

Village of Walden  
Zoning Board of Appeals Meeting  
June 09, 2016

|                     |                   |         |
|---------------------|-------------------|---------|
| Chairwoman:         | Rebecca Pearson   | Present |
| Members:            | Faith Moore       | Present |
|                     | Carolyn Wesenberg | Present |
|                     | Gregory Raymondo  | Absent  |
|                     | Mary Ellen Matise | Present |
| Alternate:          | Dan Svarczkopf    | Present |
| Building Inspector: | Dean Stickle      | Present |
| Village Attorney:   | Robert Dickover   | Present |
| Secretary:          | Nancy LaMancuso   | Present |

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Chairwoman Pearson - Called the Zoning Board meeting to order at 7:30pm with the Pledge of Allegiance.

**1. APPROVAL OF MINUTES:**

**2. BOARD BUSINESS**

**A. PUBLIC HEARINGS:**

**A.1 108 Ulster Avenue**

**A.2 106 First Street**

**A.3 66 Sherman Avenue**

**B. FORMAL APPLICATIONS:**

**B.1 108 Ulster Avenue, Interpretation**

**Member Wesenberg and Member Matise - Counted mailings; mailed 40, returned 30.**

**Member Matise, made motion to open the Public Hearing  
Seconded by Member Wesenberg, All Ayes, Motion Carried**

Rebecca Valk, Attorney representing People Inc. – People Inc. is the lessee of this property. Also by email to Building Inspector Stickle yesterday I made a supplemental submission, I know that was email to the Board members, at this time I would like to put the original on file with the Board. I did bring hard copies for all members and consultants. The original application that was submitted listed Crystal Run Village as the owner, that had been transferred in October 2015 to Pathways Inc. but I would like you to know that the individual who signed the proxy was a representative of Pathways Inc. so it's a matter of making a note of the owner name on the application.

Attorney Dickover – Counselor are you asking that the application be amended to Pathway Inc.?

Rebecca Valk – Yes I would.

Attorney Dickover – That is acceptable Chairwoman Pearson if we had the original application or make a note of it to amend later, Counselor would you repeat what you said about that.

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Rebecca Valk– On the form that's provided by the Village of Walden for the interpretation the applicant is listed as the legal name and the owner is listed as Crystal Run Village Inc. that actually had been transferred in October of 2015 to Pathways Inc.

Attorney Dickover – Counselor you handed up to the Board an original supplemental application and note that the affidavit within it from Mr. Miccio is now signed and notarized, were there any other changes in this document from what you submitted to the Board members.

Rebecca Valk– No, there are no other changes.

Attorney Dickover – Chairwoman Pearson you can amend the application.

Chairwoman Pearson – Thank you.

Rebecca Valk– I am representing People Inc., Projects to Empower and Organize the Psychiatrically Label Incorporated. People Inc. is based out of Poughkeepsie and has a model home known as the Rose House and has successfully implemented this model in Garrison, Glens Falls and Hyde Park New York and would like to establish another Rose House at 108 Ulster Avenue here in the Village of Walden. I do have the Chief Executive Officer of People Inc. here this evening, Steve Miccio who is able to answer any additional questions about the Rose House that any Board members may have.

Essentially my submission to the Board the residents of the Rose House would remain in the premises for approximately 1 week at a time. There will be 2 employees per shift from People Inc. that will be on premises 24 hours a day 7 days a week. The goal of the Rose House is to provide assisted living to individuals in need of help by receiving the support provided by living in a family environment, this a peer driven system of support.

There are 3 essential arguments that People Inc. submits that the Board must consider that we are permitted in the Village of Walden.

Attorney Dickover – Counselor can I just interrupt you at this point and we will let you continue perhaps in a minute. We have a jurisdictional hurdle perhaps 2 of them that we would like you to address. This application was brought by Attorney Fallon requesting an interpretation of the word Family as it is used within the Village of Walden Zoning Code. The authority of this Board's jurisdiction for interpretations runs to interpretations as given by the Building Inspector in interpretations, determinations orders, etc. there is no provision for this Board to here interpretations on other than Building Inspector determinations and so it may be that this Board doesn't have the jurisdiction- if you will- to hear the request for the interpretation. I know this may be coming to you a little out of the blue, your supplemental application was also out of the blue this morning, but we're trying to get caught up with you a little bit and this is certainly a hurdle that this Board has to address and sanction. So before going on with your case would you like to comment on the jurisdiction of this Board to hear the application in the first instance?

Rebecca Valk – As you correctly pointed out it's not unusual to request an interpretation of the determination made by Building Inspector Stickles in July of last year 2015, but my understanding was that the application had be submitted notwithstanding the time frame that had past, therefore there is a underlying determination which is being an appeal at this point.

Attorney Dickover – Yes, but the July 2015 letter of Building Inspector Stickles was addressed to Pathways Community Support services, care of Mr. Jacob Reckess, and it is part of the original application on this matter for the interpretation. But if it was a statement by the Building Inspector as you look at it you see it's not a determination for his interpretation of the word Family that generated this issue, it was his determination of the prior owners Crystal Run were exempt from Village of Walden Zoning and so on. It didn't address the issue of Family and yet that's what the application is for, the interpretation of "Family".

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Rebecca Valk – I would disagree with that. That precise question which comes to the Board has to have been precise issue rule upon by Building Inspector Stickles. He ruled that this was not a permitted use and directed us to the Zoning Board of Appeals. Now to say that the appeal is limited to the issue to whether or not we are exempt from zoning that clearly would be an answer of no, however he stated essentially and made an implicit determination that it was not an as of right use, and would referred us to the Zoning Board of Appeals. I would argue that to the extent that our application is asking for an interpretation that we are an as of right use at this the facility.

Attorney Dickover – That would be changing I think the nature of the request. I understand that's perhaps what you've done with your supplemental application, it's filed now with the Board, but if that be your position then the second hurdle that needs to be gone over is one of again jurisdiction in that appeals taken from a Building Inspectors if you will interpretation or letter from July of 2015 needs to be brought within 60 days of its issuance otherwise it's untimely. So perhaps you would like to comment on that as well.

Rebecca Valk – The application submitted by Mr. Fallon was accepted by the Village of Walden and was placed on the agenda, so therefore we have now had another 2 months go by. I believe there would be an argument of bad faith to at this point turn us away on that grounds after the application should have been rejected in the initial review of the application, that it was untimely and therefore would we have had the ability to then request a review determination. But at this point this application to my understanding was submitted at some point in April 2016 by Mr. Fallon we are now in early June 2016, if this had been an issue raised and I put in a notice of appearance about a month ago that I was going to be taking over this matter.

Attorney Dickover – We're talking about a letter that he wrote in July 2015, it's 11 months ago. Your application was filed I believe in April 2016 so it would still be untimely. If you're asking the Building Inspector to reject an application because it's not timely it's sort of like asking the jail keeper to throw you back in jail again, you're going to appeal from his determination seems to be whether he calls it timely or not wouldn't be correct. In fact is a jurisdictional issue for this Board to address.

Rebecca Valk – In the sense that the Village of Walden setup position, applications are submitted to the Building Inspector is essentially gate keeper to the Zoning Board of Appeals, I would argue that would be an appropriate response. In other municipalities that I have myself represented and appeared in front of there is a separate individual who does that gate keeping, but that's not how you're customs and practices are here in the Village of Walden. So I would speak that notwithstanding that's its own determination means rested with that Board as the gate keeper of applications coming in and out that burden and that one's would fall to review that make the appropriate objection because we would of clearly had the ability to ask for a supplemental determination and possibly still been here on the June meeting or possibly the July meeting. But now we're looking at an issue that we have contracted with Orange County and we are looking to service these individuals and depending on what Building Inspector Stickles would make his determination upon a request for essentially a reviewed with new information or to use legal term on grounds in which he made his first decision is going to be a significant detriment and that's why I made the statement of a back dated delay to preserve my clients rights here on the record.

Attorney Dickover – We probably won't come to an agreement on that, it's just a matter of fairness that the gate keeper would in turn reject an application when you're appealing his determinations if you will, it really is a jurisdictional issue for this Board at inception and all applications whether it be one for interpretation or appeal or other also.

Rebecca Valk – I also note that we extended significant expense to send out 40 notices, jurisdictional issues tend to be the old phrase from law school, as you raise it or you waive it, this was not raised by the Village of Walden before tonight so I would argue that had it been waived and to the extent that we are arguing as of right use, and also that there is I believe State Law that could trump even that issue if we pursued the notification of the mental hygiene law. I would ask the Board to look at the position of the

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jurisdictional issue as waived at this time, if you disagree with that and reserve that this evening I would ask for the ability to take parallel paths and resubmit our request for a possible ruling in our favor from Building Inspector Stickles given only the information that I have submitted in the supplemental given the state law, given the laws on reasonable accommodation and particularly the interpretation of the word Family in your own zoning code.

I don't know if it's your custom or practice to always rule on every application the same night upon which it's before you. Some boards do it differently.

Attorney Dickover – Chairwoman Pearson you've heard what Counsel has said in respect to the 2 issues. The first one being, that this is a request for interpretation, it appears that the character of the application has now changed.

Chairwoman Pearson – I was very confused about that. I was reading one application and then today we get another application. That confusion was there among my thoughts because we thought we were talking about the interpretation of Family.

Rebecca Valk – If I may respond to that? I would disagree with the describing of what I submitted to you as a number application. My goal is to supplement what Attorney Fallon submitted as to why this should be considered Family within the meaning of your zoning code and there was significant information that I felt that did not make into the initial application that I felt was important for the Zoning Board of Appeals. I just want it to be current I would not describe as another, this is information I believe to support and build upon the description he had in his cover letter as well as in this typed section of your application form.

Attorney Dickover – Counsel if you don't mind, just a comment your application is supplemental I'll refer to that is, refers to it as an appeal. So it takes us to the second thing I've mentioned to you is the timeliness of it. There may be a typographical error that you might want to have corrected this evening, the supplemental on the first page you say is a letter of the Building Inspector dated July 14, 2016?

Rebecca Valk – That should be 2015.

Attorney Dickover – Yes, second line of your cover letter. I presume you meant 2015.

Rebecca Valk – Correct.

Attorney Dickover – If that be the case how do you respond to the fact that it's not timely, it wasn't brought within 60 days?

Rebecca Valk – Once again, I forgot the discussion I had about the fact that it was submitted and not rejected for lack of timeliness. It was accepted, notices were sent or were instructed to send, my client incurred very large expense I would argue that jurisdiction has been waived by the Village of Walden given that we are now here at this Board meeting, after sending out over 40 notices and after an additional delay of approximately 6 weeks. While I recognize that does not change the time frame again the issue has been waived by the Village of Walden.

Attorney Dickover – I guess we will have a further conversation on that. My opinion would be that jurisdiction can't be waived. The Board doesn't have jurisdiction, how can it be waive and say that because the action of the Building Inspector in not rejecting the application at its inception that that's a waiver that's binding upon the Village of Walden?

Rebecca Valk – You're not waiving the appellate portion you're waiving the time frame. It is an appeal of his determination of July 14, 2015, there is an underlying determination. What you would be waiving is the timeliness of it. There is nothing in the law that states that it cannot be waived, while I recognize that you do not want to be making a custom practice in doing that in the Village of Walden, however I must

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repeat that given the time frame that has past and number of mailings and the time that has already been burdened upon my client I would argue that it would be in bad faith at this time to reject it on that ground.

Attorney Dickover – Well we won't agree on the bad faith allegation. Chairwoman Pearson it seems to me that you have a number of options this evening. One is to adjourn the preceding this evening for a decision on whether or not there's ground to make an interpretation. Secondly adjourn to determine whether or not the application is timely. You could reserve decision on both of those issues and allow the applicant to precede with their application, which I submit to you may be the fair thing to do since they are here this evening in the interest of economy if you will of this Board as well as the application, to hear what they have to say. But reserving your determinations on to the 2 grounding issues, one being timeliness and the other one being standing.

Rebecca Valk – And I would repeat my request that you do reserve decision on those that I will without prejudice be allowed to make supplemental submission that Building Inspector Stickle if I am successful in advocating what I feel should be the result here given the requirements for reasonable accommodations for those are disabled, I would hopefully be successful at the level of the Building Inspector interpretation without prejudice to you completing your review of the application pending before you. We have released that media in the beginning of this year, and that is some frustration to my client without getting into specifics that we are here at this time and we would like to keep this moving as diligently as possible, as we have individuals that need to be served.

Chairwoman Pearson – I don't have a problem listening, the public is here this evening and it would fine for them also to hear the Public Hearing. You can state your purposes in this and as I said before I was very confused that we're for an interpretation of Family and now there is something else before us. I don't feel prepared number one because of what you submitted and we received this morning to forward with a decision tonight. That's my voice; I don't know what the Board will decide. One issue was what we were sent and notice before and now it's something for my mind as something that is completely different. I would be happy to hear your statements, what you have to say, how you are going to run your business, what it's going to be. The public is also here tonight to hear this and too maybe make comments and I think that is fair to the public as well.

Rebecca Valk – The original interpretation I submitted, the question was asked this is a peer one rested home and hence meets the definition of Family. That is where the majority of my submission relies upon, that is the definition of Family. It does get into 2 additional issues of State and Federal Law that I've expected you would rely upon your counsel for a discussion of. One being that the mental hygiene laws Section 3134 on its very terms states that a community residential facility should be considered a family for purposes of the Local laws and ordinance. That is the exact situation we are in right now. Secondly notwithstanding that provision of the mental hygiene law it is our submission that the Host Rose House satisfies your definition of Family.

First it is a detached dwelling and I get into this in my cover letter, "it is a detached dwelling which has 4½ baths, 5 bedrooms and one kitchen, as well as approximately room for 8-10 parking spaces". Therefore it is a detached structure meaning one set of cooking, living, sanitary and sleeping facilities within the meaning of your code.

Secondly you code defines family, it has 2 different portions to it, first is a group of related individuals living and cooking together as a single housekeeping unit or more importantly a group of unrelated individuals living and cooking together as a single housekeeping unit in a manner which is a functional equivalent of said related individuals.

The second portion of it is driven by state law that states you cannot limit a family to only being those who are related. It is our position that the residents of Rose House essentially qualify as a functional equivalent of a Family under your code. They have shared living space, they prepare their food in one kitchen, share meals, do the laundry, take out the garbage, all the normal chores that you would see a family doing in a single family residence.

Your code does not place a limit on the number of individuals who can live and cook together as a single housekeeping unit to qualify as a family. Therefore given that it satisfies your permitted use in

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the R-5 Zone for a single family detached dwelling, we would submit that we are an as of right use and we do satisfy the definition of family. That is why you see because your family is tied to your single family detached dwelling. That's why the interpretation of the word Family is so important here.

Thirdly I have laid out for you both State and Federal Law, they get into the issue that even if you were to find that this use does not satisfy the definition of family within you code, reasonable accommodation can be granted by the Village of Walden because we are serving a population that suffers from mental disability. Under both Federal and State Law it would be unlawful for the Village of Walden to not find such a reasonable accommodation for the population that we are seeking to serve. At this time I have the information and the Case Law cited and as I stated I would expect that you would wish to discuss that with your counsel.

I do have our CEO here who can answer some specifics about the group home. The other thing I would like to mention is the prior owner Crystal Run Village also had a community residence at this property. This is not a new use for the property. The populations being served are not identical but the underlying use is the same, a community residence. Do any members of the Board have questions for my client?

Chairwoman Pearson – Yes we do. The funding that you receive is from where?

Steve Miccio, CEO of People Inc. – NYS Office of Mental Health.

Chairwoman Pearson – The County of Orange supplies you how much funding?

Steve Miccio- \$247 thousand.

Chairwoman Pearson – That goes for all your properties or just this one property?

Steve Miccio– Just this one.

Chairwoman Pearson – With the people that are there, you said it is run by peers. Give us an example of what happens.

Steve Miccio– We have been running this service for Orange County in Milton for the past 15 years. Peers are staff, these are people with experience in the mental health world that have recovered and have now joined the employed workforce and are helping thru a mutual relationship. Helping people get thru some emotional stressors that they may feel within the community. They get 24 hour 7 day a week support, to help people with their situations or emotional distress differently than having to go to an emergency room or an inpatient setting, hospital etc. They live there for 5-7 days that's the longest they are there; they do all the chores of the house.

Chairwoman Pearson – How do the people get there, what is the pre-requisite for them to be in this home?

Steve Miccio– There are a number of ways. The pre-requisite is that they understand is for and how we designed it. It is an alternative to an emergency room or crises. They get there from driving themselves if they can or they can take local transportation if it is available, thru Medicaid which is now funding for them to get there and also thru case management, pick them up ourselves we have a vehicle there, family members, friends, police also a wide range of ways.

Chairwoman Pearson – For example I come to you and want to stay for a week, what happens, what's the procedure.

Steve Miccio – When you come and we explain to you that we are a peer run organization that we are people of experience and what's going on with you. We ask you what kind of stressors you're having and then we provide you with a whole list of tools and opportunities to deal with those crises and those

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emotional issues. We have what is call volunteer call reaction plans, we do intentional peer support. These are peer to peer counseling methods of helping people to get thru their crises. Then we also help to connect you to the traditional services in the communities, which could be psychiatric, therapist, program that may exist in the community or in the county. We have personalized recovery oriented services; there are many services that are in Orange County that help people to recover thru their mental health issues.

Chairwoman Pearson – The education level of these peers, is there an educational level that they have to have, do they have to have special training. Where does that all come from?

Steve Miccio – NYS offers the Academy of Peers Services Training which is now certified and Medicaid billable so it falls under Federal mandates as well. We also supply our own internal training that we've created because there were no houses like this when we first started, now we've helped to open over 30 house across the country and around the world that are similar to grow in service. We also get our training which is thru what's called Reliance, which is an online training out of North Carolina, that you can develop your curriculum thru that and it's all professional training from motivational interviewing to safety to whatever your organization really needs. We fall under the guidelines of the NYS Office of Mental Health to make sure that the staff is trained properly.

Chairwoman Pearson – This is a licensed or non-licensed? Because you have non-licensed groups as well I read somewhere.

Steve Miccio – This is at a point of non-licensed but beginning July 1, 2016 it will be licensed because of the new Medicaid redesign. The our entire Medicaid system is now changing to the services that we provided that were not licensed are now being licensed. So in July we will be and we are a Medicaid provider as well.

Chairwoman Pearson – I also read that the Rockland Psych Center you have a lot clients. Are these people that will come to this home from there?

Steve Miccio – We we're under Rockland Psychiatric Centers catch unary, they are not coming from Rockland Psychiatric Center, and they are people that live in the community that connected to Rockland Psychiatric Centers services.

Chairwoman Pearson – Then they live in Rockland County?

Steve Miccio – No, Rockland's catch unary is Rockland, Orange, Ulster, Dutchess, Putnam and Westchester.

Chairwoman Pearson – You are basically to be funded thru Orange County or do they pay to live there?

Village of Walden – No it's free, we funded thru Orange County.

Chairwoman Pearson – So anyone out of the Orange County can come there

Steve Miccio – Only Orange County residents.

Chairwoman Pearson – Are there any other questions/comments from the Board?

Member Matisse – Are there going to be any people with drug problems?

Steve Miccio – No, this is really more mental health issues. Some people do come in and have drug issues but we don't deal with that part of it. This is thru the Office of Mental Health. They cannot have drugs in the house, cannot be homeless. They are folks that have permanent residences. An example is

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this is open to the community and we do have family members that have children over 18 that are dealing with some emotional stressors that are also bringing these folks to our houses. So it's not just public mental health people that we serve, we serve the community.

Chairwoman Pearson – Is there a head of household, is there predominately one person in charge, what is the structure of the family.

Steve Miccio – There is a site director that runs the house then there is a senior peer companion that is second in charge. On top of that there is a chief services officer that goes around to all the houses that we have in NY. Then the peer companions are under the senior peer companion at the center.

Chairwoman Pearson – But you said there's only 2 people on at a time.

Steve Miccio – Someone is there 24/7, we have 3 different shifts.

Member Svarczkopf – Does there have to be an issue of mental illness?

Steve Miccio – Let me clarify this. There could be somebody for first time having a panic attack, if it hasn't been diagnosed. It doesn't have to be a direct mental illness.

Member Matise – At the houses you have now are there restrictions, hours, quiet time, are they free to come and go, etc.?

Steve Miccio – They are free to come and go, we ask that everyone be in by 11pm. Many people do go to work, services or programs or whatever they usually do.

Chairwoman Pearson – I read there is a contract that when someone comes they have to sign. When they leave what happens, are they allowed back at any time? Can the go for 1 day and then come back?

Steve Miccio – There must be at least a 30 day gap in between. The purpose of the house is to help people to deal with their stressors and comprise some tools before they come back. So we give at least a 30 day opening, we don't get a whole lot of people that do come back because we also have a mobile staff that meet people in the community and they will tie them into other services from there. the whole idea of this is to eliminate the trauma that people have experienced of going to emergency rooms, going to in patient hospitalizations and really beefing up and kind of pushing the community services as they should have been in NYS to make sure that people are getting services that they deserve so that they don't have these crises over and over again.

Member Matise – Are there people there now?

Steve Miccio – No, just my staff.

Member Moore – The 2 employees per shift are they trained?

Steve Miccio – They are all trained staff, they are peers but they are trained.

Chairwoman Pearson – Are they physiologists, psychiatrist, what type of training are you looking for when someone works for you?

Steve Miccio – They can have motivational interview training, which is a therapy of helping people to self-regulate. They get peer support training, which is how to do peer to peer counseling, so they do have a counseling component to what they do. They can train in wellness recovery action plan which is evidence based practice, intentional peer support which is also evidence based practice, becoming engaged how to create a trauma component environment, who to use trauma in vehicles. We use a sanctuary model

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which is a clinical model which is again a trauma conformed therapy kind of therapy for people. So there they are not licensed to be clinicians or whatever, but they are people that are highly trained with the experience that have helped people get thru crises at a very difficult time.

Member Matise – In this information you gave us did you give us any type of a geographic breakdown of where the clients you have are from in Orange County?

Steve Miccio – I didn't break that down for you, but simply it's Walden, Milton, Middletown all different parts of Orange County. Milton is Ulster County but was serving Orange County.

Chairwoman Pearson – The Milton house is not going to be run anymore?

Steve Miccio – It's closed.

Chairwoman Pearson – It's closed because of?

Steve Miccio – The house was physically falling apart.

Member Matise – Who owned the house?

Steve Miccio – I don't remember their name, we leased it.

Chairwoman Pearson – Do you take regular insurances as well?

Steve Miccio – Now we can.

Chairwoman Pearson – So you are taking payment other that County money.

Member Svarczkopf – The letter from July 14, 2015 to Building Inspector Stickles I don't see that.

Rebecca Valk – That was next to the original application submitted by Mr. Fallon.

Member Svarczkopf – The initial letter from you was on July 7<sup>th</sup>, was that before we got the initial determination?

Rebecca Valk – No, that might be going back to the issue of the typo I had on the first page.

Member Svarczkopf – That letter dated July 7, 2015, it's a request for approval of proposed use.

Rebecca Valk – May I approach I do not recognize the document.

Member Svarczkopf – Then Building Inspector Stickles letters was 7 days later after we got this.

Rebecca Valk – This is not a document that I was in the file, I have not seen this. I apologize; I'm not able to answer any questions on this. It does look like it came from Pathways Inc. itself who is the current owner of the property. We are just an entity, we're the lessee and before they closed on the purchase they must have submitted this letter.

Member Svarczkopf – I'm just wondering why we have the request for approval of proposed use before we ever approached, that it should be included under permitted use. Why we requested it before we ever spoke.

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Rebecca Valk – unfortunately I cannot represent Pathways Inc. they have designated Mr. Miccio as a proxy in the application, I was not aware of this letter I don't know why it was submitted before an initial determination. I wish I had more info, if that is a concern I will happy to investigate it.

Member Moore – How do people find out about People Inc., how do they know you're there?

Steve Miccio – All of the providers in Orange County know of us and they serve all of the public mental programs. Mobile mental health knows also, we work very closely with them.

Chairwoman Pearson – The owner of the property is Pathways Inc., correct?

Steve Miccio – Yes.

Chairwoman Pearson – Is the owner a NYS licensed entity?

Steve Miccio – Yes they are.

Chairwoman Pearson – They're licensed for the same things People Inc. is as well?

Steve Miccio – They have several licensed but they run the assisted living centers thru out NY.

Chairwoman Pearson – So is it the NYS Mental Health and Office of Mental Retardation the same?

Steve Miccio – No, they are licensed under the Office of Mental Health.

Chairwoman Pearson – Did you send intent to operate to the Village of Walden when you started?

Rebecca Valk – Are you stating intent to operate under 4134 of the mental hygiene law where notice would go to the Village of Walden Board? My understanding is that was not done, when I picked up this file the application had already been submitted to the Zoning Board of Appeals. This situation does periodically come up thru out the state, you research these cases where someone precedes thru the appeals of the Zoning Board and then it's discovered where we put it and I did just make a footnote in my cover letter, that we preserve rights to pursue that path.

Chairwoman Pearson – Are there any other questions/comments from the Board?

Attorney Dickover – Staying with the question about licensing. Pathways Inc. is licensed I think you said by the Office of Mental Health correct?

Steve Miccio – Yes.

Attorney Dickover – They're the owner of the premises. With respect to your agency People Inc. do you have a NYS license from the Office of Mental Health?

Steve Miccio – We do now, under Medicaid we had to apply for a Medicaid license.

Attorney Dickover – You have it currently or it's going to be effective July 01?

Steve Miccio - We currently have it.

Rebecca Valk – I can submit the same use in Glens Falls; it's listed under the licensed agencies in that county. So this particular use is subject to licensing to receiving a license from the Office of Mental Health. This action states us or the facility subject to licensing of any Office of Mental Health. We would submit that we've satisfied that criteria.

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Attorney Dickover – Let me ask my question again. Does People Inc. have a license from the Office of Mental Health?

Rebecca Valk – I think the point I'm getting to is that each particular site is licensed not just the program entirely. It's the same use in Glens Falls has issued the licensed. The licensed upon the ability to open this house, correct me if I'm wrong.

Steve Miccio – No.

Attorney Dickover – I would just like to talk about Counsels reference to the functional equivalent of the family and the language that's in 4134. I heard a little bit of comment from you about who is going to operate the home and one of the questions was is there a person who is in charge of the home. I didn't quite understand the answer. Is it one of the 2 staff members that come in on the shift basis or is there an overall head of the household?

Rebecca Valk – I believe there are 2 staff members that will be essentially running the home during the shift upon which they are at the home under the auspices of the entire home.

Attorney Dickover – Is one of those 6 people staff members that are in charge of the home?

Steve Miccio – The site director.

Attorney Dickover – The site director would be one of those 6 people?

Steve Miccio – Correct.

Attorney Dickover – What's their authority with respect to the home, maintaining order there?

Steve Miccio – They're in charge of the operations so think of it as running any household. They are charge of ordering, living, maintaining the residence, hiring lawn maintenance, whatever is needed and supervising the staff as well.

Attorney Dickover – Are they under contract with People Inc.?

Steve Miccio – They are employees of People Inc.

Attorney Dickover – Do they have the authority to remove a resident who may be causing a disturbance in the house?

Steve Miccio – Yes.

Attorney Dickover – Do they have the authority to answer emergency calls if the Village of Walden had to be on premises? Would they the person the Village of Walden would speak to?

Steve Miccio – Yes.

Attorney Dickover – Are they responsible for making sure that the residents are being properly cared for, fed, clothed, they're sleeping and living arrangements are appropriate?

Steve Miccio – Yes.

Attorney Dickover – Are they also the same people that you refer to as peers? Is that your industry name for these staff members?

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Steve Miccio – Yes, we generally don't use that in the industry any more, its people with experience but peers is the easier way.

Attorney Dickover – You're referring to peer operated home before but that's who we're talking about are these staff members.

Steve Miccio – Correct.

Attorney Dickover – I think some of the Board members were thinking they were residences themselves.

Steve Miccio – No these are staff members.

Chairwoman Pearson – I did read your word for peer was that possibly some of these peers were people who had gone thru the process before and are now an employee of People Inc.

Steve Miccio – Yes.

Attorney Dickover – You answered a question about their training do the staff members the peers are they also licensed in any capacity by NYS?

Steve Miccio – They are certified under NYS under the accreditation for peer services.

Attorney Dickover – You mentioned that your residents stay for a period of 5 days which was in Counsels supplemental application; you've indicated that the period of time might 5-7 days?

Steve Miccio – NYS is changing those guidelines from 5 days to 5-7 days, so now I started saying 5-7 days. But generally it's been 5 days.

Attorney Dickover – Are there circumstances where the period of time would be longer than that?

Steve Miccio - Usually no.

Attorney Dickover – So when a person comes in and commences their stay they know that they know that they will be leaving within the 5-7 day time period?

Steve Miccio – Correct.

Attorney Dickover – Do they have to leave at the end of the 5-7 day time period?

Steve Miccio – Yes they do because of the purpose of the house, the mission of the house is to help people get thru emotional stressors and then after 5 days they go back residence.

Attorney Dickover – You were also asked whether they pay to stay there and the answer was no?

Steve Miccio – They don't but in July when we become Medicaid eligible under NYS's Medicaid redesign, it's going to be a slow transition but if they fall under health home and community based services they can be Medicaid billed.

Chairwoman Pearson – And private insurance.

Steve Miccio – And private insurance.

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Chairwoman Pearson – So if I came to you and I had prior insurance you would automatically bill me because I have the insurance? How do you decide who is going to pay and who isn't?

Steve Miccio – That's a question for NYS, what they're doing is coming up with the guidelines of when that is billable and when it's not. So its home and community based services that NYS and the center for Medicaid and Medicare services is now negotiating.

Attorney Dickover – When a resident comes to you do they sign a contract?

Steve Miccio – No there is a guest agreement.

Attorney Dickover – Is the guest agreement a contract with them that they agree abide by the rules of the home. They understand that they are coming in they're going to leave in 5-7 days? Perhaps you can share with us a copy of the guest agreement?

Rebecca Valk – I submitted a copy of the application that must be filled out by someone. What I submitted is essentially is pre-registration form. There are rules and guidelines and the penalty would be that you would have to leave the home sooner than 5-7 days if you failed to abide by those terms and conditions. Particularly the use of alcohol and drugs is not permitted on the property.

Attorney Dickover - The decision whether or not they weren't abiding by their guest agreement would be made by one of the staff members the peers?

Steve Miccio – Correct.

Chairwoman Pearson – Another example, I come to you I'm not doing well maybe almost suicidal is that something People Inc. have? And just say my husband is after me as well, now what type of law enforcement do you rely on? Do you rely on the Village of Walden for those services? Say I come to you and he comes behind me in another car, maybe that will happen I don't know, if I'm in that state of mind I'm coming to you because I know you're there and 2 day later he shows up there and wants me out of that situation. What happens, what is the scenario for something like that?

Steve Miccio – That's never happened, but if it were too happen the staff are trained. If there was a domestic violence issue or something like that they would have to call the police law enforcement and of course make sure that person is safe.

Chairwoman Pearson – I know that is an extreme but it's not impossible in today's world.

Steve Miccio – We do have the mobile team, but also I am one of the trainers in Orange County and in Dutchess County I am one of the principles in all the crisis intervention training for the police. Some of the officers here in the Village of Walden have gotten some CIP training, which is a 48 hour training on working with people with addiction and mental health issues.

Rebecca Valk – As I stated People Inc. is running this model in at least 4 other locations successfully and there's nothing to show as Steve Miccio stated the particular scenario that you talked about, it has not happened and there is nothing to show that it's anything more likely to occur in this home as it would be if I still lived in the Village of Walden and had an incident with an abusive spouse or significant other. There's no correlation in between the population and increase crime or domestic violence issues.

We would welcome you to take a look on the internet of the Rose House model. It has received quite a bit of positive press and is really being adopted by the Office of Mental Health, and as a practice for other agencies throughout the state to adopt.

Chairwoman Pearson – So the owner is Pathways Inc. and I read People Inc. is possibly going to purchase the house at some point from Pathways Inc.?

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Steve Miccio – Yes.

Chairwoman Pearson – I did go on your website and tried to find something on Pathways Inc. and I couldn't find very much on Pathways Inc. online at all.

Steve Miccio – I don't think they have a website.

Chairwoman Pearson – So what is Pathways Inc.?

Steve Miccio – They're a corporation that has assisted living for adults thru out NYS. They do other housing at different levels and are mostly in the Hudson Valley area. We approached them because we couldn't afford to just go out and buy a house. People Inc. just bought a house last year in Glens Falls and Pathways Inc. was looking for an opportunity and so the offered to purchase the house for People Inc. and lease it to People Inc. until we could buy it.

Member Matise – Let's go back to the letter of July 7, 2015 that the Village of Walden received. In anticipation of Pathways Inc. buying the building the property and it clearly says that. There's an email and there's a letter to the Building Inspector and you're copied on it. Then Building Inspector Stickles replied 7 days later July 14, 2015 and then in March 2016 Building Inspector Stickles sent a letter to Pathways Inc. and to John Fallon I think was copied on it, everybody was copied on it. John Fallon, John Revella, Donavan, everybody was copied on it. "As you should recall I contacted you by letter dated July 14, 2015" now this is March 2015 and in the meantime Pathways Inc. and you in relation to Pathways Inc. purchased the building. Why was no contact made to the Building Inspector in that time frame at all? The Building Inspector did not get a letter from John Fallon until January of 2016.

Steve Miccio – That I don't know.

Member Matise – You were party to the July 2015 correspondence.

Steve Miccio – I was party to it yes, but I was relying on Pathways Inc. knowing what they were doing and their legal Counsel knowing what they were doing. I wasn't in a position yet to really get involved with that.

Member Matise – Then who hired John Fallon?

Steve Miccio – Then I hired him.

Member Matise – But this was after the property was already purchased.

Steve Miccio – Yes.

Member Matise – Did you have clients there at that time?

Steve Miccio – No not at that time.

Member Matise – At what time frame did you have clients there?

Steve Miccio – That was my mistake and I apologize for that. I thought that everything was all set, the zoning, the building and everything and we opened for a couple of weeks and then had to close and that was it. That was in February 2016.

Attorney Dickover – Counsel in your supplemental application today you make reference to an attached exhibit being a County contract? When I looked at it, it appears to be an agreement that you will preserve

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the privacy issues of the patients. I don't see a contract that would talk about the patients and so on with the relationship with the County.

Rebecca Valk – It's a very limited contract. There is an attachment that goes into specific listings of properties and the funding for each property and that goes with the properties for which the grant funds are coming out of the Office of Mental Health and are being essentially delivered to the County of Orange who is then distributing them to People Inc. for the purposes at these sites.

Attorney Dickover – That is the extent of the County contract?

Rebecca Falk – That is the contract I've been provided and that is consistent with similar documents. I'm not surprised by your question and regard.

Chairwoman Pearson – From the County that's all they will give you as a contract then, or are you going to get something more from the County for a contract?

Steve Miccio – That is the entire contract.

Chairwoman Pearson – That's it and that's all you will be receiving and that's all you feel comfortable having to receive from the County?

Steve Miccio – This is how they get us the funding thru out all the counties.

Member Matise – Is it an annual contract?

Steve Miccio – Yes.

Member Matise – Do you have to reapply?

Steve Miccio – We just have to do the insurance policies and re-up and our contract is written.

Attorney Dickover – You made a comment about operating a mobile center. Does the mobile staff operate out of the residence?

Steve Miccio – Yes and no, some do and then I also have additional recovery center staff that operates in Dutchess, Ulster and Orange Counties.

Attorney Dickover – Was it your expectation that a mobile staff that a mobile staff will operate of the Walden location?

Steve Miccio – No, if there were any mobilization out of the house it would be 1 of the 2 staff that are there.

Attorney Dickover – No additional people?

Steve Miccio – No additional.

Member Matise – Based on this 5-7 days occupancy about how many people a year are going to be there?

Steve Miccio – It's only 4 bedrooms that we are using. Our average is between 230 and 280 individuals a year.

Chairwoman Pearson – Will it only always be 4 bedrooms?

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Steve Miccio – Yes.

Chairwoman Pearson – Should Pathways Inc. be the one who should be coming before this Board instead of People Inc. or is because they are leasing the property that is proper procedure?

Attorney Dickover – Your question really is who has standing to bring an application before this Board. Many times to bring an application, an appeal in particular, typically has to be a person with standing. That might be the property owner or other times it might be a person who is in contract with the property. We've had this issue before. This applicant is in contract with the property owner and the lease also. I would prefer not to answer that question this evening.

Rebecca Valk – I would just note that your form requires the owner's consent; the applicant can be a different individual. The owner did sign off, that is why I did made the correction in the beginning of our presentation that the correct representative signed the application. However it was listed under Crystal Run the individual's last name is Reckess, who signed the application, and he is the representative of Pathways Inc.

Chairwoman Pearson – Inspections and living there and one entity moves out and another moves in and there has been no inspections? I believe the Building Inspector might have to inspect and look in the house. I know he does have to do buildings like the one we're in now and group assemblies etc., I don't know if that is also something he would have to do. He has not been in to inspect the house is something that would have to happen?

Building Inspector Stickles – Before they occupy the house. I don't believe it will be on an individual bases when someone moves in and out.

Attorney Dickover – Their occupancy is subject to the city fire and building code.

Member Matisse – Building Inspector Stickles, would you be inspecting to issue a Certificate of Occupancy?

Building Inspector Stickles – Yes.

Chairwoman Pearson – Are there any other questions/comments from the Board? None noted at this time. Then we will open this to the public.

Ellis Langlitz, 92 Ulster Avenue – I am 2 doors down from the property we've been talking about. I'm concerned about the appropriateness of this location. That corner, Ulster Avenue and Albany Avenue is kind of a hub in the Village of Walden for the movement of children. Right behind 108 Ulster Avenue is the Girl Scout Cabin, not far from that is Bradley Park, a couple of blocks up Ulster Avenue is Most Precious School where a lot of students walk back and forth to and that corner itself is a very busy bus stop for the public school system.

My concern comes from the last time this particular property was used for a group of people who enjoy each other's company and cook together. I have records here from 2004 to 2014 of police calls at 108 Ulster Avenue about that address, 241 calls over the course of 10 years and if you look at the incident types most common is assault, larceny, disorderly conduct, suicide attempt, noise complaints and harassment, over and over and over again for 10 years.

When I moved into the Village of Walden 10 years ago, I wasn't aware that it was a group home and I can tell you the place was a fiasco. There were people screaming obscenities at all hours, screaming gibberish. There were people who came onto my property; residents from there would come up my driveway asking me for cab fare, asking to use my cell phone.

The way that family is defined in the law is one thing but a place where there are so many children all the time and this much police activity, there seems there has to be some other way of

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addressing the appropriateness of this sort of facility in this particular area. That's my concern; it was unbelievable what was going on at that place. Thank you for giving me the opportunity to make my statement.

David Stoudnour, 103 Albany Avenue – With regard to what the last speaker said, I've lived in my house for 32 years. Some years ago the previous group house was there, yes it was chaos, yes the police where there about every 10 months I've had residents that house walk through my yard, I fenced in my yard because of it. They would look at my kids like a bobcat looks at a rat, it wasn't pretty. I really don't want to do this for the next 10 years.

The last time they stood up here and with a very nice speech and talked about the family, it was going to be so wonderful and we're going to help all these people. It didn't work out, thank you.

Wendy Mucke, 100 Ulster Avenue – I'm pretty new to the Village of Walden it's been a couple of years. I too did not realize I lived across the street from a group home, which would be neither here nor there shame on me for not doing the research. This time you didn't ask, I've a 14 year old at home by myself.

What is the mental health population you serve? That would be my question. You talk about protection and safety and security and crisis mode, what about us. At what point do we have to sacrifice ours for someone else. I'm not saying it's not for the greater good, I'm not saying it doesn't our state hundreds of thousands dollars, but when did I sign up for the sacrifice, when did I get the opportunity to yes or no? Maybe I would have said yes, but I wasn't given that chance and where in the law might that be. But if someone could define for me what that population we're serving I would feel a whole lot better, well maybe.

Bruce Townsend, 26 Albany Avenue – I'm 2 houses from the site on the other side of the Girl Scout Cabin. A couple of comments, initially boring stuff about jurisdiction, it does look like this is a matter for which there is no jurisdiction. It looks like it's untimely and looks like although there hasn't been any determination as to the word family that wouldn't be the subject for this Zoning Board to address. So I think the application should be dismissed at the outset. I'm a bit concerned that this further discussion may be viewed as a waiver of that, I don't think that is in any way the case.

With regard to these applicants, when we read this notice that came to all of us, there's no mention of any of the facts that were discussed today. None, there's no mention that this is a huge corporation coming in here, as I viewed their website it is a corporate structure coming in here to rent space to individuals for short periods of times. Under any normal definition it is a rooming house and this rooming house does not in any way fit either of the 2 definitions of family in the Zoning Law. Traditional definition of family or the expanded sort of alternate definition of family, they're trying to bring it in with that. By saying well it really isn't, but it's really not, it's a group of people coming essentially as I see it completely unscreened. They're not screened for criminal history, they're not screened for sex offense, they're not screened for substance abuse, they're not screened for alcohol abuse, they're screened for violent behavior, and they're not screened under domestic violence registry. There are all of these resources available to anybody who's running a public facility to screen people and there hasn't been one word of any of that.

I don't know what the minimum qualifications are for the people who are actually there at the facility. Based on the last facility we had a huge variety of in competencies supervising the place. There were times when there was a party rocking and rolling until 2 or 3 in the morning and I'd go over and say, hey guys what's going on? It wasn't the people living there, it was the workers and their buddies, and they were having a great time. There were also some very competent very caring people there.

Another point, that prior residence was under the Padavan Law, this is not under the Padavan Law. The reason for the Padavan Law, as I have very superficial knowledge of it, was to except these sorts of facilities from zoning so you can't keep them out by saying they don't comply with zoning. We know they know they don't comply with zoning so we're going to pass the Padavan Law and say you have to take them as a municipality. It was an ingenious stroke of legislation. But this particular application is not under that law. That law had a house at 108 Ulster Avenue for a period of time and then it ended. In the recognition that that disruption to a community and it is recognized as a disruption to the community, should end after a period of time and it has ended.

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It is an abuse of the Padavan Law to then put another facility in there, with no termination date except perhaps this tenant permits this dwelling to fall into disrepair as they permitted the facility in Milford to fall into disrepair, so they couldn't use it any more. As a tenant you're entitled to the power to keep the property up. They didn't do it in that place and as far as I can see they're not going to do it in this place. I live 150ft away, since they have been there this spring the grass has been mowed once. We're in the middle of June and the grass has been mowed 1 time. In the back yard there are huge limbs hanging in the trees, literally widow makers, piles of brush, piles of garbage behind the house that are untouched. We know the character of this applicant because they've come in and they've operated without any permission, with complete disregard to any Village of Walden rules any Village of Walden requirements. They just came in and opened up shop and said we're going to do it.

I'm concerned about the people who are there; we don't know anything about the corporate structure. We have the CEO here; we have no idea how many levels of people before we get to that person who is actually caring for the residents. We don't know who to call when the sidewalks aren't plowed, when the grass isn't cut. He is saying they need 3 shifts of people to run 24 hours and even that's not true, you can't run a place with 3 shifts of people, you need 4 at least because of vacations and time off etc. Who supervises that, we have no idea. There hasn't been any presentation to the Village of Walden saying this is our business structure, this is how you begin to interact with us, this is the contact person, if there is a problem this is what we do. We don't know. Every time there's been a question like that the applicant has backed away. That concludes my comments, thank you very much.

Susan Millsbaugh, 86 Ulster Avenue – The notice that we received was talking about family and listening to the description it sounds more like a hostel situation. I don't see where people would arrive with a person who owns and be living in this home as somebody actually in a family would be living and their signing a guest agreement which sounds like they are a temporary guest and then they go back to their residence to live with their families. Where is the family in the definition of family?

Elizabeth Michella, 114 Ulster Avenue – I live right next door. I just want say that I'm not impressed with my new neighbors. My husband's been taking care of the grass, taking care of other things, they haven't done anything. The house is a mess. I say shame on the Village of Walden if we didn't learn from the first time. We should learn this is our opportunity, that's all I have to say.

Chairwoman Pearson – Are there any other questions/comments from the public? None noted at this time. Are there any other questions/comments from the Board? None noted at this time.

Attorney Dickover – The applicant wishes to address comments from the public, perhaps now would be the time.

Rebecca Valk – Thank you. One thing I would like to notice, we are not waiving the argument that this is covered under the Padavan Law, we reserve our rights that this is a facility that would receive the protection of that law. The Padavan Law is what's known as Mental Hygiene Law 4134. I also note that this definition of family the argument we're making this evening is not a new argument, it's an argument that has been adopted by the courts of this state. I would refer you to the decision that I attached to my supplemental submission as well as the federal cases cited within my cover letter.

I will certainly make notes; discuss it with my clients of the growing grass and the number of issues that have been raised this evening. Certainly People Inc. has no desire to be viewed upon as a neighbor that's not maintaining it. I would note that the situation in Milford while they may not have the rights as a tenant to make improvement, when those improvements become cost prohibitive as a tenant you're not willing to invest in that cost as a tenant. So the business decision was made to no longer remain in that property, given the owner. I've also been informed by my client that there is screening for sexual offenders, I don't recall some of the other issues the gentleman raised, but there is background screening done for an individual that resides at the home.

Steve Miccio – There is a pre-registration where people cannot enter the house until we have done a search on the sex offender registry.

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Rebecca Valk – I would also note on a business structure the business structure is not before the Zoning Board as a question whether or not this is a permitted use. While I recognize with council we have the issue time frame, I would note that the letter of the Building Inspector impliedly determined that a Use Variance was needed, therefore that is not a permitted use we arguing this evening that it is a permitted use and right.

Member Svarczkopf – If a guest becomes destructive to the community what is the normal procedure for that?

Steve Miccio – In 15 years that hasn't been an issue but if there was then we would ask them to leave or call the police or do the right thing.

Chairwoman Pearson – You didn't answer about what population you are basically serving in your home.

Steve Miccio – People with mental health issue.

Rebecca Valk – Are you looking for those on the developmental disability scale vs those who are having more of a temporary psychiatric issue.

Chairwoman Pearson – Well this is temporary this sounds like. So this is a temporary place for people to come, so what is your percentage of the population that you serve.

Steve Miccio – These are 100% mental health issues, not developmentally issue. There is a difference and maybe that's what's confusing people. Crystal Run was developmental disabilities when they ran that house, this is mental health, schizophrenia, depression, bipolar, anxiety, those types of thing, there's a big difference.

Chairwoman Pearson – Attorney Dickover anything else at this time?

Attorney Dickover – The boards choices at this point are if you decide to close the Public Hearing and make a decision this evening or you can close the Public Hearing and reserve your decision, which I would suggest if you decide to do that proceed in that fashion because there are issues that we can research and the board members certainly want to review the supplemental application that was made. The other choices you have are to leave the Public Hearing open so that you have time to review the supplemental application and perhaps have the applicant come back and address any questions that the board may have with respect to it. It's a lengthy argument and perhaps that may be better for you to proceed with. The applicant has indicated they are under a bit of a time constraint here, but in all fairness the board received that package sometime today.

Member Matise – Didn't the building inspector have some compliance issues involved here too, that maybe need to be addressed. So we should keep the Public Hearing open.

Attorney Dickover – I'm not aware of any compliance issue you are talking about. There was an order to remedy by the building inspector back in March, which apparently the applicant complied with that. It's not being operated currently I heard as said this evening. Other than that compliance issues are for the building inspector not for this board to consume themselves with.

Chairwoman Pearson – Can you back over the jurisdiction that we talked about in the beginning. I went into this part of it because the public was here.

Attorney Dickover – The first one is that the application was presented to the board as a request for an interpretation of the definition of the work family as it appears in the Village of Walden code. This board has jurisdiction over interpretation questions when it involves an interpretation that rendered by the

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building inspector, which it was not. That word was not used by the building inspector in his letter of March of 2015 and yet that was the request that was made. One of the issues I've asked the applicant to address is on what basis does this board have standing to hear an interpretation of anything other than the determination, order, decision, etc. made by the building inspector .

The second piece of that is that the supplemental application that was received refers to the application as an appeal. Yet I'm not sure from reading it that it's an appeal or perhaps the word appeal was used, maybe missed characterizing really what is a question of an interpretation I'm not sure. But the issue with respect to that is if it's an appeal it needs to be brought within 60 days of the decision, order, determination made by the building inspector and what we've seen so far is that the letter referred to again is March of 2015. This appeal if that's what it is was brought in April of 2016, well beyond 60 days of being timely of the building inspector determination. There are 2 preliminary issues that you need to address.

So there are 2 things going on, 1 you received a supplemental application and you want time to review that and ask further questions which the public again might want to ask questions, respectively you can hold the Public Hearing open. If you don't think that's necessary you can close the Public Hearing and reserve decision or close the Public Hearing and made a decision this evening. If doing that we first have to address the issue of the interpretation, you have jurisdiction for that if you decide that you want to do that. Number 2 is it timely and then go on to an interpretation of the word family because that is the issue that is before the board.

Chairwoman Pearson – We really don't have any other issue before us because that was the formal application which was the interpretation of family. But you're saying the jurisdiction was not really it because that is not a word that Building Inspector Stickles had used in this letter. So there really is no reason. Are there any other questions/comments from the Board? Are you all following what I'm hearing?

Member Matise – What are you hearing?

Chairwoman Pearson – The interpretation that they are requesting that came before us tonight was for the word family that is what we are here for. Building Inspector Stickles has never put that in a letter so they are arguing against something that was there. The jurisdiction is not where it needs to be. My question is where to go from here and the board has to make that decision. Do you want to move forward, do you want to hold the Public Hearing open?

Member Matise – What complicates it is that they gave us this additional information today.

Chairwoman Pearson – Exactly but what we are being told is the jurisdiction is still not there.

Attorney Dickover – That is the position I have put to you, it is for this board to determine whether or not you feel that's the position that you are going to take. If you would like me to brief it for you I can do that. Counsel for the applicant perhaps wants to address it as well but if you are going to take that I would suggest you leave the Public Hearing open, while you have time to review the supplemental application.

Member Svarczkopf – The supplemental application is considered part of this application?

Attorney Dickover – Yes.

Chairwoman Pearson - It is because we just received it today?

Attorney Dickover – It's been construed as a supplement to the application so I would suggest to the board that you take it as that.

Chairwoman Pearson – An application that we really don't have jurisdiction over because Building Inspector Stickles never really told us about that word.

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Rebecca Valk – I just want to address the point you raised about my use of the word appeal in my cover letter, I will concede that was a poor choice it was always meant for this submission to add to what Mr. Fallon submitted. I felt he did not raise issues that were important for the board with his request for family. The separate issue about the jurisdiction I'm not addressing right now, I just want to address the point of this that was submitted today. It was intended to be additional information for your review to review with your attorney that I felt was germane and extremely important given the laws.

Member Matise – Yes, but we didn't have time to review it because we received it this morning.

Rebecca Valk – My point being that as Counsel for many boards myself I know you don't always rule the same evening and that your counsel would likely be of a great guidance on those issues raised in it. So by all means am I expecting for you have thoroughly analyzed it all, the point was when I reviewed the application submitted as a zealous advocate for my client I felt it needed to be supplemented.

Chairwoman Pearson – Are there any other questions/comments from the Board? None noted at this time.

**Member Svarczkopf, made motion to hold the Public Hearing open to the next meeting 07/07/16  
Seconded by Member Matise, All Ayes, Motion Carried**

Chairwoman Pearson – Thank you everyone from the public, we appreciate your comments. You can come back to the next meeting the Public Hearing will still be open.

**B.2 106 First Street, Interpretation**

**Member Wesenberg and Member Matise - Counted mailings; mailed 37, returned 20.**

**Member Wesenberg, made motion to open the Public Hearing  
Seconded by Member Moore, All Ayes, Motion Carried**

Jay R. Myrow, Attorney representative – Michael Fuentes is the owner of the property and he is present this evening. I have a rather large stack of papers I was going to submit to the board but I only have 1 copy of them. Some of the documents are; a lot of receipts for the work that has been done on the premises, there are copies of photographs that were submitted I do have originals that the board should have, if you have questions about these things Mr. Fuentes can answer them.

This is an application for an interpretation regarding a letter from Building Inspector Stickles dated 04/11/16 attached to the application. A brief history, Mr. Fuentes bought the property from Orange County in 08/2015, it was a tax sale property at the time he bought it the property was vacant. It was not in good condition. When you look at the property it's clear that the property is laid out as a 2 family dwelling. I don't think we know whether or not it was owner occupied before it was vacated or not, but it was clear to Mr. Fuentes intentions to use the property as a 2 family dwelling.

Briefly going through some of the documents I handed to the board. I have a copy of the auction offering from Orange County showing the address and the description was as a 2 family residence. This is the offering Mr. Fuentes was responding to, the official bid purchase document was noticed and submitted to Orange County and ultimately accepted. It describes the property as identified as a 2 family property. Subsequent to the purchase in August I believe the deed came back to Mr. Fuentes in October after the recording.

There was a tremendous amount of cleanup to do, I believe Mr. Fuentes can confirm that he had 7 truckloads of garbage that he had to take out of the place and the photographs show some of the conditions that are not conducive to occupancy at the time that he took possession. The place was serviced I think by propane, he has made an application to NYSEG to convert over to natural gas and is in the process of doing that.

There were a couple of violations issued by Building Inspector Stickles I believe they were for cleanup and mowing and I think they were timely complied with after Mr. Fuentes taking possession of the

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property. Electrical inspection was done and passed we had to submit that to NYSEG as part of the application. Mr. Fuentes has hired Stephen Deutsch, P.E. who is an engineer to do an analysis of the building and to instruct him as to what work should be done and what would require permits. I don't believe there is any structural work that is going to be done, it is also cosmetic. We don't believe any of the work needed to be done required a permit. I have told Mr. Fuentes that after we have completed this process that he should contact and sit down with Building Inspector Stickles to make sure things are done properly.

Back in January 2016 Building Inspector Stickles sent a letter that was received by Mr. Fuentes advising him that the property had to be registered pursuant to local law. Mr. Fuentes filled out the statement of registry stating that the property contained 2 units and I notarized this on March 1<sup>st</sup> and Mr. Fuentes mailed it out the next day. The letter said it had to be filed by April 1<sup>st</sup> but he found the statement of registry indicating it was a 2 family dwelling and paid the fee calculated based on 2 families.

Chairwoman Pearson – What were the dates again?

Jay R. Myrow – I notarized it on March 1 and Mr. Fuentes says he brought it over either that day or the next date.

Chairwoman Pearson – He bought the property on what date?

Jay R. Myrow – In August 2015. I don't know if this letter is sent out the first part of the year routinely.

Building Inspector Stickles – It's supposed to be.

Jay R. Myrow - Mr. Fuentes got it, processed it, and filed it timely.

Member Matise – What is it?

Jay R. Myrow – It's called a Rental Property Registration Law which is Chapter 221 of the Village of Walden code and requires a registration of all rental properties.

Member Matise – I'm assuming that this was not going to be his primary residence.

Chairwoman Pearson – Let me interrupt here. We're here for another interpretation; abandonment of use is what the board is looking at as an interpretation.

Jay R. Myrow – We're here for an interpretation. We believe that there is no voluntary discontinuance of the use as governed by applicable law and that therefore the legal non-conforming use this property was not abandoned and it remains. We disagree with the interpretation; Building Inspector Stickles notice the law no longer maintains its non-conforming status. This building was built obviously prior to zoning that's what makes it a legal non-conforming unless the zoning was changed. I don't believe that it was but it's been a legal non-conforming 2 family since the zoning was enacted. There are a couple of issues with that.

Essentially the letter states that the non-conformity has been abandoned and no longer exist; it converts back to whatever zoning law exists. It's our position that there was no voluntary discontinuance factors an affirmative statement of the intent to use it when the registry form was filed and there was no abandonment of the non-conforming status of the property.

Member Matise – How was long was the building vacant before it was purchased?

Jay R. Myrow – We don't know.

Member Matise – But it was vacant?

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Jay R. Myrow – When we bought it, it was vacant.

Member Matise – Did Mr. Fuentes buy the property sight unseen?

Jay R. Myrow - Mr. Fuentes did you inspect the property before you bought it?

Mr. Fuentes – You can't get into the property.

Member Matise – Did you look at the outside?

Mr. Fuentes – Yes, we looked at the outside. Orange County does not allow you to go in.

Member Matise – I understand that, going wouldn't give you any more information.

Jay R. Myrow – From the outside you can see where the 2 entrances are, the building was clearly a 2 family because you can't get into the second unit except from the separate entrance.

Member Matise – How many curb cuts are there?

Jay R. Myrow – One driveway.

Member Matise – That's a factor too if you say you're dealing with a 2 family.

Jay R. Myrow – That typically wouldn't have 2 driveways for one dwelling.

Member Matise – You have to have the capacity for parking. So you're either going to have second curb cut or a wider driveway that allows cars to be parked that are not impeding each other.

Jay R. Myrow – I understand your comment but not quite sure I agree with you.

Member Matise – But that you can clearly see from a curb cut effect.

Jay R. Myrow – I can tell you from the zoning especially in the Village of Walden you're not going to have 2 curb cuts for one building, even if it's multi family.

Member Matise – You might, there are.

Jay R. Myrow – It would be extremely rare.

Member Svarczkopf – Do you have the listing?

Jay R. Myrow – It's in the paperwork I gave you.

Member Matise – Unfortunately the board is just seeing this now. I know this says 2 family residences but that doesn't mean it's accurate. A real-estate agent could have listed this as 2 family residences and that wouldn't make it accurate.

Jay R. Myrow – It is clearly a 2 family residence. There are 2 kitchens, 2 entrances, 2 boilers, you can't mix them, there's no common entrance.

Member Matise – Even so our zoning law still has exactly what the building inspector told him, that its use was abandoned, if there's nobody living in both apartments then it reverts back to a single family unit.

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Jay R. Myrow – With all due respect, the law says there has to be a voluntary discontinuance and that is different than simply a succession of use.

Attorney Dickover – At this time I would like to remind the board that this is really a time for you to ask questions, to receive the testimony with evidence presented by the applicant. It's important that you stay on task and ask questions.

Member Svarczkopf – Was there a realtor involved?

Jay R. Myrow – No realtor.

Member Svarczkopf – Did Mr. Fuentes contact the Town of Montgomery and check to see if it was still listed as a 2 family residence before he made the bid?

Jay R. Myrow – No.

Chairwoman Pearson – We're still going thru the paperwork you gave us tonight.

Jay R. Myrow – The receipts are for items since Mr. Fuentes too possession of the property. The place is still not habitable; it's not in good shape.

Chairwoman Pearson – Do you know the square footage of each apartment?

Mr. Fuentes – I don't have that.

Chairwoman Pearson – There's a drawing here, but it doesn't really tell us much.

Member Matise – There's a copy of the property card.

Chairwoman Pearson – Looks like the ground floor is 896, Building Inspector Stickles can you confirm that.

Attorney Dickover – Did that come from the applicant or the building inspector?

Chairwoman Pearson – From the applicant?

Attorney Dickover – It should be marked as an exhibit for and the applicant should be given a copy of it.

Building Inspector Stickles – This is the assessor's record; it's 896 for the ground floor and a total living area of 1952.

Attorney Dickover – I didn't get copies of these, again I would ask that exhibits or copies of this be made and also be shared with the applicant if the board is going to consider this as part of this hearing. They can be referred to as the Tax Assessors Records, there are 2 pages.

Chairwoman Pearson – Are there any other questions/comments from the Board?

Member Moore - Mr. Fuentes have you been actually maintaining this property? There is a notice in the document you just submitted that the Code Enforcer mentioned about cleaning up brush, grass, weeds.

Jay R. Myrow – Those are the 2 violations I mentioned earlier that Building Inspector Stickles confirmed that they were complied with.

Member Moore – Ok.

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Jay R. Myrow - Mr. Fuentes addressed it as soon as he got the notice.

Chairwoman Pearson – There is a tarp on the roof and it has been on there for a long time.

Mr. Fuentes – We have had several contractors look at it, I'm still in the process of getting contractors.

Jay R. Myrow – Yes that will be taken care of. Building Inspector Stickles does that need a permit?

Building Inspector Stickles – Yes.

Jay R. Myrow - Mr. Fuentes will apply for a permit for the roof.

Chairwoman Pearson – So you don't know when the prior use ceased when somebody moved out of the house.

Jay R. Myrow – We had no contact with the prior owner. We simply bought it from Orange County and when you buy from Orange County it's the definition of As Is.

Chairwoman Pearson – You purchased in August 2015 and March 2016 you filed something else?

Attorney Dickover – He filed a Property Registration with the Village of Walden and was notarized on March 1, 2015 and was recorded with the Village of Walden shortly thereafter.

Chairwoman Pearson – So from August 2015 to March 2016 the Village of Walden would not have known anything was going on. During that time the Village of Walden had to have people go and fix, cleanup the property.

Member Matise – You said Stephen Deutsch, P.E. did an engineering report on the building?

Jay R. Myrow – The report should be in those papers if not I, will get the board a copy.

Member Matise – You said he said there were no structural issues with the building?

Jay R. Myrow – I have the original of Stephen Deutsch report with me. In Building Inspector Stickles letter it says there was a voluntary discontinuance for a period of 6 months. I'm not sure when that period is. There are 2 provisions of the code, one is where such nonconforming use is voluntarily discontinued for a 12 month period that is designed for such use, and voluntarily discontinued for 6 months where such building is not designed for such use. We're taking position that this structure was clearly designed for the 2 family uses. I had some preliminary emails back and forth today with Attorney Dickover.

Attorney Dickover – If you would like we can take your statement in writing or you can state it verbally if you prefer to do so.

Jay R. Myrow – I can basically tell you briefly what the issue is. The issue is interpreting the provision of the code where the abandonment results from a voluntary discontinuance.

It's my position that a voluntary discontinuance requires more than just the passage of time. Voluntary implies that there was actually come intent to abandon. When intent is involved when interpreting these ordinances 2 things must occur, one must be proof of the actual intent, which could be referred as obvious and second of all there has to be some overt act that indicates that that voluntary discontinuance was intent. So there are essentially 2 types of codes. There are codes that simply say that if you discontinue the use for a certain period of time you lose it, end of story. The other type of code is one where there is proof of abandonment and proof of intent and it's my position obviously that interpreted this code when they use the word voluntary that requires a showing of intent.

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It's my position that in January thru March 2016 when Mr. Fuentes filled out the registration form and was accepted by the Village of Walden and indicated 2 family and was calculated as 2 family that's about as clearly an intent that he wasn't intending to abandon this use, as you can get. The registration form was filed, it was completed, everybody was on notice, and clearly there was no intent. That's what I believe the issue is it's also what I believe the property interpretation is.

Mr. Fuentes bought the property, he knew it was not in great shape and that it would require some time to get it in condition, it clearly is no happening but what is clearly not going unnoticed. Mr. Fuentes is responding to the Village of Walden's concerns, he addressed them immediately. He is working on the property and he does a lot of the work himself. Based on clearly what he saw and certainly what was confirmed after he got into the property is that this is a 2 family dwelling.

Member Matise – Does Mr. Fuentes have a time frame of when he will be finished and ready for it to be habitable?

Mr. Fuentes – Providing I get the permits. I would say 9months?

Member Svarczkopf – In Subsection 2 it says, in cases where such non-conforming use of the building or structure not designed for such use when voluntarily discontinued for a period of 12 months, so you are agreeing with that essentially?

Jay R. Myrow – I am simply saying that clearly the building was designed for such use. So if that's the case essentially that would have to apply.

Chairwoman Pearson – Orange County owned it for how long?

Attorney Dickover – I don't think you know the answer to that at this point.

Chairwoman Pearson – I would want to know that. Building Inspector Stickles when Orange County owned it did we cite them for any violations or anything for lawn etc.?

Building Inspector Stickles – We may have, I don't know that answer at this time.

Chairwoman Pearson – I would like that answer as well.

Member Matise – The last person, I believe was Mrs. Schoonmaker, to live there would they have relatives living in the apartment or were they unrelated tenants?

Building Inspector Stickles – At one point she had relatives living there and she did have tenants also.

Attorney Dickover – I will be asking those types of questions of the building inspector.

Chairwoman Pearson – Attorney Dickover please continue.

Attorney Dickover – Jay R. Myrow from the time Mr. Fuentes acquired the property tax sell on August 1, 2015 has he had any persons occupy the premises?

Jay R. Myrow – No.

Attorney Dickover – And it remains that way today it's unoccupied?

Jay R. Myrow – Correct.

Attorney Dickover – I don't have any questions for this applicant but I do want to address the board for a moment. You asked a number of questions about the possible violations of the Village of Walden building

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code. Whether or not there are violations really is not a germane factor for you to consider on this application, however the applicants perhaps haven't addressed those, may speak to the issue of his intent to abandon the use. I will tell you this, do not consider in your deliberations the existence or non-existence of Village of Walden violations. That's not a question or a factor you should consider but the applicants addressing them is perhaps something that might go to his intention to abandon the use.

Member Svarczkopf – Let's say he owned the property and it was rentable and for 12 months he could not rent it.

Attorney Dickover – That is certainly a factor that the board could consider to be abandonment of the property.

Member Svarczkopf – Would it be voluntary abandonment even if he was trying to rent it?

Attorney Dickover – That also is a question that the board is going to have to answer. If the board has questions that they would like to ask of Mr. Myrow to explain in respect to that now would be the time to do it. But otherwise I would like to start with Building Inspector Stickles and ask him a number of questions that you have asked so we can get it on the record so you know what the issues are.

Chairwoman Pearson – When Orange County owned the property 6-8 months however long they owned it and they were not taking care of it, would that be called the abandonment where the zoning would go back to a single family?

Attorney Dickover – Let me ask Building Inspector Stickles and perhaps that will answer your questions.

Jay R. Myrow – What was the question?

Chairwoman Pearson – My question was, is that before Mr. Fuentes bought the property and Orange County owned the property and if they were not maintaining the property and they weren't doing anything with it and it sat there, that's still part of being abandoned and not being used, that could have been when the zoning would have reverting back, not necessarily when Mr. Fuentes bought it but before that process.

Jay R. Myrow – If the code requires an intent to abandon I don't think a municipality who takes it in a tax sale actually is in it with intent one way or the other. Basically they are a holder of the property until they can get rid of it. I don't think they exhibit intent one way or the other.

Attorney Dickover – Building Inspector Stickles do you know when the property commenced its status as a 2 family dwelling?

Building Inspector Stickles – From our records approximately 1947.

Attorney Dickover – Prior to March of 2015 do you know who the last individual owner of the property was before Orange County acquired it?

Building Inspector Stickles – It was Mrs. Schoonmaker, I don't remember her first name.

Attorney Dickover – When Mrs. Schoonmaker owned it did she operate or use it as a 2 family?

Building Inspector Stickles – Yes.

Attorney Dickover – Did there come a time when the use of the premises ceased as a 2 family?

Building Inspector Stickles – Yes it did.

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Attorney Dickover – When?

Building Inspector Stickles – Approximately March of 2015 according to our records.

Attorney Dickover – What are your records based upon?

Building Inspector Stickles – Water bill, sewer bill.

Attorney Dickover – Where those records part of the basis of which you determined that the prior 2 family use had ceased?

Building Inspector Stickles – Yes.

Attorney Dickover – At that time the premises were vacant?

Building Inspector Stickles – Yes.

Attorney Dickover – Do you know why or how the vacancy occurred?

Building Inspector Stickles – The vacancy as far as our records and knowledge was the owner passed away and there was no one resided in the home.

Attorney Dickover – You mean family members or tenants?

Building Inspector Stickles – Yes.

Attorney Dickover – So it was empty?

Building Inspector Stickles – It was empty.

Attorney Dickover – The applicant has testified that they became the owner of the premises on August 1, 2015, you have no information otherwise?

Building Inspector Stickles – We have it as August 7<sup>th</sup>.

Attorney Dickover – During the period of time immediately prior to Mr. Fuentes prior procession from the time that Mrs. Schoonmaker passed away were the premises occupied?

Building Inspector Stickles – They weren't occupied from approximately March of 2015 until it was purchased and they still are not occupied, so it would be March of 2015 until present.

Attorney Dickover – There's been a search of graphs by Mr. Myrow on behalf of his client and the premises are layout or designed to be a two family. Do you have a comment or statement in respect to that, that you would like to make?

Building Inspector Stickles – I would have no knowledge on how originally the house was to be laid out; it could have been constructed prior to 1947 as a single family and converted later on. I don't have an answer to that question.

Attorney Dickover – Do you know for how long Orange County owner the property prior to Mr. Fuentes acquiring the said?

Building Inspector Stickles – At this time no.

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Attorney Dickover – I don't have any other questions at this point of Building Inspector Stickles, if the board members do perhaps you would like to make an inquiry and after that Mr. Myrow certainly would have the opportunity to ask the building inspector questions.

Chairwoman Pearson – Are there any other questions/comments from the Board?

Member Moore - Under the section 305-47 what means of determination about something being designed for its use versus not being designed for use, what makes the difference or determination?

Building Inspector Stickles – Design means that it would be built as an actual 2 family. It would have some kind of a fire wall constructed and it would be 2 separate units. If it was converted it could have been converted from a single family with a connecting stairwell being taken out, closed in and then the lower level becomes an apartment and the upper level becomes an apartment.

Chairwoman Pearson – Are there any other questions/comments from the Board? None noted at this time.

Jay R. Myrow – Building Inspector Stickles you just mentioned some scenarios where it could be converted, do you have any information at all suggesting that occurred at this particular dwelling?

Building Inspector Stickles – No, that's what I said before.

Attorney Dickover - Mr. Myrow can your client describe for the board the interior layout of the premises? Are the apartments side by side, up and down, are they first floor, second floor.

Jay R. Myrow – Mr. Fuentes the board would like you to describe the actual floor plan layout of the building. How are the entrances, the floor plan, what is actually in it, start at the first floor with the entrance and what you would find that services the first floor.

Mr. Fuentes – The first floor main entrance is street level. As you're going thru the main entrance you have a small room on your left, you have another room on your right, and it would be bedrooms. Continue on, on the right again you have another bedroom then you have the kitchen. On the left hand side you have a boiler room, 2 separate boilers, you have a water meter, utility room there is a dryer and washer. As you continue on you have a bathroom immediately in front of you and on the right hand side you have the exit door that goes to the outside. You have ingress and an egress on the first floor.

Second floor as you come up to the driveway, the main entrance for the second floor you have a little foyer type, you come into the kitchen. There is a bedroom on the left hand side on the right hand side you have another bedroom and there's a foyer on your right. As you make a left you have a living room and then you continue on you have the dining room. There is a door that goes up to the attic upstairs. As you come out you have the exit from the foyer there's stairs going out so you have again ingress and egress. So there are 2 complete units, top and bottom.

Chairwoman Pearson – Thank you.

Attorney Dickover – Building Inspector Stickles we just heard from Mr. Fuentes, can you with a reasonable degree of certainty testify as to how that building was originally designed as 1 family or 2 families?

Building Inspector Stickles – The way he has described it is the way it exists right now. I don't know how it was years ago.

Jay R. Myrow – I would like to address what Member Svarczkopf raised before about whether non-use is voluntary. I found in my research a quote that says " There are a number of common examples where

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non-conforming uses does not imply an intent to abandon where a rental property is vacant due to eviction of tenants in the building of rental property or renovation or repairs. Intent to abandon is lack of use, as long as the owner is attempting to seek or attract new tenants would perpetuate the non-conforming use.

Chairwoman Pearson – Building Inspector Stickles in our Village of Walden code we still have a 900 sf apartment that would still have to be part of this if we moved forward? If one is 850 and one is 1000 what does that do?

Building Inspector Stickles – If you interpret that this is still a 2 family home you have what is existing. They are not creating a new space. It's only if you were to take a home and convert it.

Attorney Dickover – You haven't heard from the public yet.

Chairwoman Pearson - Are there any other questions/comments from the public?

John Ravella, 16 Church Street – I thank the board for your time this evening. I would like to know if the residence have been charged for 2 garbage bills and has 2 water meters has that ever changed during its history.

Chairwoman Pearson – I would still like to find out about the County, about how long they own it.

Attorney Dickover – Mr. Myrow would you like to research that issue for the board and report back as to what you can find?

Chairwoman Pearson – How long Orange County owned it before you purchased it.

Jay R. Myrow – The premises was deeded to Orange County on November 26, 2014. Even after Orange County bought it people continued to live there to at least March 2015 according to Building Inspector Stickles.

Chairwoman Pearson – We would know by the garbage bills and the other bills to make sure when that ended to see when people moved out.

Attorney Dickover – You have the right to request that information, the applicant can provide it or the building department can.

Jay R. Myrow – The garbage bills and the water bills may be only one meter if they were renting them out.

Chairwoman Pearson – I thought there were 2 of everything, 2 water meters, 2 electric meters.

Mr. Fuentes – No, there is one water meter downstairs. There are 2 electrical meters outside.

Jay R. Myrow – We don't know whether the landlord was simply picking up those charges and making it part of the rent.

Attorney Dickover – I would ask you at this point if you are going to close the public comment portion of this meeting, I suggest that the board reserve decision on this tonight. There are issues of law that need to be addressed. Mr. Myrow has presented some of them. I would invite you to submit a brief if you would like to do that. I similarly will address some of those issues, but they are tied and determination of the facts and basis to proceed.

**Member Moore, made motion to keep the Public Hearing open**

**Seconded by Member Wesenberg, All Ayes, Motion Carried**

Chairwoman Pearson – We would like some added information, water and sewer bills when they ceased.

Jay R. Myrow – We will get a copy of that information too?

Chairwoman Pearson – Yes, this will be continued at the next meeting on 07/07/2016.

**B.3 66 Sherman Avenue, Area Variance**

**Member Wesenberg and Member Matise - Counted mailings; mailed 29, returned 21.**

Kevin Delmonico, 66 Sherman Avenue property owner – We have 3 road front lots, 50x100 lots and then a second lot behind our house, and is adjoining between my property and my parent's property. The properties been in the family since it was been built both sides. I purchased my grandmother's house from the estate when she passed away because with the lay out of the property there's no way you could effectively sell or rent to somebody else. Half the driveway access of my parents' house is on our property. Everything is pretty much one big lump of land.

What we are proposing is to put a 15x30 oval swimming pool between my large barn and my parent garage. You should have pictures, one of the overview of the property and a close up. Basically because of the way the property line runs up its about 1½ feet 2 feet off my parents garage, in order for us to put a pool in that place we would have it 10ft from the property line it would basically touching the barn. So we want an Area Variance so we can move it closer to my parent's property line and have it centered in the yard. Originally we were going to put it traverse to the property line but after talking with Building Inspector Stickles he gave us a letter stating that we would need to have 2 variances and 2 easements and we were able to find a way not to do that and keep it on the one property.

Member Svarczkopf – The space behind the barn?

Kevin Delmonico – Unfortunately there is an entire row of 60ft pine trees there and the span of them are about 8-9 foot radius, we would have to cut all of those down.

Chairwoman Pearson – There are 3 out buildings in the back, you own 2?

Kevin Delmonico – Correct, I have the garage on the left, the long skinny barn and then my parents garage on the right hand side.

Member Svarczkopf – Attorney Dickover is an easement needed?

Attorney Dickover – No it's not needed, this is a side yard Area Variance request. Building Inspector Stickles what is the side yard measurement?

Building Inspector Stickles – 10 feet.

Attorney Dickover – The code requires 10ft separation between the pool and the neighbor. This proposal is for 4ft so it's a request for a 6ft side yard variance, no an easement is not required.

Chairwoman Pearson – It's an above ground pool and its 4ft, so there isn't going to be anything blacktop or anything around the pool.

Kevin Delmonico – Just the pool.

Chairwoman Pearson – You talked about one reason you bought your property now was because of being so close together. Heaven forbid that someone wants to move away, what does that do to this

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piece of property? You talked about easements because you are sharing things now, what will be happening possibly in the future if something like that happens, what will happen to this pool?

Kevin Delmonico – It's not a common structure.

Chairwoman Pearson – I didn't realize you were that close together so that made me think what will that do to this approval if it's granted. The approval goes with the property, or we could have a condition on it to take the pool down?

Attorney Dickover – You could condition the approval based upon the family relationship between these applicants.

Chairwoman Pearson – You don't know what's going to happen in the future, it's not something you plan on but something very well can happen.

Member Matise – You're not proposing any decking etc.?

Kevin Delmonico – Just a patio, there was for many years just a flat stone patio. All we're going to do is level it off and just put a paver stone patio.

Chairwoman Pearson – How high is the pool it off the ground?

Kevin Delmonico – 52" high.

Chairwoman Pearson – Does it need a fence around it?

Kevin Delmunico – Does not require a fence it's over 48".

Member Matise – You would have just a ladder?

Kevin Delmonico – On the patio side where the top of the patio meets the driveway, it is on a hill, and it's going to be built to that hill. So the top side of it will be access restricted in accordance with the building code on that side. The whole back side of the pool will require it.

Attorney Dickover – Are there other above ground pools in the area?

Kevin Delmonico – Yes.

Attorney Dickover – How close by to this property?

Kevin Delmonico – I can think of within 300 feet at least 3.

Attorney Dickover – Is there any other way to achieve installing the pool without the side yard variance?

Kevin Delmonico – No we were trying for a while to purchase the 2 lots adjacent to us and that would allow us to cut down the trees and move it into that yard.

Attorney Dickover – So is the location of the trees that brings you here requesting this variance.

Kevin Delmonico – Basically it's the best place for it.

Attorney Dickover – Can you think or advise the board of any adverse effects that location of the pool might have on your neighbor's property or anyone else in the neighborhood?

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Kevin Delmonico – The only people that can see the pool are my parents. The back yard on both sides is shielded by those large trees.

Attorney Dickover – I don't have any further questions of the applicant.

Member Matise – Who owns the lot behind you?

Kevin Delmonico – On the left hand side down from Sherman Avenue as you're looking at the property is owned by Mr. Degrote and they are in the process of a sale. We're still going to try and purchase it. There is one house on that property in disrepair.

Chairwoman Pearson – Board do you feel there should be conditions on it for the future?

Member Wesenberg – I feel there should be conditions based on the family. Once the family is not there I think it should come down.

Member Svarczkopf – Can you take it down unless the family purchases the house oks the pool stay?

Chairwoman Pearson – How difficult does that get to be?

Attorney Dickover – It would somebody going to make an inquiry of the new people, as to whether they want the pool to go or not. Just a note on conditions, they do have to be reasonably relayed into the variance that the board is granting. If you feel in the conditions the pool has to come down if the ownership changes is that reasonably related to a 6' variance? You could condition the pool not be replaced absent another variance.

Member Matise – That would make sense because maybe the property next door would change in that and they would have something to say.

Chairwoman Pearson – In 20 years you would have to replace the pool then you would have to come back.

Kevin Delmonico – What if a tree falls on it and I have to replace it? I would have to get the variance again?

Attorney Dickover – If the ownership has changed and the pool is going to be replaced it would require a variance.

Chairwoman Pearson – Is there a fence between you and your parents property?

Kevin Delmonico – No.

Chairwoman Pearson – We are always looking to the future and what changes could happen with the property and how different scenarios can or will affect the property.

Attorney Dickover – Chairwoman Pearson here's perhaps a solution, Building Inspector Stickles informs me that if the pool is to ever be replaced it would require a new building permit regardless of where it's being placed. Perhaps the condition would be that this variance is granted for the existing pool and will expire on the request for the application for a new building permit.

Member Svarczkopf – What about repairs like Kevin Delmunico mentioned?

Building Inspector Stickles – Within one or two years you wouldn't have to?

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Kevin Delmonico – What about 10 years from now, something falls in the pool and damages it, would I have to apply for a new building permit?

Building Inspector Stickles – Yes you would have to apply for another building permit.

Kevin Delmonico – But if it happened 1-2 years I wouldn't?

Building Inspector Stickles – What would happen to it?

Kevin Delmonico – I don't know.

Chairwoman Pearson – The neighbor on the other side slices the lining because they don't want a pool for example.

Kevin Delmonico – That's possible.

Building Inspector Stickles – A building permit would be different than coming to this board.

Kevin Delmonico – But the condition was upon reapplication for a building permit I would have to apply for a variance. That is what was just stated.

Chairwoman Pearson – Are there any other questions/comments from the Board? None at this time.

Attorney Dickover – This does not have to go to Orange County the 239 referrals, your vote is subject to SEQRA process however this is a request for an Area Variance with a short form EAF based on the one or two family dwelling and Area Variance is a Type Two project and I so instruct you that no further environmental review needs to take place. Chairwoman Pearson you can go thru the 5 factors.

Chairwoman Pearson - Area Variance;

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 – **No**.
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 – **No**.
3. Whether the requested Area Variance is substantial – **No**.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – **No**.
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 – **No**.

Attorney Dickover – A motion at this point if the board were inclined to adopt it would be a **Motion to approve the Area Variance requested, which is a 6' side yard variance.**

Member Svarczkopf – No conditions correct?

Chairwoman Pearson – No conditions correct.

**Member Svarczkopf, made motion as stated above by Attorney Dickover  
Seconded by Member Moore,**

**Roll call vote; Chairwoman: Rebecca Pearson Yes**  
**Members: Faith Moore Yes**  
**Carolyn Wesenberg Yes**  
**Mary Ellen Matise Yes**  
**Alternate: Dan Svarczkopf Yes**  
**All Ayes, Motion Carried**

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Chairwoman Pearson – Ok, you're approved.

Kevin Delmonico – Thank you.

**C. DISCUSSION ITEMS:**

**D. INFORMATION ITEMS:**

**E. CORRESPONDENCE:**

**3. COMMUNICATIONS:**

**4. EXECUTIVE SESSION:**

**With no other matters in front of the Zoning Board of Appeals  
Dan Svarczkopf, made a Motion to adjourn,  
Seconded by Member Moore, with all members voting yes.**

**MEETING ADJOURNED:                      1030 pm**

RESPECTFULLY SUBMITTED  
June 09, 2016  
Nancy LaMancuso  
Zoning Board Secretary