

ZONING BOARD OF APPEALS
TUESDAY – OCTOBER 27, 2020
ZONING BOARD OF APPEALS
7:00 P.M. – TOWN HALL (ZOOM)
1529 NY RTE 12
BINGHAMTON, NY 13901

Present: James Brewster, Chairperson
Aleta Kinne, Board Member
Scott Smith, Board Member
Melanie Pandich, Board Member
Joe Aston, Board Member
Thomas Eldridge, Alternate

Also Present: Nicholas Cortese, Esq., Attorney
Frank Carl, Councilperson
John Freer, Ordinance Officer
Kathleen Rudy, Deputy Town Clerk, Interim Stenographer

Jim Brewster: Opened the Town of Chenango Zoning Board of Appeals meeting for October 27th at 7:01 P.M. and asked Kathy for roll call of the board members.

Kathleen Rudy: Mr. Eldridge, Mr. Aston, Mr. Smith, Mrs. Pandich, Mrs. Kinne, Mr. Brewster were all present.

Jim Brewster: With that roll call, it's determined that we do have a quorum for the board. So therefore I, James Brewster, chairman of the zoning board of appeals have confirmed with counsel, as he's watching, that this meeting is being held in accordance with executive order 2022.67 issued by Governor Andrew M. Cuomo on five October 2020. Executive order extends the suspension of provisions of the open meetings law, to the extent necessary to permit any public body to meet and take any action authorized by law without permitting in-public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service. This meeting is being held remotely via Zoom virtual meeting software. The public has the ability to view or listen to this meeting live via the Zoom app web browser and/or by telephone. This meeting is being recorded and will be transcribed at a later date.

Jo Anne Klenovic: Also, Mr. Brewster, if I could add Mr. Cortese has been enabled as a co-host to help with the entry. So just so everybody knows that. Kathy's taking notes. He'll be able to help.

Jim Brewster: We'll set the base rules here right before we get to the public hearing. First order of business, board members, will be to approve both the August 25th, 2020, and September 22nd, 2020 zoning board minutes. Assuming you've had a chance to read them over. Are there any corrections or discussions of these minutes that we should go through before I seek a motion? Hearing none. Okay. I'll accept a motion to approve the minutes as written for August 25th.

A motion was made by Mrs. Kinne to accept the meeting minutes of August 25, 2020; seconded by Mr. Aston and carried by the following roll call vote:

Joe Aston, Board Member: Voted __Aye__
Scott Smith, Board Member: Voted __Aye__
Melanie Pandich, Board Member: Voted __Abstain__
Aleta Kinne, Board Member: Voted __Aye__
James Brewster, Chairperson: Voted __Aye__

The motion was thereupon declared adopted by a roll call of:

Ayes – 4 Nays – 0 Abstain - 1

Jim Brewster: Moving on to the September 22nd minutes. Any comments, questions about those minutes as written? Nothing heard, I'll accept a motion to approve those as transcribed.

A motion was made by Mr. Smith to accept the meeting minutes of September 22, 2020; seconded by Mrs. Kinne and carried by the following roll call vote:

Joe Aston, Board Member: Voted __Aye__
Scott Smith, Board Member: Voted __Aye__
Melanie Pandich, Board Member: Voted __Abstain__
Aleta Kinne, Board Member: Voted __Aye__
James Brewster, Chairperson: Voted __Aye__

The motion was thereupon declared adopted by a roll call of:

Ayes – 4 Nays – 0 Abstain - 1

Aleta Kinne: I would like to have on the record that I feel that our secretary did a great job on both of these sets of minutes.

Jim Brewster: Thank you for that. Duly noted. The next order of business is new business. We have one area of variance to examine for approval and scheduling of a public hearing in November. Do we have any comments on this? Anything we need to look at, board members, before we take a motion to approve?

Aleta Kinne: Is Mr. Johnson present?

Mr. Johnson: Present

Aleta Kinne: Mr. Johnson, have you had a chance to talk about your plans with your neighbor?

Mr. Johnson: Yes, I was just out the other day marking out where the pegs were with them and talking about the property line and where everything would be. They didn't have any problem with it, because they're still going to have 20 feet from their house to where this addition would be.

Jim Brewster: Okay. Thank you. Yes, and if they can provide input either at the public hearing directly next month or by correspondence to support the facts that we need to see, that'd be great too. I actually do have a question on the seeker form part one. There's a couple of empty spaces there, number two and number three on the first page, Mr. Johnson, that we'll need you to go back and mark them as you feel appropriate. Especially the size of the acreage disturbed. Just have those ready before our meeting in a month, just to have those numbers filled in.

Mr. Johnson: Sure, sorry; I trying to locate that and make sure I have the right ...

Jim Brewster: The short environmental assessment form is actually what I should have said. Page one, and then numbers two and three. Just have a couple blanks there.

Mr. Johnson: I'll have to come back down to the office there. I don't think I got a copy of that portion. I'll do that. Just a letter that you say from the Gates' next door?

Jim Brewster: Well, it's their choice. They can come testify or be on a Zoom, whatever we happen to be doing next month, or a letter. It's fine. Either way. Would be very helpful to you actually. Yeah.

Mr. Johnson: Yeah. They're leaving on a Friday for Florida. I think what I'll do is I'll stop over and just have them write a little letter they're okay with the addition and so forth.

Jim Brewster: Okay. It was just a suggestion, any further questions, board members, on the application, just the face value of its completeness? Otherwise, we'll take a motion to approve and schedule. Ok, I'll take that motion to approve and schedule.

Joe Aston made a motion to approve and schedule the Planning Board; seconded by Melanie Pandich and carried the following roll call vote:

Joe Aston, Board Member:	Voted ___Aye___
Scott Smith, Board Member:	Voted ___Aye___
Melanie Pandich, Board Member:	Voted ___Aye___
Aleta Kinne, Board Member:	Voted ___Aye___
James Brewster, Chairperson:	Voted ___Aye___

The motion was thereupon declared adopted by a roll call of:

Ayes – 5 Nays – 0

Jim Brewster: To the Ordinance Department, do your thing there and we'll schedule the appropriate meetings and so forth. Okay. Next up is our public hearings. At this time I want to ask if the representative from New Singular Wireless is with us tonight? I'm just going to flip things around real quick here. We've had a request by that applicant to adjourn in order to continue to be able to provide information for the public hearing and so, anyways, is George here? Or a representative? Okay. Well, we did receive that email today, as well as, due to the unfortunate hiccups we had in the acknowledge and notification on our website of this particular hearing, we actually did have a request from one of the neighbors as well to defer for the ability to look at any new information. We have not had new information from the cell tower folks. We did get some letters from the public that we should all kind of take an opportunity to read in more detail. To the board members, I would be inclined to, at this time, take a motion to approve an adjournment of the New Singular Wireless application until next month, based on the latest developing situation we have. Or discussion.

Aleta Kinne: I feel that we have put this off for two months already. Given them plenty of time to get their information in here. I would like to see us move forward. That's only my opinion.

Jim Brewster: That's fine, do we have any further discussion on that?

Scott Smith: I think since we have the nearly identical requests from both sides, in fairness to both sides, since they both requested it, that we should table it for another month.

Jim Brewster: Okay. Anyone else? Or does anybody want to propose a motion first? We can have further discussion, whichever way that goes.

Aleta Kinne: Is our attorney Ms. Bell online with us, or have you talked with her?

Jim Brewster: No, she's not online with us. She's not online with us, but yes, I did receive a call from her and had discussion on the weighing the balances of this. To honor the request from both sides and table the public hearing.

Thomas Eldridge: Jim, can we put any kind of stipulation in there that this is the last time that we extend it? That we don't do this again? We're kind of beating a dead horse here month after month.

Jim Brewster: I'm going to have to go this one on my own, I guess. I don't see a problem with that. I think that's within our purview. If we could get an amendment, if you would like to propose the wording of that.

Thomas: I don't know if I'm, I mean, I'm not necessarily a voting member at the moment, so I don't know how that works.

Jim Brewster: That's right. So, your suggestion is to put a restriction on that this will be the final time that we would honor an extension. Does that sound good?

Thomas Eldridge: Yep.

Jim Brewster: Melanie, you made the motion, right?

Melanie Pandich: I did.

Jim Brewster: Does that sound fine to you? Would you be willing to amend your motion to include that statement?

Melanie Pandich: I would, if we put on it barring an emergent circumstance. I don't want to back us into a corner. If there's a true emergency that prevents us from moving forward on one of the parties' behalf.

Jim Brewster: That's a valid point. In fact, I believe I read that there is in the seeker law, if you will, that there can be extensions for exigent circumstances. As long as we word it that way I think that will fit.

Melanie Pandich: Yes, I am in support of that.

Thomas Eldridge: What are the consequences of continuing on another, further than a month? They're saying it's the last time, but what happens after that?

Jim Brewster: Well, then we would just proceed forward with the findings we have or would put together based on the evidence that we have.

Mrs. Kinne: If the public hearing is still open, do the people have a chance tonight to voice their opinion?

Jim Brewster: Not if we table it. That will also give us time because we all received several additional letters in the last one or two days, that we would really need to review as well. So, we're a part of this tabling to review the latest information, as well as the applicant and the residents. We would not proceed with the public hearing for that tonight. We would just table it and move forward with the other items on the agenda.

Resident: Would there be another public hearing? I'm sorry. I'm not sure if I'm supposed to ask that. I'm looking for the raised hand function. Or is this the last public hearing?

Jim Brewster: We have not closed the public hearing. So, when we convened the next time, it would be, the way our rules state is, if anybody new who has not spoken, they go first and they would have the five-minute town time limit to provide their comments. Then, if there was anybody who had spoken and just had some new information to provide, without rehashing everything. So yes, there would be an opportunity for more public verbal discussion. There was going to be tonight as well.

Jo Anne Klenovic: Mr. Chairman, we have several guests with their hand raised to make a comment, will you be accepting them at this time?

Jim Brewster: We actually have a motion on the table and seconded. So, I think we have to carry on that. That would only be applicable to board discussion anyway. We can address those questions after that. Let's take that roll call on tabling with the restriction of it being the final time.

Melanie Pandich made a motion to table the Singular Wireless public hearing, until the November meeting in order to allow both parties to continue to provide information; seconded by Scott Smith and carried by the following roll call vote:

Joe Aston, Board Member:	Voted ___Aye___
Scott Smith, Board Member:	Voted ___Aye___
Melanie Pandich, Board Member:	Voted ___Aye___
Aleta Kinne, Board Member:	Voted ___Nay___ (does not feel right without Attorney Bell present)
James Brewster, Chairperson:	Voted ___Aye___

The motion was thereupon declared adopted by a roll call of:

Ayes – 4 Nays – 1

Jim Brewster: The motion to table the Cell Tower public hearing to November has passed. At this time, if they're still applicable, I can take any of the questions, very brief questions from the audience.

Carol Slick: Will we be receiving notification about the next meeting? Some of us didn't receive anything about this one. We were assured at the last meeting that we would be notified. We only found out through word of mouth from the neighbors.

Jim Brewster: Understood. I believe the supervisor did address that too, well, one of the residents who inquired, so I'll reiterate what she said. There was, this is just a matter of fact, not an excuse, but with the growing pains of switching the website over, it did not make it to the appropriate part on the website. Although, from the Ordinance office to the web facilitator, the information was transmitted on the appropriate date, which is about a week before. So, have to chalk it up to some technical problems and we will re-note, I will make sure, and I know I said this before, I will make sure Ordinance is aware to re-notice and re-postcard this thing.

Carol Slick: Okay.

Jim Brewster: This time I will micromanage that and make sure it gets done.

Carol Slick: Yeah, because we certainly didn't get one this time.

Jim Brewster: I understand.

Carol Slick: Thank you.

Jim Brewster: Okay. Thank you everybody. Anybody who came for the cell tower, you're welcome to hang on or whatnot, but you're also free to go as there will be no further discussion on the cell tower tonight. Thank you for your time and attendance, or attention, I should say. Okay. So, with that, I believe before we start the Abbey Family Trust, Jay Abbey, public hearing, 2020 B12, Nick, did you have a statement you wanted to do at this time or as we begin?

Nick Cortese: I can do it now. Just because I know certain people are wondering and certain parties have corresponded about it. I just wanted to make a quick statement about the analysis that our firm has done regarding the potential or reported conflict of interest as it relates to Jay Abbey and the representation of this board. First, I'll say that Coughlin & Gerhart doesn't represent the Abbey family trust. We don't represent the trustees of the trust, and we don't represent Mr. Abbey in this application. The only party that we represent in this application is the Town of Chenango. Mr. Abbey has secured his own counsel to represent him as it relates to this specific application. Mr. Zamelis from HH&K, who's here tonight. I guess, furthermore, on top of that, we do represent Mr. Abbey in his personal capacity in matters that are unrelated to this application. To the extent that there may be a private, civil dispute between parties that are here tonight that involves Mr. Abbey. That dispute is unrelated to the Variance application and it's our firm's position that it's unrelated. So, from a technical, ethical, legal standpoint, there is no conflict of interest, but to the extent that there might be an appearance of there is no conflict of interest, we have obtained an express waiver of that conflict from Mr. Abbey we have obtained an express waiver of that conflict from the Zoning Board of Appeals. And so our firm does feel comfortable moving forward at representing the board only on this application. Should circumstances change and there becoming irreconcilable conflict, then we would obviously assess if and when something like that happens. But for the time being, I just wanted to make that statement that our firm feels comfortable continuing to represent the town only on this application. And that is the last that I'll speak about it tonight. So thank you.

Jim Brewster: Okay. Thanks Nick. So now at this point I will open the public hearing, but I do have a couple of things to say, just logistics wise. Those of you who have found the hand raise feature, that's great. If you would want to speak tonight, whoever wants to, will have

their five minutes or up to five minutes, I should say. So if you can help us out with that, that's great and if you don't have that capability or can't find it, we'll get you towards the end by voice. So I'm going to, at this time another logistical thing, we're going to try something a little different tonight. I am going to share my screen and I'm going to have a timer available. So hopefully everybody will be able to see this and the way it's going to work, obviously it'll count down, but there were also some visual colors that will go along with this. So when I acknowledge you just to speak, go right ahead, I'll start the clock. You'll have roughly three minutes where nothing will show on the screen. It'll at least my part of the screen will be gray. When you reach two minutes left, the screen will turn green. When you reach one minute left, the screen will turn yellow and 30 seconds left, you'll have a red, and with 10 seconds left, you'll have a red flash. I have the option of turning on or off the clock, if you don't want to be distracted by the timer, counting down, we can just go with the colors. I've tested this. It's very accurate. Okay, so I'll officially open the public hearing for the Jay Abbey Family Trust, # 4. We customarily start off with the applicant, Mr. Abbey, you wrote to us, sir, you've just submitted your application. You submitted a letter today. I know you're fully aware at least of the five factors that the board will have to consider. I'd prefer not to step you through them and painfully step you through them, but I would like to remind you of them just if you'd like to address the board with those five minutes and address those factors through your letter or your own comments, but one is whether the variance will create an undesirable change produced in the neighborhoods and the character of the neighborhood, or a detriment to nearby properties. We'll be looking at that. Whether the benefits can be achieved by some method that will be feasible for the applicant to pursue, but would not require variance, assessing whether the variance is substantial. Also, whether the proposed variance will have an adverse effect on impact or the physical or environmental conditions in the neighborhood, and whether the difficulty is self-created. So when you're ready, Mr. Abbey, if you choose to speak, then let me know, and I will start the timer.

Mr. Abbey: I guess I'm not really needing to speak. I've addressed all these in letters and my original application, so I think that's pretty straightforward.

Jim Brewster: Okay. In that case that's fine. We do have your information which we can consider. And so now we'll move on. Do we have anybody on the hand raise list that would like to speak from the public?

Nick Cortese: Yeah. I would just suggest that if you have any questions for Mr. Abbey, anything like that, go through everything with the applicant and then edit it. After the board is satisfied in terms of questions for the applicant, any additional comments or evidence he wants to present, then we can go to members of the public who were in opposition to the application.

Jim Brewster: Thanks for that course correction, Nick. I did jump ahead of myself. So for reiterating that board members, do we have any questions for Mr. Abbey that you'd like to follow along? You may have the floor. Anyone out there? Board members? Okay. Well, as usual I do and so Mr. Abbey, I actually need some clarification on just the whole providence of your land, just to step through that. And so I'll ask you some questions. So, from what I gather the application, excuse me, the deed was in for 26 Buckley, was owned by at some point, I'm not going to go way back in time, but just from the John L. O'Brien Sr. days and then from what I can tell, Mr. O'Brien moved the rights to the property, into an LLC ownership of his in 1998. Is that correct?

Mr. Abbey: I believe that'd be correct, yes.

Jim Brewster: Okay. From what else I was able to obtain, the property was sent into arrears with the County sometime around 2008. Is that correct to the best of your knowledge?

Mr. Abbey: Yes.

Jim Brewster: Okay. And then they held an auction approximately in the year, 2012, right?

Mr. Abbey: That's correct.

Jim Brewster: Okay. And that's where you picked up both parcels on or about January 9th, 2012?

Mr. Abbey: Correct.

Jim Brewster: And you pick those up in your name?

Mr. Abbey: No, I think the bid come up initially in the Abbey Trust before. The auction I think, was in my name, but when we filed the deed with the clerk's office, it was in the Trust.

Jim Brewster: Right. Okay. So I was going to go there next, this is just for clarity, so, right. There's a quick claim on file from you to the trust dated on or about the 7th of February, 2012, so that would be roughly the time that you put the property in the Trust with the trustees of your children, right?

Mr. Abbey: That's correct. Yeah.

Jim Brewster: Okay. So, after that, and here's where I get a little fuzzy, and I understand that there was some splitting off of the larger parcels for Justin and well, the trustees I'll just call them the trustees for his property on about 2016 or 2017. And then there were some easement transfers for that side of the parcel. So, I guess my question, my final question to you is, on paper I'm not seeing your legal rights to the property, and I understand this is family. So I just need you to understand how after your quick claim, where did we get the rights for essentially for you to be here asking for this variance?

Mr. Abbey: Well, in my original application, I did provide the survey information for the portion, 2.9-acre portion, that is going to be conveyed to myself from the Trust. So that's how I become part and parcel of this whole discussion.

Jim Brewster: Okay. But to the right now, you obviously have some sort of agreement with the trustees to be on that land.

Mr. Abbey: Yes, that's correct.

Jim Brewster: Okay. Is it verbal or?

Mr. Abbey: I would say, yes. It's verbal.

Jim Brewster: Okay. And actually has the parcel been cut out to you yet or is it in the process of being done so?

Mr. Abbey: It has not. It's been cut out. It has not been conveyed.

Jim Brewster: Okay. Well that extends my first line of questioning on, I'm just trying to clear up exactly what your rights are here for approaching this permit or the application. So does anybody else have any follow up to my questions or anything else for Mr. Abbey regarding any of the factors?

Mr. Smith: Mr. Chairman?

Jim Brewster: Yes. Mr. Smith, go ahead.

Mr. Smith: Quick question. On any application it said that the easement was granted in 1959 for farm use. What was the property zoned at? What type of zoning did the property have at that time? And what is it now?

Mr. Abbey: I believe it's agriculture.

Mr. Smith: Agriculture. Is it still agriculture?

Mr. Abbey: As far as I know. I can't say for sure.

Mr. Smith: Okay. It would bring up a question for someone else later, I think. Just a clarification from the town attorney. Does the easement continue if there's a change of classification of the property? That would be my question, but this an attorney question, I believe.

Nick Cortese: I believe that the property is still located in agricultural district, Scott.

Mr. Smith: Okay. Very good. Thank you so much.

Jim Brewster: Anyone else on the board? I thought of another question.

Nick Cortese: Jim, if the trustees of the trust are here tonight, I have a feeling that they might be able to answer some of your questions as well. I'm not sure if you're here tonight or not, though.

Frank Carl: I believe they are.

Jim Brewster: Okay. I'm just going to ask, I'm going to address one of the factors that's pressing to me and the parcel you have is quite large. And so really the number two factor about can the benefit be sought by you by some other method feasible to pursue that would not require a variance and I'd really like to hear your opinion on that because to me it's a pretty big part of the factors.

Mr. Abbey: Well, I think that there's a particular piece of ground, like anyone, where I'd like to build my home. Not in any other particular place that other people might think I should build it, but I want to build it on top of that hill right there. It's a nice piece of ground right there. It's a close proximity to my son and my daughter, but not on top of them. And it's quite private. I like that. And those are the kind of the reasons why I'd like to build right there.

Jim Brewster: Okay. Thank you. Board members. Do we have anything else that you'd like to hear?

Jim Brewster: Okay. Hearing that we will now open it up to the public. And do I have a hand raised somewhere there from my co-host to tell me?

Resident: I'm not seeing where to raise a hand.

Nick Cortese: I believe that the hand raise function is in, I think it's at the bottom of the participants list. I believe, you can also click on your own name if you're participating and raise your hand. I think that that's the case as well.

Resident: No, that was a good lead. I see it under the participants, yes. Thank you.

Jim Brewster: I see a flag that Paula has raised her hand. I will acknowledge Paula to the floor.

Dr. Fallon: This is actually Dr. Fallon. We're up on 39 John Smith Road. I guess, as you guys probably know, the topography of that land is very problematic. The road has washed out in the past before. The terrain has a slight bit of elevation there. There's been drainage problems in the past. And I haven't seen exactly what kind of structure, what plans are in place for building that high on that hill. So, we're very concerned about potential property damage without all these things being thought out, or at least that we're aware of. I guess my other concern is I haven't heard of property rights here. Nobody has been able to explain exactly who owns this property and how it's been surveyed out, if a formal survey has been done. And what plans are for making sure the drainage does not affect the properties downhill? So those are some of the issues that I really believe, that the town planning board would consider and that we'd get some feedback. I'm also wondering if right now it's zoned agricultural. Has there been any move to convert that zoning to residential? These are very fundamental issues. That sounds very premature to proceed without knowing some really fundamental principles of land ownership, surveys, planning, planning designs, exactly how this is all going to pull together and it'd be in the interest of everybody else up on the John Smith Road.

Mr. Abbey: I believe I can answer them.

Jim Brewster: We can have rebuttals later, but we're going to just have folks air their concerns right now. So, just make a note of that, Mr. Abbey.

Jim Brewster: Okay. Thank you very much. There's no actual yielding of diamond municipal law. I found that out. But thank you for your comments. Do we have the next person up? Do we have any raised hands right now or? Okay. Three people raised their hand. Any of the hosts see this? Because I am in the share mode, I can't.

Jo Anne Klenovic: I see two right now, Mr. Matthews and Mr. Hailey.

Jim Brewster: Okay. Mr. Hailey, you have the floor.

Mr. Hailey: Thank you, Mr. Chairman. I represent the E.L. Rose Conservancy. I'm an attorney for them tonight and they have a conservation easement on Mr. Matthews and Mrs. Matthew's property at the top of John Smith road and there's a few things I would like to point out to the Board initially. The first one is that John Smith Road and, some are a little more than 500 feet from the property of the Abbey Trust # 4, it's not a few feet away. So, the request is that the Board is reducing the 240 feet of road frontage that would be necessary for a house lot down to zero because there's no road frontage at all and the nearest road frontage is 500 feet away. So, I just wanted to make that fact

known that the easement is an ingress egress easement. Terry Matthews supplied the Board, I believe, with some aerial photographs over time, which demonstrate that it really is more of a 10-foot-wide path used in the 50s and 60s to get farm tractors up into the fields up above the Matthews home. The Matthews home has been there since the mid-1800s, so they didn't build on top of the hill. Subsequently, that house has been there for 150 years or better. So, what the Board is being asked here is to say, not that we're varying something, "He had 210 feet, but the rules say 240 feet." He's saying, "Let's take from 240 feet to zero feet. By the way, I have to travel 500 feet across someone else's land to do that." One of the questions was about, I think Mr. Brewster, you said what is your standing? Because at the time of this application, Mr. Abbey does not own the property. The Trust owns the property. So, I'm wondering if it's even premature for him to bring this application because he does not personally own the property, another legal entity owns the property. And I think at the Planning Commission, what was striking to me was how many neighbors came into that Zoom meeting and said, "We have flooding problems, we have erosion problems"; I know I've driven up John Smith Road and it gets narrower and narrower, and the ruts are deeper and deeper where the water runoff is. And I'm questioning on behalf of the Conservancy, whether this is going to add to the storm runoff problems of the people downhill? One of the major reasons for the Conservancy to take this property in a conservation easement was to slow it down because the Matthews have legally committed in that conservation document to keep their trees in place and not to clear any trees without permission of a master forester. So I think they did that out of concern for their neighbors downstream. And now there's a presentation that someone wants possibly to pave this road and to widen it and I just think that would cause havoc downstream and I think if you'll apply the byproducts of the test, you're going to find that it fails on all five of them.

Jim Brewster: Okay. Mr. Hailey, thanks. Have you concluded? I'll stop the timer here.

Mr. Hailey: Well, I think it's important for the Board to look at the facts based on the application and the fact of the matter is this is really a 10-foot-wide stone and dirt path that goes up into the meadows up above the Matthews property. And it should also be clear to the Board that this is about 500 feet from the nearest town road. Thank you, Mr. Chairman.

Jim Brewster: Okay. Thank you for your input.

Jo Anne Klenovic: Benjamin Perkus is the next one.

Jim Brewster: Well, I think we need to go back to Mr. Matthews if he'd like to speak because he yielded if you will, to Mr. Hailey that he was next up.

Mr. Matthews: Okay. Thank you, Jim. I have three questions for the Zoning board. We've been following this variance with this property since it was purchased in 2012, at the auction that you mentioned, at 26 Buckley Road property. In 2016, this property was also up for the Zoning Board to grant a variance and it had a variance granted. A 10-acre lot was carved out for Justin Abbey. And there were, at that time, limitations placed on that variance. There were a declaration that no further houses would be built and there would be no easement on the remaining 150 acres for access to Buckley Road and so that was granted. The variance was granted with those limitations. So, following that at some point, there was an easement put on the 150 acres to allow access for the 24 Buckley Road, across 24 Buckley Road, which counters the previous variance limitation set by this Zoning Board. So now we have this application adding a variance for another house

and adding another subdivided lot, and a recent statement about planning a two-lane road. The Zoning Board, my understanding is, you try to grant a minimum variance and that's what's required of the Zoning. This looks like an example of what's called segmentation, where the current request for a variance is really a part of a larger whole action that requires a detailed environmental review, not a short environmental state review that was done in this application. So, my question is, has the Zoning Board looked at this variance request in the context of a whole action that started really in 2016?

Jim Brewster: Well, since we're just convening for the public hearing tonight, Mike, the short answer is no, but you've presented that information. So, it's now on the record for us to take a look at it.

Mr. Matthews: Okay. My second question is regarding New York State Town Law 288 and to 288 requires that there's proof of a safe access for emergency vehicles with the minimum 15 foot with access. And this site, the easement across the Matthews to John Smith property, doesn't meet that access width, its less than a 10 foot right away and on a steep slope. So, is the Zoning Board applying Law 288? New York State Town Law 288?

Jim Brewster: We'll have to discuss its applicability to zoning and the variance. It certainly would come up in the process. I'm led to believe it comes up in the building permitting process after that, but that's something for legal to chime in on, but it's certainly a consideration we'll have to take.

Mr. Matthews: I think it applies now. Applying it later would basically be too late. But my third question is Town Code 57 B. I believe there's a storm water pollution protection plan, SWPPP, for all actions that require variance with a minimum of a 12 foot construction vehicle access, whatever the access is along the entire length of the access. So, my question is, is that code town of Chenango, Code 57 B, being followed?

Jim Brewster: Again, that comes under the building permit process, I believe and it also has the criteria, there are certain size criteria. I don't want to take up your time, but certain size criteria that this property may or may not meet. That's going to be for ordinance to discuss.

Mr. Matthews: Okay. Thank you very much.

Jim Brewster: Help me out with who's next on the list?

Nick Cortese: I think that Dr. Perkus is probably next, and then Mr. Millus and then... Well, I'm not sure if it's Terry M. or Mr. Millus, and then Mr. Wright is last.

Jim Brewster: Okay, Dr. Perkus, you have the floor.

Dr. Perkus: Thank you. I'm Ben Perkus. I live on Route 12 at the bottom of John Smith Road and my property is where all the rocks accumulate when they flow down the hill. As I mentioned last time during the several large storm events, we've had significant rocks and dirt and debris, tennis shoes, basketballs, all these kinds of things have come down to land in the property. We had to have equipment in several times to clean it out. And so obviously, we've seen the damage that has been occurring. Not just once but several times. So my concern is not so much that they dislike having neighbors or new neighbors. I'm not opposed to having neighbors or new neighbors. It's really about is the planning really

including a serious look at what would happen to the runoff, primarily, is my concern. So, for instance, and it's hard to assess these things without knowing what the master plan is. How much paved road would there be? I can imagine that when it rains, I'm not an engineer, but when it storms, when storms hit a paved road, it runs very quickly downhill. If storms hit trees or sod, it doesn't run as fast. So, I can only imagine the more paved road there is, the faster things would run downhill, the more flat surfaces like roofs and driveways and things like that. So, that's the concern. And then beyond that, if there is a master plan that we're not hearing about, and I'm not saying there is or isn't, that includes additional roads, additional developments up there, all those would be compounding, of course, what might happen down below. So, I feel it's really important to know where the true plan is, if there is one. Also, such as basically my personal concern that, that's really as far as that goes. I suppose if there was a huge amount of traffic going up and down John Smith, that would be disruptive, in a way it is now. I live on a busy road as it is, which is already noisy, so that's not my biggest concern. And then from a procedure point of view or, I don't know what to say, a justice point of view, the concept that the Board would grant the ability for someone to, in a sense, use eminent domain, it's probably not the right technical word, but to run a driveway hundreds of feet across another person's land, whether they want it or not, to me doesn't seem fair. It's not my land, but when I heard that it did give me concern. And so those were my main concerns. And I would love someone to address those if possible. Also, having not heard from Mr. Abbey himself on how the plan, I guess he submitted an application. I haven't seen it. And maybe someone could instruct me how I could see that, if it's not going to be talked about, what his response to those five points were verbally tonight, and then where we could take a look at that. So that's all I have to say. Thank you.

Jim Brewster: All right. Thank you for your contribution. Yes, the application is always available at the Town Ordinance Office, or perhaps the Town Clerk. I'm not sure which. Either one, I'm sure would be able to track it down for you. And the first part of what happens is we get the applications. As you saw, if you were on early, you saw us approve one tonight for, to cycle through the process, through the Planning Board and then eventually to us. So, usually the application is settled a good month or so in advance. But it is old school by going to the Town Hall to request that or foil it. I don't know if you have to foil it, but anyway, that's my answer to that.

Dr. Perkus: Thank you.

Jim Brewster: Who's up now?

Nick Cortese: We'll take Mr. Millus next.

Jim Brewster: Mr. Millus, you have the floor.

Mr. Millus: Thank you. Just a few comments. First of all, I just want to reiterate the fact that this has been in front of the planning board, which unanimously recommended approval of the application. Contrary to one of the previous comments, there was not a litany of complaints from neighbors. I remember Mr. Matthew's speaking, in fact, after the planning board voted and maybe one other neighbor. There was not a line of neighbors lining up to complain about this application. The ownership, if that's an issue, we can cure that, but we'll just be right back here in another month, because all we have to do is convey the property from the trust to Mr. Abbey, which is what the intention is. That's really a non-issue, as far as I'm concerned. The right of way width is not an issue before this board. We believe the right of way away is at least 25 and possibly 50 feet wide.

That's an issue to be resolved with the town and with the neighbors. It's not an issue for this board. The only issue for this board is whether the grant of variance to reduce the frontage requirement. As I said in my letter today, I've been a town attorney of the Town of Fenton, and deputy town attorney beyond that for years. We all know what these lots are on the top of these hills. They're flag lots. They don't have frontage on the public roads. They have access like easements. And that's exactly what we have here. The fact that there was concern about, is it fair to be able to go over somebody else's property. Yes, it's fair, because the Abbey trust owns an easement over their property, which is a valuable property road that was conveyed years and years ago. So that's not an issue. Mr. Abbey, there is no master plan. Mr. Abbey wants to build a house. He's not building a warehouse up there with the intention of bringing up tractor trailers. He's building a house with the intention of driving in and out to get to his house and get back down to the hill. This is not going to... Unlike the concerns expressed by the neighbors, very few neighbors, this is not going to cause any substantial increase in the runoff. The runoff on this hill is an issue everywhere. And just building another house that there's not going to make a difference. But Mr. Abbey did get an opinion from an engineer, which he provided to you today, saying this is not going to add any substantial runoff. In fact, it's not going to even run down the John Smith Road it's going to run in the opposite direction. That's just not an issue. The Conservancy is meaningless. You can't stop your neighbors from developing their property by creating something called a Conservancy and saying, Oh, we've created a Conservancy, so nobody else is going to be able to build up here. Mr. Abbey's a good neighbor. He's lived in the town his entire life. He's a good businessman in the town, both the Town of Chenango, Town of Fenton and the Village of Port Dickinson. He's not going to do something here that's going to create problems for his neighbors. He just wants the right to build a house. And one more house up on top of that mountain is not going to make any difference to the runoff or the character of the neighborhood. He's got the right to go up there. It's a valuable property right and we respectfully submit that the board should grant the variance. Otherwise, you're just going to render their property useless and, if you render that property useless, you're going to render all of the properties up on top of that hill useless. Thank you.

Terry Matthews: This is Theresa Matthews. I'd like to let Michael Wright go before me, and then come back to me, please.

Jim Brewster: That's fine. Mr. Wright, you now have the floor.

Michael Wright: Thank you. I believe that the members of the board have the inhibitions that we're setting forth in great detail. The reasons why we feel that the variance application should not be granted. And I'm not going to take the board's time to reiterate all of those. But I would ask the Board to carefully consider those in light of the relatively superfluous responses that we had this evening from Mr. Abbey and his attorney. I do take exception to the fact that there is an assumption that Mr. Abbey had and should be allowed to proceed to the grant application because he lacks standing to make an application to the Board. He has no legal ownership interest in any of the properties involved at this time. So, for the Board to act on the various application to approve it, would be in my mind, improper. And I would make that objection for the record.

Secondly, with regard to the issue of conflict, I heard Mr. Cortese's statements earlier this evening, and I do take exception to those, in who feel that there is a valid and existing conflict of interest. As I pointed out in the letter that I sent to the Board today, Mr. Pope from the same firm is actively representing Mr. Abbey, specifically with regard

to the issue of the easement across the Matthew's property, the width thereof, and the intention is stated by Mr. Pope on behalf of Mr. Abbey of an intention to develop a runway across my client's property to create a two-lane road, 25 feet wide each. So, that is critical to the consideration of this Board. And for Mr. Millus to suggest as he has, that the issue of the easement across my client's property is a non-issue, I totally disagree. The imperative and the request for the variance to obtain access to John Smith Road, on the basis of your representation, a false representation to the Board, that he has a 25 or 50-foot-wide easement, on which he can construct a roadway, is absolutely improper. And the Board, is in fact, we had established on the record and the material to be submitted. It is a 8 to at most, 10 foot wide roadway undeveloped that cannot be developed across my client's property. That the entire premise, which he is basing his application for variance to have access to John Smith Road is without merit. And on that basis, we would submit that the application should be denied for all the reasons stated in all of our papers, and for the reasons I have stated tonight.

Jim Brewster: Thank you. So let's go back to Ms. Matthews. Terry, you're up next on the floor.

Terry Matthews: Good evening, everybody. I'd like to thank Michael Wright for his statements regarding our easement. And the question that I have for you is, we believe that there is a false statement on the application that this easement is 25 feet wide. We know it's not. We understand that this is a civil issue that we need to clear up with Mr. Abbey and the Abbey Family Trust. But given that, the question is can be Zoning Board defer their decision on granting this variance until that issue was cleared up. That's my first question. My second is, given that in December 2016, the Abbey Family Trust submitted a 10-acre parcel with a request for a variance. And at that time, Justin and Rochelle submitted a very complete plan for their lot that they plan to build on. It included sewer and utilities and storm water management. Why has that not been required of this particular variance request? We have concerns and we've addressed those concerns in several letters that we sent to you regarding the SEQR, and regarding the storm water plan, which we believe was required at this time. Then finally, the question is, if there are false statements on an application is that grounds enough for denial of the variance until those issues are cleared up and were rectified? And if so, who enforces that? And what are the consequences? I guess that's pretty much all, other than the comment that Mr. Millus made about their being very few neighbors who made any comments. There are very few neighbors on John Smith Road. And I can tell you that that two of the neighbors who have been most impacted by water runoff from the town road were both on that call and made comments. And that's about all I have to say. Thank you.

Jim Brewster: Okay, thank you very much. I see more raised hands, but I can't identify them.

Nick Cortese: Still waiting is Katherine Desisto.

Jim Brewster: Okay. Katherine, you have floor, if you'd like it at this time.

Dominic Desisto: All right. So, this is actually Katherine's husband, Dominic. We are at 39 John Smith Road, Dr. Fallon owns the property, but we are living here. We are the stewards of the property for him. And several issues that I have with this. Again, I want to state from the beginning, we're not opposed to any type of residential house being built up there. We welcome neighbors. We love neighbors. You're welcome to the area. But my issue is the development. We just want everything to be responsible. The farm road that is accessible to Abbey's property. There is a culvert that goes underneath that road and that empties out directly above our property. From that point, it drains down through

our property, around the backside of our house and has created a rather large culvert along the backside of our property. (Katherine: "Drainage. Like, a big erosion.") Right, so in this ditch, I could stand in the center of that. It's at least four to five feet deep and a good six to eight feet wide. We did submit a letter to the Town of Chenango, it has pictures of this area, has everything stated out. From the planning board, not a single member had bothered to stop by and take a look at it. I thank Mr. Brewster for stopping by a week and a half ago to look at this area, and it is really remarkable the amount of water that has been coming through this area and creating an amount of damage to our property. That is one issue. My other issue is that Mr. Millus, he has stated that the water runoff is not going to be an issue to the properties downhill because the water is going to be in the opposite direction. Well, this opposite direction is that area along the back of our property, where we have this current drainage issue. Now also, running through this area is NYSEG power poles. The one power pole is getting very close to this drainage ditch that has been created. We have put a call into NYSEG for them to come out and take a look at it. We have not heard any resolution to this problem as of right now. So, we're waiting on further information on that. The other question I have is Mr. Millus has said that canceling this variance is going to render the property useless. Well, that is not true. It is rated, listed as agricultural. There are definitely agricultural purposes that could possibly be used on that property. Say for instance, corn or even Christmas trees. I know Mr. Abbey on the other portion of his properties, he has a rather large Christmas tree farm. That is just a great idea for the area. And that also helps with us erosion control in the area.

Katherine Desisto: Hi, I just want to add in, too, that when this property was purchased, it was purchased as a large track of land without direct road access. So Mr. Abbey obviously knew when he purchased the property there wasn't direct road frontage as he purchased it as an agricultural piece of property without the road frontage. So you can surely use that, as he's been using it, for recreation and hunting and other things and growing corn and whatnot, since it was purchased about that road frontage.

Jim Brewster: Thank you very much. Nick, who's next on the list?

Nick Cortese: Mr. Matthew's has his hand raised again. He has already had five minutes to speak. It's up to you what you'd like to do with that.

Jim Brewster: Okay. Is there anyone else?

Nick Cortese: Nope.

Jim Brewster: Okay. I do have to open it up to new speakers, so if you're on the phone or you're out there and not able to raise your hand for the chat, I'll take the next person who can just say out that you'd like to speak and we'll let you go.

Nick Cortese: Problem is, I think everybody's on mute, Jim.

Jim Brewster: Okay. Can you release them temporarily?

Nick Cortese: Yes, no. This isn't a free for all moment. As you guys know, this is just to address people who are on the phone and don't have access to the Zoom interface. We're going to unmute everybody for about 30 seconds. And if you don't have access to Zoom and you want to speak now would be your opportunity. Just give me one second.

Nick Cortese: So, there's one person on the phone. I see a 607-343 number. I'll unmute you right now. And if you want to speak that's fine. If you don't, that's fine too. I've asked you to unmute. Once, twice, three times not unmuting. Okay.

Nick Cortese: And then I think everybody else is connected to Zoom in some capacity or other. Everybody pretty much does have video capability, at least audio capability. I'm not exactly sure how to handle this, but it's looking for direction from you, Jim.

Jim Brewster: We do have a policy, once everybody we've determined has spoken we can get back to...

Nick Cortese: And we have a... Gary has raised his hand. I will ask him to unmute. Just have to unmute yourself Gary, if you can. There you go.

Jim Brewster: Okay. Gary, you have the floor. If you'd like to speak. Maybe, maybe no Gary?

Nick Cortese: Gary's out, apparently. Gary's out. I don't think that we have anybody else. We had the one call in phone number. We asked them to unmute. They did not unmute. Nobody else is chomping at the bit to go. It appears that the people who wished to have spoken have, to the best of my knowledge and ability, I guess.

Jim Brewster: Okay. With that, we do allow a second round of those interested. So it sounded like Mr. Matthews, you wanted to speak again.

Mr. Matthews: Yes. Thank you, Mr. Brewster. A couple of questions. One on a conservation easement. Edward L. Rose Conservancy has been established for more than 30 years and it is fairly new to New York State in Broome County with the work that they do for the stewardship of lands is very important. Is not, as Mr. Millus stated, something we invented for this. Conservation easement was a rigorous process and it was done well before any of this recent variance request was in the works. Mr. Brewster, so far with this open forum, there've been a number of questions asked. And my question is, will they be answered and how will they be answered?

Jim Brewster: Yeah, that's a good question in and of itself. As some of the answers will probably take time. I can see a lot of, a few of them having to go over to John at ordinance. Perhaps we'll need some commentary from Nick on some of the guidance, especially the legal tending questions. It's possible we may need more time to review, but we'll have to follow that up as we get into it towards the end of the hearing here with the board. I can't make that unilateral decision. Nor can answer a lot of your questions or anybody's questions.

Mr. Matthews: Great. Thank you, Jim.

Jim Brewster: So, this will be the last call for open speaking in the public hearing.

Mr. Abbey: Mr. Chairman. This is the applicant.

Jim Brewster: One second, Mr. Abbey. I wanted to hear what Attorney Cortese had to say really quick.

Nick Cortese: Mr. Abbey, are you on a name that's James right now?

Mr. Abbey: No, I'm on as Jay Abbey.

Nick Cortese: Oh, okay. All right. There's someone who's named James who hasn't spoken yet that has their hand raised. I don't know if you're James or someone else, but yeah, they're new.

Jim Brewster: Okay. Well, we'll have to proceed with that. Mr. Abbey, since you're the applicant, I'm sure the board may have some questions or you can have your second round as well, per policy. So, James are you out there?

James Matthews: Hi, this is James Matthews. So just a couple of clarifications at the Planning Board meeting. They did not take public comment before the vote. There was a significant number of the total houses on John Smith Road are opposed to this. There's eight or nine on John Smith Road. And I think six have submitted to the board their opposition. And again, in 2016, Justin and Rochelle Abbey apply for a variance, an area variance on the Buckley Road side and they asked to build a house. They also asked to carve out 10 acres, which wasn't necessary for building a house on the 160-acres of the Family Trust. They could've had a house on 160-acres. But the Zoning Board, allowed them to do, was to also carve out those 10-acres leaving 150 for the Family Trust. So those are two different actions. And during that process, they said, we will only build one house and we will not divide the rest of the Family Trust. That's in the minutes from the 2016 application. So, four years later, they're asking for something that's completely opposite. It's logically inconsistent what they said in 2016 and what they're saying now. And they have only one, when they bought it, it was only one lot. And normally one lot is one house. So, in this application, they're asking to divide again. They're asking for 2.9-acre lot and leaving behind a 147-acre lot. And again, there's no logical reason for making that division. As the map that I've seen shows, Mr. Abbey will need to cross two different properties to get to his own property. He'll need to cross the John Smith road and then part that's on Abbey family trust that connects to the right of way isn't going to be conveyed to Mr. Abbey. He will need two easements to get to his driveway. And again, it doesn't seem to be logical to divide 150-acres again, to put in a 2.7 or 2.9, whatever it is, unless the plan is to put in more divisions later on. And with his statement that he wants to put in a two-lane road, there is no need to put it a two-lane road if the plan is to just have one house. It seems that this is segmenting a larger project into smaller pieces and saying, I just want to do this one more thing. And I ask that the zoning board takes this request and the 2016 request as one action, because it's the same tax client number, and it's the same owners. They're using both sides on Buckley Road to John Smith Road as one property. They've put in a road from one side to the other, for private use. And from a statement that Mr. Abbey has made, he wants to expand that to a two-lane road. And that would change the character of the neighborhood, making a dead end road into a through road. Thank you.

Jim Brewster: Thank you, James. Anything else Nick, that you see out there?

Nick Cortese: Mr. Millus wants a second crack at it and so does Dr. Percuss.

Jim Brewster: Okay. Dr. Percuss.

Dr. Perkus: Yes. Thank you. First of all, I just got texted by Gary Carley. He's my neighbor who was coming up as Gary and he wanted me to speak for him. He said, because for whatever reason he couldn't speak. Technologically didn't come through. He basically just wanted me to convey pretty much the same thing. I said, he's next door to me. He's on John Smith road and I've seen the big, very large like the grand Canyon, you can literally stand

in there twice probably, ditch that has developed on his property from all this drainage. And he's had to do a lot of work and its ongoing still. It's not even done, to try to shore it up so it doesn't cause further damage. So that's just on the side of the number of residents who are concerned is significant and not minuscule as had been referred to earlier. And the other question I had again, was just kind of procedural but those of us who don't do this day in and day out, I would like if one of the Board Members or the Chair could tell us, what is the responsibility of the Board as far as answering these questions? Is there any responsibility to answer either questions? And how does that process work? And also if you could maybe outline again, for those of us that aren't familiar with this, what is the process from here? What can we expected to happen going further? Are there other... Which other parts of the town get involved in that sort of thing? Thank you.

Jim Brewster: Thank you. Yes. Let me finish up with the speakers and I'll take a shot at that and perhaps with the assistance of Nick, if I need it. But, so Mr. Wright was up next Nick?

Nick Cortese: No Mr. Millus is the only one remaining with his hand raised.

Jim Brewster: Okay, Mr. Millus then you have the floor and then we'll get back to Mr. Abbey because he made a statement.

Mr. Millus: Thank you just very quickly. I've heard the statements made here. We're not opposed to neighbors. We love neighbors. We want new neighbors, but they don't want Mr. Abbey to build a house up there. That just doesn't make any sense. There is no plan to further subdivide this. Mr. Abbey just wants to build a house. The suggestion that well, you can collect Christmas trees or corn. Well, Mr. Abbey wants to build a house. He doesn't want to be a farmer up there. But I'll let Mr. Abbey speak for himself.

Jim Brewster: Okay. Mr. Abbey, you can have your second moment to speak there.

Mr. Abbey: Okay. Well, I guess I'd like to say that, people can ask questions and a lot of the questions have already been answered in the various letters pretty clearly. Lots of conjecture about the width of the right of way. The fact is the legal document for the right of way does not give a width and that's yet to be determined, but the actual measurement of the paved portion of the right of way that's paved by the town now does run 18 to 20 foot wide with three to four foot shoulders. And the shale impervious hard packed section of the right of away into my property, that's been there since 2012, also runs about 18 feet wide. So, all this conversation about how little it is, how it's grass or this is just not really correct. The drainage does not make its way across John Smith Road to the large ditch and the large culvert that everybody references. It just doesn't get there. A little bit of a culvert that's at the very end of the dirt portion drains that water that's right in front of the Matthew's house. So it doesn't come across there. That was kind of something we put in to eliminate that little bit of area from eroding. We do have the idea of extending that driveway or making it a little bit wider. And that is a civil matter. And that's something that we'll fight out with the Matthew's, I guess. We have no intention to develop it and that's not what's before the Zoning Board right now. If we were intending to develop it in the future or anything, that then would come before the Zoning Board or the Town Planning Board. And that would all be discussed at that time. So I don't believe in any of that has any application on... I don't think the conservatory applies. It could be taken seriously, but the right of way was there. The fact is we have a right of away. We have a right to travel across it. We have 150 acres, and we certainly have a right to build a house there. As far as who owns the land and that conversation.

On the town's zoning application it has a statement right on there. It says, are you the owner of the land? And I put in there, no. And I said, who the owner land was. So, I'm making this application not as the owner of the land. So, but for my benefit. The land... We provided survey information. Very detailed about that. I provided a letter from an engineering firm indicating there's minimal stormwater runoff. Most of the questions that were brought up or up to code have to do with code. We do not have to provide a SWPP plan. It's not necessary. They've already called the DEC officers. They've all gone up there, it's required. And the septic, the house plans, all that has to meet town code and be approved by the code. So, I guess there's really an awful lot of questions or concerns that are highlighted. They're there, but there's actually answers for all of them and legal answers as well as practical answers. So, I guess with that I would conclude my part of the statement.

Jim Brewster: Okay. Thank you, Mr. Abbey, for that. Okay, I think we've covered everybody's speaking once and twice.

Nick Cortese: It looks like James Matthews is on for his second request to speak.

Jim Brewster: All right, thanks. Okay, then James, you have your second option. Go right ahead.

James Matthews: Thank you. So, the town Chenango has a local code about stormwater pollution prevention. It's code 57 B. And it requires any action that goes through the Zoning Board of Appeals, well, to fill out a full stormwater pollution prevention plan, full SWPPP, and that's Town of Chenango Code and when I spoke with John Freer, he said that they've never done that in the past, but that is what the Town Code says needs to be done. Again, that requires a minimum of 12 feet along the entire width or the entire length of the entrance to use as construction entrance and the land isn't physically 12 feet wide. There's a culvert and it's drops off steep into the side. And the actual right of away is eight to 10 feet wide. So even if land is larger than 12 feet, they only have the right to use 8 to 10 feet. Again, this is not something that we're making up. This is Town of Chenango Code. And it's something that even if it hasn't been applied in the past, it's something that... that's the law. And it's something that, maybe it should be applied here because that's what the law says needs to be done. It's not that the DEC doesn't regulate it because it's a Town Law, it's not, not a state requirement. So, but again, if you take this into combination with the 2016 action and the expanding to a two-lane road, it probably would meet the State DEC guidelines for a full SWPPP. And just because the DEC says it doesn't apply now, it doesn't mean that the town could ignore their own laws. There's one more thing. When you consider the five factors and go through the SEQR, would you please use the letters that my parents had sent in as a guide to ask the applicant or however your procedure goes, please refer to those while you're going through all of those factors. Because there's a lot of detail and there's... there are a lot of nuances that have been glossed over and requirements that have not been met. So, including the presence of grades on the site, where the applicant wants to put his house less than 25 feet from where his foundation... There's are two grave sites from late eighteen-hundreds. One is probably an infant. There are real issues here, and it's not that we don't want neighbors. It's just that we don't want this ran through without any planning. And we don't want... The way it's set up now in four years, they can say, oh, we would just want to put one more house. We have 147 acres that we don't have any use for. We need to put in one more house. And it appears that the goal is a larger project. There's no need to divide the 2.9 acres to put in a house. Right now they could put in the house on 150 acres and the division is a secondary issue that's not necessary for their goal. So thank you.

Jim Brewster:

With the public hearing still open, I need to do some administrative work here. We get letters, not only from the public, but from certain agencies that are required to submit us information. So, I'll go through those letters, then I will solicit the comments from John in Ordinance. First letter we received back is the 239 - General Municipal Law from Broome County. The case file was routed to Binghamton Metropolitan Transportation study, Broome County Public Works, and the Health Department who had no comments. The Planning Department reviewed the above cited case and has not identified any significant countywide or inter community impacts associated with the proposed project. As was alluded to, we received the official letter from our Planning Department after their meeting on October 13th. The Planning Board considered the request of Jay Abbey, 26 Buckley Road, a portion of tax map 094.021-11 for an area variance to create a buildable lot with less than required road frontage from 240 to zero in an Ag zone and also the short EAF. The Planning Board refers this application to the Zoning Board of Appeals with a favorable advisor. We have a drainage coordinator review from the Town Drainage Coordinator dated September 18th, and that has been checked as approved, signed by Michael Kwartler. We have one standard letter and an addendum from the Town Engineer that would come up. The standard letter received from Alex Urda, the Town Engineer, in reviewing the code of the Town of Chenango article 7, section 73-23C variances 2 sub-part A, B and C. The granting of this variance is necessary for reasonable use of the land and is in harmony with the general purpose and intent of these chapters. Recommendations also Legal should review access and easement concerns of neighbors, and he had no engineering objections. He went on to say in a letter from the other day, however, refers to his visit to the site at 26 Buckley Road on 10/23/20 to do additional review. He mentions the Crowley's at 61 John Smith Road had also requested I look at the surrounding area drainage. I drove up to John Smith Road and observed the drainage patterns along the road, and also went up to the right of way easement to location of the Abbey parcel and proposed house. The house area is partially cleared of trees and stakes are in place and what appears to be the proposed house location. The John Smith Road area has had historic drainage problems, particularly during our flash flood storm events. The addition of a single house on an existing drive lane, which was graveled dirt and easily drivable to access the site typically will not pose a drainage problem and when under an acre is not deemed by New York state DEC to likely have any adverse impacts. The plan is left to the Code Office to review as part of a building permit process typically. Drainage should be considered at the time of a building permit and the owner should assure they will not adversely alter drainage patterns. Alexander Urda, PE. I have a rather large grocery list of letters that also came in from many of you which... In the interest of time and the fact that they are written and part of the record, I will do what I did in the July public hearing and put out a list of those letters... the authors of those letters. So, we have two letters from Michael Wright representing the Matthews from Levene, Gouldin & Thompson. We have a letter from Alan Pope of Coughlin & Gerhart representing Mr. Abbey. A letter from Albert Millus, Jr. for the Abbey Trust # 4 from HH&K. James Haley Jr. representing the EL Rose Conservancy, Aswad & Ingraham. Several letters from Terry and Tim Matthews 9/21, 9/25, August 20th. And then a list of the package, which I think were many duplicates, but a concise package was received today. I have a letter dated 10/13 from a Karen Crowley. We have a letter a dated 10/9 from a Dr. Michael Fallon with CCs of Dominic and Katherine Desisto. We have a letter from Jay Abbey in addition to his application, which the letter we received on 10/26 outlining several points of that, that he needed to outline on the five factors. We have a letter that was attached to that from the engineer that he hired with and he referred to that in his discussion where they discussed drainage. And then I just read to you the Alex Urda follow up letter. I believe that covers it all. I had ex-partake communication as was mentioned with the

Matthews and Desistos on 10/17. And we were on their properties and near the Abbey line. So, that's all I have to declare at this time.

- Jim Brewster: So now we... Board members we are at a decision point here. You can recommend to me to close the public hearing if we feel we have enough information or are comfortable with the information we've received and do not need any additional time to go over all of the letters that have come in today. Or we can table this, leaving the public hearing open until another time just to give us and everyone time to review the latest developments and all of the questions and to review the public hearing again. That is up to you to make a motion on that, whichever way we want to go. And for the public's benefit, if the motion comes out that we continue forward, then we would begin the SEQR evaluation at this time. One other thing before any board member speaks up, probably should mention that now Joe, since we're getting closer and closer to wrapping things up, is there anything you would like to declare at this time? I know you've been sitting and listening, but we've talked about earlier, so.
- Joe Aston: Yeah, just the fact that I share property lines with both the Matthews and the Abbey trust. I think it's probably in the best interest of the board after talking to you guys that I recuse myself from this and just allowed Tom to be the voting member. That area variance is to keep my discussions and all that unbiased.
- Jim Brewster: I will accept that and accept your recusal. And so Tom, I'm putting you in charge of being a member instead of Joe. So, you'll have the vote as you know. So, where did we go from here board members?
- Aleta Kinne: Mr. Chairman, are we be allowed to ask some questions as Board members?
- Jim Brewster: Sure.
- Aleta Kinne: As they're listening?
- Jim Brewster: If you'd like to do that in the public hearing or... I lost part of that.
- Aleta Kinne: We also didn't hear from ordinance. I don't know. Did we?
- Jim Brewster: I do that every time. John, are you out there?
- John Freer: We have no concerns allowing the area variance would request a building permit on approval. I did do a little homework over the last few days and hold a lot of variances for less than required road frontage. This is not an uncommon request and maybe to answer some of, or a lot of the questions that are out there. Concerns or issues that a lot of people had would be determined upon approval in a variance or, in a building permit that we could look in to all these other issues. So, if that makes anybody feel any better. I mean, that's typically how everything would go. If it's approved, then he would apply for the building permit. And we would look at those issues that everyone has. But other than that, that's all that the ordinance has.
- Jim Brewster: Thanks, John. And I'll add onto that from my understanding. So after we get through... if and when we get through the SEQR, then we would proceed on to the discussion. The board only would discuss the five factors with the evidence presented. And we would apply about the balancing test of those five factors and discuss it and come up with the resolution, whichever way that the balancing test was coming out. So those are the next

steps for the folks, just for everyone to understand how the process works. And as John alluded to the...we will be focusing on the area of variances as written and as written into the laws. There are some other laws that we certainly have to consider, but right now I need to discuss with the board how we move forward tonight.

- Aleta Kinne: As the ordinance said, this is not unusual. We do have several buildable lots without road frontage. This isn't the first time we've had this. But, I would like to ask legal counsel. It seems to me before we have had applicants go through this sort of procedure. They do not actually own the land yet, but it is with the arrangement that if the variance is approved, then the land is conveyed to them. And I just would like to say before, that's what we've been advised. And I just wondered what Nick had to say about that?
- Nick Cortese: I'm not really sure the practice has been in the past in the town of Chenango. I know that I've been here for about two years now, and we generally don't deal with this type of issue very often. Usually it's either the owner of the land that's applying or somebody who is authorized in writing by the owner of the land to apply. The scenario's a little bit different. I understand what both sides are saying. If you want to acquire written authorization by those who own the land for Mr. Abbey to pursue the variance application, I think you'd be within your right to do that.
- Aleta Kinne: The last time we did this, the other party was also present and just spoke to us about it. I don't know if the Abbey trustees are on and they want to clear that up?
- Nick Cortese: I think it's a worthwhile question.
- Aleta Kinne: My next question is, I wanted to ask the Matthews, how long they've owned their property?
- Nick Cortese: Are the trustees of the Trustees of the Abbey Trust present tonight? Yes? No? Maybe so?
- Justin Abbey: Yes.
- Erin Abbey: Yes, we are here.
- Nick Cortese: Would you like to answer Aleta's question?
- Justin Abbey: Yes. I mean, we're absolutely fine with my father deeding off that spot, absolutely.
- Nick Cortese: Good, I mean, obviously you guys are the Trustees of the Trust, and you own the land. So he would have to be authorized by you to pursue the variance.
- Justin Abbey: Yes, and we authorize him. Absolutely. He is the one that placed that land into our possession, so yes, absolutely.
- Nick Cortese: Does that answer your question, Aleta?
- Aleta Kinne: Yes. Thank you.
- Nick Cortese: You're welcome.

Aleta Kinne: My next one is for the Matthews. What year did they purchase their property? I know it's probably in some of the letters.

Mr. Matthews: This is Tim Matthews...

Aleta Kinne: At the time that they purchased that property, they were aware of the easement road that went through their property?

Mr. Matthews: Yes, I believe it was 1975. So for 45 years, we've lived there. We're, the longest residents in that property since it was established.

Aleta Kinne: Okay.

Mr. Matthews: And we are aware of the easement....

Aleta Kinne: So, when you bought the property, you knew that a permanent easement...

Mr. Matthews: Yes a farm road for, to access behind us. We knew that. With previous owners, we had the discussion. We had the understanding that it was not able to be improved. It was only after that access road, the farm road washed out, after one of the big rain events. And then the Abbey's purchased the property. That access road was not accessible. It was washed out. We had replaced the big ravine that was cutting through it. We patched up one side, so it became its own pond, like a retaining pond, to slow down the water that was rushing down there. When the Abbey's bought the property, we talked with them and to give the access, restore it back as it originated in the 1950s, to the less than 10 feet. That was the agreement that they fill in that little wash out pond; so, they could restore it to its originating shape. They actually brought in more fill than we had discussed. But the agreement was that it would be restored as original. So even though the town road, John Smith road when we bought it, bought the house in 1975 was a single lane, gravel road, it wasn't even blacktop. The town has improved that since then. We put in a turnaround at Earl Markham's request, so that the Town's plows would have a better place to turn around. Our driveway has been improved, but those improvements have nothing to do with the originating character of the right of way easement to get to now get to the Abbey property. It doesn't change that width or character of that right of way.

Terry Matthews: When we first bought the property in 1975, the O'Brien's, the second generation of O'Brien's owned a house down where the Jaffe's live now. They kept their horses up there. Only a pickup truck would go up and to bring hay up to the horses. That's been a farm road since we purchased the property, as it was established in 1959. Nelson James sold the property that we now have that cut-out very odd shaped piece of property with 15 acres, it's ours. He owned it, the larger parcel, and he sold off to the Sear family in 1959 and then retained the right to go up to his farm lands when he did that. So it was ingress egress for agricultural purposes only, and less than 10 feet wide.

Aleta Kinne: Okay. I know this, this whole business with the roadway, is really a civil matter. That is not up to us tonight, but I did have a couple of questions. I just wondered also, do you maintain the road portion that goes through your property, or the conservatory maintain that section of road?

Mr. Matthews: You're talking about the easement right of way that goes up to the Abbey property?

Aleta Kinne: Yes. The section that goes through your land, you maintain that?

Mr. Matthews: We mow the grass because it's right there on our lawn, next to our lawn. We had in the past, we have done some improvements for drainage just after big events and things. But other than that, it hasn't required much maintenance, because it was used very little.

Aleta Kinne: Okay. You brought up something else a minute ago. Just want to ask about, you were saying that the Town snowplow plows your driveway up to the turn around?

Mr. Matthews: Well, Earl Markham when, they improved John Smith road, he needed a place for his trucks to turn around. So he asked us, would we put in a cul-de-sac at the end of our driveway, which we did. And at the time I had a Jeep with a plow and he also asked me, would I open up the road when the snows were deep? And I did that for more than 20 years with no pay. So, it was a very nice arrangement, I think for the town, when we stopped plowing, they lost at least two trucks with broken axles on that road doing plowing. So, we put in at our expense, the turnaround...

Aleta Kinne: We're getting off track. I'm sorry. You've answered my question. You understand that your questions about the permit or the septic is not up to us tonight? That'll be taken care of by ordinance with a site plan later this tonight, the only thing we're working on is a variance for a buildable lot, with no road frontage. We can't answer a lot of your questions that you're asking because they have to be addressed at a different time and in a different way. Also, your statement about Town Rural Code 57B. I understand DEC has been out there to visit, and I believe that the state overrules the Town Law. So, if the State has already given an okay on it, I'm not sure that the Town Code takes effect there. That's someone else would have to answer that. I was out there today. I used that road today. I was out there. I got to agree with many of the things that Mr. Abbey's letter of the slope of the land. I did not see the grapes. I, if they were 25 feet from where he started to build the houses, I just didn't see them. They're probably there, but I didn't see them. And there's no way that we, as the Zoning Board can foresee the future and give you any guarantee that down the road, 20 years or something that someone else isn't going to want to build a house up there. That's just in my estimation, that's just not logical question to ask us. The layout of the whole plot. That section comes down in kind of a funny layout, and it just seems like the road sort of semicircles and that the plot would be a buildable lot. You mentioned about because it's agriculture, they could plant corn. You realize that to plant corn, it has to be clear-cut. And I don't believe Mr. Abbey plans on clear-cutting. That looked to me today, like he had cut about five trees to lay out the diagrams for his house, but I'll give someone else a chance to talk then. Thank you. One other thing, maybe in our variance, our Board Members should consider that this might be an improvement for the whole area, because maybe Mr. Abbey would be redirecting some of the water flow, like ditches or sluice pipes or something. That's just a possibility. That we can't answer, that it has to go into the site plan. Thank you, Mr. Chairman.

Jim Brewster: Thank you. Board members, any other questions? Again, where would we like to go from here? I'll give you a hint that there's still a lot I think I need to digest, but that's as far as I'll go right now. It will be at the pleasure of the rest of the board, how we proceed.

Melanie Pandich: Mr. Chairman, there was reference made to a Zoning Board decision in 2016, with some conditions in that variance grant. Would we be able to get that document pulled for our review of what that exact decision was with the specifics of the conditions?

Jim Brewster: I'm sure we could. The, again, they're having trouble on the website. I saw it like a couple of weeks ago when the old website was up, but I cannot access it now and they're working on that, but I'm sure you get a hard copy out of Town Clerk. No problem. I guess the relevancy of that I would have to, well, that would be upon us to determine.

Tom Eldridge: Jim, I don't know if anybody in the ordinance has possibly looked into that already and may have possibly read it, or if that's something we could ask John?

Jim Brewster: Sure. John, did hear the question?

John Freer: Yes, I did. What are we referring to exactly in 2016?

Tom Eldridge: Some of the notes that were thrown on with the variants that the Abbey's were given, some of the stipulations.

John Freer: I got the deposition set right in front of me, and description of need for Planning, Zoning, action to create a lot with less than required, road frontage from 240 to 50 foot, R.O.W. and agricultural zone. There are no conditions on that.

Tom Eldridge: I think I understand it was more of a spoke in the minutes, but I mean things spoke in the minutes aren't necessarily well, a rule unless they're wrote down.

John Freer: Yes, yes. So as far as the minutes go, we look at what is typed into the deposition and there is nothing in this deposition that would state anything differently.

Jim Brewster: I did find it in the letter that was presented to us, and if I may, I can, if it's, if you think it's worthwhile, I can just reiterate it for the record? Relevance we can determine, or not. So, conversation was between Justin Abbey and Mr. Walls, Justin Abbey being the Trustee for 26. Well, for the, that whole parcel split but mostly the 26 Buckley.

Tom Eldridge: One sec, before you go any further. It may, this is a question for council, but are we, I know this is kind of attached to this, but not really. Are we supposed to reference back to things done in the past?

Nick Cortese: So yes, the ZBA is being a quasi-judicial board, ordinarily, you have, you're required to follow your own precedent. If your precedent is factually similar enough to the point where basically, it would be an apples to apples comparison, granting one variance versus another. That's not, you know, that doesn't always happen obviously, but your past decisions should inform your present decisions.

Jim Brewster: So, in a discussion with the town, Town Attorney, Mr. Walls at the time, Justin Abbey, the trustee for 26 Buckley, it says the John Smith roadside was accessible only by four-wheeler. The 50 foot right of way to Buckley is not a mapped public street and is owned by two neighboring properties. They would only carve out one residential lot. These are notes, not necessarily direct transcript. They would only carve out one residential lot and would not subdivide any further, quoting Mr. Justin Abbey, just the house singular. Mr. Walls stated, assume you will not subdivide the rest of the Family Trust parcel. Mr.

Justin Abbey, correct. And then it goes on to say as a condition of approval, Mr. Walls stated that the right of way access from 26 Buckley Road must be transferred to the 10-acre parcel at 24 Buckley Road. Then a note, which is what I covered in the beginning it is that was codified by deed, which I had asked Mr. Abbey about in the beginning, about the, the 10 acres and, and, and the easement. So, it is what it is. I read that factually and that's for us to determine later if we see it fit to do so.

Aleta Kinne: I was on the board at that time, I remember the variance, but I, I don't remember a lot of the, of what they're talking about. I probably have the minutes somewhere, but I would have to do a lot of digging to find them.

Jim Brewster: Sure. And, and really board members right now, this is not the time to actually dig into this. That would be for our discussion after the closing, the public hearing, and after seeker, we could bring this up for its relevance, but we did just establish that again on the record, and it was certainly printed which is going in there anyway, but now it's in there twice. Any, any further questions from board members to Mr. Abbey, the applicant, or I guess in this case, since it's intertwining, you can actually ask Mr. Justin Abbey, the trustee, anything you'd like to know too.

Thomas Eldridge: I'll make a motion to close the public hearing.

Jim Brewster: Okay. A motion to straight up close the public hearing. Do I have a second on that?

Aleta Kinne: I'll second it.

Jim Brewster: Seconded by Mrs. Kinne. I guess we'll take a roll call for that.

Nick Cortese: No need to.

Jim Brewster: Okay, all in favor of closing the public hearing right now as motion seconded, say, aye.

Roll call was taken, two Ayes, (Aleta Kinne, Thomas Eldridge) and three Nays, (Jim Brewster, Melonie Pandich and Scott Smith)

Jim Brewster: That actually turned into a defacto of roll call? I heard three nays and two ayes. So therefore the public meeting was not closed. So other board members, where do we go from here?

Nick Cortese: Your options are to keep talking or continue the public hearing until the next meeting.

Scott Smith: Mr. Chairman, I would like to make a motion that we table the public hearing, adjourn temporarily until next month, so that we can investigate further some of the details that we had, and put it all together so we could make the correct decision, next month.

Jim Brewster: Yes. And, to exactly put together thoughts on the five factors independently for further discussion. I guess I need a second before I had that discussion, so I'll take a second on that.

Nick Cortese: Just a quick correction, it would be a continuation of the public hearing.

Jim Brewster: Continuation. Okay.

Melanie Pandich: I'll second that.

Jim Brewster: Okay. Mr. Smith moved to continue the public hearing until next month, for further investigation seconded by Mrs. Pandich. Do we have discussion?

Jim Brewster: Okay, no discussion. Because of the closeness of the last vote, let's do a roll call to be sure this time. Go ahead, Kathy.

Scott Smith made a motion to continue the Public Hearing until next month for further investigation; seconded by Melanie Pandich and carried by the following roll call vote:

Thomas Eldridge, Alternate:	Voted ___Nay___
Scott Smith, Board Member:	Voted ___Aye___
Melanie Pandich, Board Member:	Voted ___Aye___
Aleta Kinne, Board Member	Voted ___Aye___
James Brewster, Chairperson	Voted ___Aye___
Joe Aston, Board Member	Abstained

There being no further items for discussion, Scott Smith made a motion to adjourn the meeting, seconded by Tom Eldridge and carried by the following roll call: 5 Ayes, 0 Nays, motion carried.

The meeting adjourned at 9:19 p.m.

Respectfully Submitted,

Kathleen Rudy, Deputy Town Clerk, Interim Stenographer