expanding their business beyond Parcel 14.

In the opinion of this Board, there is insufficient evidence in the record for this Board to find that this meeting occurred or that Supervisor Herrington made the statements attributed to him by the appellant. Aside from the complete divergence of the stories of appellant's principals and Supervisor Herrington on this issue, the "details" left out of the stories of appellant's principals are a little disconcerting in our opinion. No specific date for the meeting is specified - only that it was before they purchased Parcel 13. And appellant's principals don't specify whether they informed Supervisor Herrington of the zoning of the parcel they were considering buying. Or whether appellant's principals were aware of the zoning of the land? Or whether there was any discussion of the zoning of the land at all. And, if it happened, it is more than a little disturbing that appellant chose to ask the Town Supervisor about it, as opposed to the Code Enforcement Officer or the Town Attorney. We also note that in an affidavit annexed to Appellant's Brief, sworn to on September 1, 2011, Sean M. Gallivan, one of appellant's principals, states in paragraph 4 thereof that when he and his brother met with Supervisor Herrington, they "brought maps showing the progression of development, ...". No maps were attached to the affidavit nor were they, to our knowledge, otherwise produced at the public hearing. It would certainly have lent greater credence to appellant's claim that this meeting had occurred if they had produced these maps.

There is no question that the Code Enforcement Officer provided information to the appellant that was, at best, incomplete, and at worst, inaccurate and misleading, in his letters dated June 14, 2007, and July 16, 2008 (see Brunswick CEO Exhibit 18), informing appellant that it had extended its operations beyond the approved site plan for Parcel 14 and onto adjacent parcels, and that an amended site plan would be needed. The CEO admitted at the public hearing that he was mistaken when he sent these letters. He should have informed the appellant that extending the industrial/commercial mulch operations onto Parcel 13 and Parcel 12 would result in zoning violations which would have to be resolved along with the Site Plan Review act violations. We see no intention to mislead the appellant on the part of the CEO. Also, it is clear that, by the point at which these letters were sent, the appellant had already greatly extended its operation onto the adjacent parcels without obtaining any sort of official permit or approval from the Town.

The record is not well developed on the issue raised by appellant regarding it being assessed and taxed by the Town for Parcel 13 and Parcel 12 as if those parcels were assessed Industrial. The only documentary proof appears to be Oakwood Exhibit No. 26, which is a page from the 2009 Final Assessment Roll of the Town of Brunswick, and the 2010 tax bills for the three parcels and checks showing payment, which were handed up to the Board during the hearing. The Assessment Roll and the tax bills appear to classify Parcel 13 as "340 Vacant indus", Parcel 12 as "330 Vacant comm", and Parcel 14 as "449 Warehouse". None of these classifications for these parcels appear to be particularly accurate, given the zoning and the uses occurring on the property. Neither side called the Assessor to testify and explain the classifications or the assessments. There was no proof introduced as to the present classifications of the parcels. There was no proof as to the classifications or assessments for the parcels prior to the time they came into appellant's ownership. It is clear, however, that by 2008 - 2009, the appellant had extended its commercial/industrial operations onto Parcel 13 and Parcel 12. If the Assessor had gone to those Parcels in 2008 - 2009 for the purpose of determining the proper assessment, commercial/industrial operations would have been evident, given the maps and plans submitted by appellant in its 2008 amended site plan application and the 2009 application for establishment of a Planned Development District, which made reference to "existing conditions". While there admittedly appears to be a "disconnect" between the zoning designations for these parcels and the assessment classifications, it would certainly be unfair and inequitable to other taxpayers for the Town to have assessed Parcel 13 and Parcel 12 as if something other than commercial/industrial uses were at that point occurring on the property.

Based upon all of the foregoing, in our view, we see no basis for ruling that the Town is equitably estopped from enforcing its zoning and site plan laws against the appellant. There were, to be sure, mistakes and mis-steps on the part of the Town in the way this entire matter was handled. However, on this record, we do not deem them sufficient to rule that the Town is estopped from enforcing its zoning and site plan laws, which are there for the protection of the public at large. We also take into account that the appellant must bear responsibility for its own actions as well. By all accounts, appellant is a very successful business; it's principals are experienced business people. We heard many success stories about the appellant at the public hearing and in the letters and documents submitted. Surely, appellant's principals knew or should have known the zoning of the parcels they purchased before they went forward. Clearly, they knew about the Town's site plan law. They applied for a site plan for Parcel 14 back in 2002. They obtained an amendment to the site plan

for something as small as a garage building addition. Why would they think they could extend industrial operations onto Parcel 12 and Parcel 13 without getting a new site plan? Why would they think they could extend their operations on Parcel 14 beyond the approved site plan for that parcel? Given the great reluctance of the courts to estop a municipality from enforcing its zoning laws even where a property owner relies on mistakes or erroneous advice from municipal officials to its detriment, we decline to do so on this record.

VESTED RIGHTS

After reviewing the Briefs, we are persuaded that the doctrine of "vested rights" does not apply in this case as there has been no change in the zoning of any or the parcels. Surely, appellant is not contending that the Town Board resolution supporting and concurring in Parcel 13 being included in an Empire Zone somehow constitutes a zoning change. First, as pointed out in the discussion above pertaining to equitable estoppel, not all property included in an Empire Zone must be zoned commercial or industrial. So it's difficult to give any credence to appellant's apparent contention that the Parcel 13 zoning was changed to industrial or commercial by virtue of its inclusion in the Empire Zone resolution. More importantly, though, even if only land zoned industrial or commercial could lawfully be placed in an Empire Zone, a simple Town Board resolution supporting an Empire Zone designation could never effectuate a zoning change. A zoning change can only be accomplished in strict accordance with the provisions of the Zoning Ordinance and Article 16 of the Town Law.

We have examined all of the other contentions of the appellant in support of the appeals and find them to be without merit.

Accordingly, this Board rules and determines as follows:

1. The Notice of Violation dated June 10, 2010, be and hereby is sustained and upheld in all respects, and the appellant's appeal thereof is denied and dismissed;
2. The Notice of Violation dated June 21, 2011, be and hereby is sustained and upheld in all respects, and the appellant's appeal thereof is denied and dismissed.

Dated: Brunswick, New York
December 19, 2010

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Special Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on December 29, 2011, at 6:00 P.M.

Present at the meeting were: Caroline Trzcinski, Member
E. John Schmidt, Member
Mark Cipperly, Member

Chairman Hannan and Member Steinbach were absent as they had recused themselves from consideration of the matter to be discussed at this meeting. Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary.

Temporary Chairman Cipperly called the Meeting to order at 5:00 P.M. He stated that the purpose of the Special Meeting was to discuss litigation which had been commenced against the Board by Oakwood Property Management, LLC in connection with the Board's denial of Oakwood's appeals from Notices of Violation issued by the Code Enforcement Officer dated June 10, 2010, and June 21, 2011.

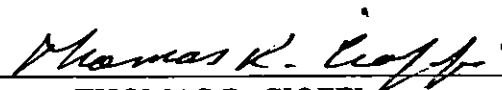
Attorney Cioffi added that the lawsuit is a combined CPLR Article 78 proceeding and declaratory judgment action commenced in Supreme Court, Albany County. In addition to this Board, the Town, the Town Board, the Supervisor and the Code Enforcement Officer were named as respondents-defendants. Attorney Cioffi explained that the Town Board intends to retain the firm of Tuczinski, Cavalier, Gilchrist & Collura, P.C., to represent all of the Town respondent-defendants, including this Board. At this point, stated Attorney Cioffi, there does not appear to be any conflict or impediment to having one attorney represent all of the Town respondent-defendants. The draft Resolution before the Board simply acknowledges the commencement of the lawsuit and consents to the retention of Tuczinski, Cavalier, Gilchrist and Collura, P.C., to represent all of the respondent-defendants in the lawsuit, including this Board.

Member Cipperly asked whether anyone had any questions about the lawsuit or the Resolution for Attorney Cioffi. There were none. Member Cipperly asked whether anyone wished to offer the draft Resolution. Member Schmidt stated that he would offer the Resolution. Member Trzcinski seconded. The Resolution was put to a roll call vote and all members present voted in the affirmative.

There being no further business, Member Trzcinski made a motion to adjourn. Member Schmidt seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
December 30, 2011

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas R. Cioffi", is written over a horizontal line.

THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

SPECIAL MEETING

December 29, 2011

RESOLUTION CONSENTING TO RETENTION OF COUNSEL

WHEREAS, a combined CPLR Article 78 proceeding and declaratory judgment action having been commenced in Supreme Court, County of Albany, against this Zoning Board of Appeals, and others, including the Town, the Town Board, the Town Supervisor, and the Code Enforcement Officer, by Oakwood Property Management, LLC, challenging the determination of this Board dated December 19, 2011, denying Oakwood's appeals from Notices of Violation issued by the Code Enforcement Officer dated June 10, 2010, and June 21, 2011, pertaining to Oakwood's business operations located at 215 Oakwood Avenue; and

WHEREAS, it appearing that the Town, the Town Board, the Supervisor and the Code Enforcement Officer will be represented in the said litigation by the firm of Tuczinski, Cavalier, Gilchrist and Collura, P.C.; and

WHEREAS, it appearing to the satisfaction of this Board, at this time, that there is no conflict or impediment which would preclude all of Town respondents-defendants from being represented by a single attorney in this litigation; now, therefore

BE IT RESOLVED, that this Board does hereby consent to the retention of the firm of Tuczinski, Cavalier, Gilchrist & Collura, P.C., to represent the Town and all other respondent-defendants, including this Board, in the above-described litigation.

The foregoing Resolution offered by Member Schmidt, and seconded by Member Trzcinski, was duly put to a roll call vote as follows:

MEMBER TRZCINSKI	VOTING	Aye
MEMBER SCHMIDT	VOTING	Aye
MEMBER CIPPERLY	VOTING	Aye
MEMBER STEINBACH	VOTING	Recused
CHAIRMAN HANNAN	VOTING	Recused

The foregoing Resolution was thereupon declared duly adopted.

Dated: December 29, 2011