

Minutes
Zoning Board of Appeals
December 8, 2011

Board Members Present: Alan Hall, Sr., James Cooper, Harold Moffitt

Board Members Absent: Donne Winslow, Mark Morey

Others Present: Stephen Schill, Dani Desantis, Matt Oliver, Chris Belden (Zoning Administrator), Patti Corlew

Meeting Commenced at 7:00 p.m.

Mr. Cooper - I'm calling to order the December 8, 2011 meeting of the Warrensburg Zoning Board of Appeals. The first item of business on the agenda is the roll call. Let the record reflect that Mr. Moffitt, Mr. Hall and Mr. Cooper, the Chairman, are present and seated, and that the other two members are absent this evening. The next item of business on the agenda is approval of the minutes of the previous meeting, November 10, 2011. Are there amendments or corrections, gentleman?

Mr. Moffitt - No, not that I found.

Mr. Hall - Not being present the last meeting, I have no corrections.

Mr. Cooper - Alright, then we'll move the minutes as, as they are, without amendment or correction, and let the record reflect that they are approved by consensus of the board. Next item of business on the agenda is the appeal of Stephen Schill, ZBA 2011-1. This matter was adjourned last month so that counsel could prepare Mr. Schill's case better, but Mr. Schill informs me that Mr. Rehm is not going to represent him tonight, and you're going to represent yourself, Mr. Schill.

Mr. Schill - At this time, yes.

Mr. Cooper - Well this is the time to decide, Mr. Schill. Yes or no?

Mr. Schill - Yes.

Mr. Cooper - Alright, as is the custom of the Board, will you explain how this matter comes before us please, Mr. Belden?

Mr. Belden - Sure. Located at 25 Commercial, there's two residences on one parcel of property, a mobile home which is the subject of tonight's appeal, which is, viewing from Commercial Avenue, is on the left-hand side of the property, and that, and another home adjacent to that. Mr. Schill... Mr. Schill is not the property owner, but he is a tenant of the home and the applicant before you tonight. The, the mobile home itself was a preexisting, nonconforming use...

Mr. Cooper - Can I stop you there please, interrupt?

Mr. Belden - Sure.

Mr. Cooper - You have on file a designation of agency on behalf of the...?

Mr. Belden - We do. Should be part of your packet there.

Mr. Cooper - Alright.

Mr. Belden - Roseanne Baker is the property owner. Should be like the fourth article in, fourth document, I mean.

Mr. Cooper - Okay. Proceed.

Mr. Belden - So like I said, the mobile home property was a preexisting, nonconforming use. However this particular mobile home lost its nonconforming status, it's grand-fathered status when the applicant, in my opinion, discontinued this use for a period of greater than six months, as, as outlined in section 211-50 of the Warrensburg zoning code. I passed out a few pieces of supporting evidence, one being an application made by the property owner to discontinue water service at the property, which was dated February 18, 2010, and also an e-mail dialogue between Stephen Schill and I where he had just, just indicated that he was looking to rehab the mobile home. I indicated back to him that to do so, ya know, his, his chance to reoccupy that, that mobile home had expired. He, he had asked me to, to go through the appeals process for him to possibility regain occupancy at that home, and then asked if it could be used for storage. Then, then basically, to make a long story short, this Fall, it was discovered that there, the water service had been resumed without the permission of the Town. The Town went down, acting on a, on a complaint from the, from the tenants that there was a leak in the home. Water Department went down and shut it off; turned it back on. I found out that there's not only a... They, they... There was two... There was a few violations, mainly the water code violation of, of the applicants or somebody at the residence there, tampering with a town appliance and then, and then representing, and then having application for water service that wasn't properly represented. The, the other, the other issue (inaudible) that they had reoccupied as, as Steve has indicated to me, they had reoccupied the mobile home even, even after knowing, with our dialogue in June that they couldn't reoccupy it. They, they had, in fact, reoccupied it. So that, that's basically the nuts and bolts of why it's before you tonight.

Mr. Cooper - This is how we do it, Mr. Schill. We allow the Code Enforcement Officer or as he's more formally known as the Zoning Administrator to recite the particulars of why the matter comes before us and since you're not represented by council, I'll explain a couple things to you, but that'll come in due course. I've got a couple questions relating to the things that he just said for him. Okay?

Mr. Schill - Okay.

Mr. Cooper - First thing, Mr. Belden, would you raise your right hand, please. Do you swear to tell the truth, the whole truth and nothing but the truth?

Mr. Belden - Yeah.

Mr. Cooper - Do you affirm that the statements you just made are factual and true?

Mr. Belden - I do.

Mr. Cooper - Okay. Now from a 'taking the facts' situation out of this in the broadest sense, in talking about the fact that there were two residences on this property, do you dispute that if there were two functioning mobile homes on the property and one was discontinued, that we wouldn't be here tonight? There wouldn't be an issue with regard to discontinuance?

Mr. Belden - I think there would be a case to be made that this, this matter wouldn't be before you tonight.

Mr. Cooper - So in other words, this law of the State of New York is that if there's two mobile homes and the, and one is discontinued, the, the use of the lot for a mobile home continues and isn't deemed to be discontinued with regard to putting another mobile home in there to replace the one that was discontinued or getting that up to code so you could live in it again, right?

Mr. Belden - Right.

Mr. Cooper - You and I agree that's that law of the State of New York?

Mr. Belden - That, that, that's the case law, I mean, as I...

Mr. Cooper - Okay.

Mr. Belden - Yeah.

Mr. Cooper - And we also have a Board precedent where we decided this once before in exactly the same issue, whether they were, there was an abandonment of the lot based on the fact that there were two uses of like kind and one was discontinued for more than six months, and we decided as a board that that meant that the lot use continued and there was no abandonment with regard to the second. So we have case law precedent in New York and the Board's own precedent, which we're required to follow, but you indicated to me when you called me up to discuss the procedure of this proceeding tonight, that you have a theory why those broader precedents don't apply. So you want to explain to the Board what your theory is?

Mr. Belden - Sure. Like, like Mr. Cooper indicated, there, there is case law in New York State where it's not, it's not just specifically with regard to two mobile homes, but more about having more than one nonconformity on a property and where if you're to (inaudible) one nonconformity, you're, you're more or less able to reintroduce that, not that, that discontinued nonconformity back, back onto the property. My, my opinion on, on this matter here, there, is that there are, there are two different distinct uses on the property. There's a mobile home and a regular home on the other property. It's, it's kind of a... It's kind of a weird situation. I mean, it's, it's not a typical, it's not a typical mobile home. What, what I'm trying to say is that the, there's a mobile home and a hybrid home on the property, if you will, where they have a mobile home that was

originally placed on the property and then subsequent additions were built around it. At this current time, they're, they're working on some, some additions on this property where they had removed a portion of that mobile home, left a portion and built a, a larger stick built addition on, on the property.

Mr. Cooper - Let me see if I can simplify this and if I've misstated, I'm sure you'll correct me. Okay?

Mr. Belden - Sure.

Mr. Cooper - There are two structures on this lot.

Mr. Belden - Right.

Mr. Cooper - And one structure, there was never any discontinuance. People continued to inhabit right up to today.

Mr. Belden - That's right.

Mr. Cooper - And that structure, for purposes of clarification I'm going to call structure A. Okay?

Mr. Belden - Sure.

Mr. Cooper - Now structure A was originally a mobile home. Is that correct?

Mr. Belden - That's right.

Mr. Cooper - And subsequently, over the passage of years, the owner of the property has made modifications to structure A in the nature of additions and improvements on structure A which you might call stick built, but they weren't, they didn't bring in another mobile home and attach it to structure A. Is that right?

Mr. Belden - That's right.

Mr. Cooper - So essentially where we are with structure A today is that it was at one time a mobile home, but that the mobile home that was there has come to be a component of a different structure which is still a residential structure.

Mr. Belden - That's right.

Mr. Cooper - But it was used as a component in conjunction with general carpentry to make it into a different structure. Is that right?

Mr. Belden - Right.

Mr. Cooper - Okay. So structure A was and is occupied for residential use, but at some point in time, it stopped being a mobile home in your opinion.

Mr. Belden - In my opinion.

Mr. Cooper - Do you have any idea when it stopped being a mobile home?

Mr. Belden - I'm not... I, I can't give you a definitive date right now.

Mr. Cooper - Well, was it between 1988 when our ordinance went into effect and 1990? I mean, do you, or 19, 2000, anything like that?

Mr. Belden - My understanding of it is that these additions that were, that were attached to the mobile home were, were, and Steve could probably answer it better than I could, but were probably in

place before zoning went into effect in Warrensburg, which was in 1988, but...

Mr. Cooper - Okay. And is there, are the, did I misunderstand your testimony or did you say that the actual changes in improvements on structure A are ongoing? Is there something that was done recently with regard to that?

Mr. Belden - That's right. So I'll kind of, kind of... (Inaudible) is that with structure, with regard to structure A, there was a mobile home placed on the property back in the '50's or 60's, after that time, additions were made kind of around and attached to that mobile home, then just recently, in August, I think it was August of 2011, the, they received a permit from the town and the county to demolish, a portion of the mobile home and a portion of one of those additions and build, build a larger addition, a bedroom for their child in lieu of that portion of the mobile home and the old addition.

Mr. Cooper - So when structurally, in your opinion, was the original mobile home modified in such a way that it could no longer be used as a mobile home. In other words, say, at what point in time did it lose the ability to be, have a chassis put underneath it or wheels, hauled off the property and located as it is to another location as a mobile home? Do you have any idea?

Mr. Belden - I guess it's kind of difficult to get down to that, but I, I can, I can say though with confidence though there are, there's about four, I'm not sure if they were all constructed at the same time or at different times, but there's about four different additions placed around this mobile home and in doing, ya know, measuring out, getting the square footage of just how much of the mobile home, or just how much of the total home square footage consists of mobile home, prior to these most recent demolition and additions, that mobile home consisted of about 36% of the total home square footage. Post-demolition about 16% of the total home square footage consists of mobile home. So based on the, based on the, on, I guess on the mere ideology that, that a larger percentage of this home is, is made of a stick built, whatever you like to call it, I would say that, ya know, that, that would kind of mean that it's no longer a mobile home. It's more of a, it's hard to pin it down on what it is, but I guess a hybrid structure. It's no longer... It's neither a mobile home, nor a regular stick built home.

Mr. Cooper - Has the mobile home been demolished in any respect, the original mobile home?

Mr. Belden - Yeah.

Mr. Cooper - Walls taken down?

Mr. Belden - Yep. Yeah, I mean, it's...

Mr. Cooper - We're still talking about parcel A.

Mr. Belden - Oh yeah. Oh yeah. Okay. So the total square footage of that mobile home before anything was taken off was about 480

square feet. With these most recent additions in 2011, they removed about, they removed about 230 square feet from that.

Mr. Cooper - Prior... Let's take, as a demarcation date, the date they filed for this relief for the Board, which is October 29th or was it October 24th? Do your records reflect?

Mr. Belden - October 24th is when they, when they filed for this appeal.

Mr. Cooper - Six months before October 24, 2011, was the structure on Parcel A still a viable mobile home?

Mr. Belden - In my opinion, no.

Mr. Cooper - And what, why, what's the basis of your opinion?

Mr. Belden - I guess the, some of the basis of my opinion would be included in that definition of a mobile home within our zoning code, there is a provision that the mobile home could be transportable. If, if you were to look at the applicant's building plans that were submitted, he indicates in his plans that, that another, the other rooms were rented at various times and are not, and are not attached to the trailer, except for the roof. In my opinion, a mobile, if it was to be, if it was to be truly mobile, transportable, I guess there's, there should be an understanding that you would be able to, to kind of drive a vehicle up to this thing, puts some wheels on it and haul it away to a different site. It seems like if, if that was to happen in this, in this case, part of his home would be missing. They wouldn't have a kitchen, ya know, they'd have a giant gap on the side of their house.

Mr. Cooper - Alright, well that's, that's a relevant fact. Some of the essential service structure to the residence, the kitchen was never, ceased to be used in the mobile home and was built someplace else, attached to the mobile home?

Mr. Belden - The mobile home, the mobile home portion of, about 250 square feet of the mobile home is, is the kitchen/dining room area. So that would, and that, and that mobile home also connects, also connects and six months prior to this, this apply, application linked two bedrooms, I'm sorry, three bedrooms, a living-room and it also housed a, a fourth bedroom and bathroom and a utility room. So it, it's a pretty large, pretty large and pretty important... I'm sorry, not a large, very important component of, of this house.

Mr. Cooper - Is not mobile home?

Mr. Belden - It's not... Well, if you're talking square footage, there's a larger...

Mr. Cooper - No, I'm talking about to be able to use it as a residence; a place where you go to the bathroom; a place where you bathe; the place where you cook your food. Some of those places were not incorporated in the mobile home structure after the improvements that were in extant, at least six months before this application went in.

Mr. Belden - At least six months before this application was made, the, the, I'm, I'm assuming, I'm assuming before these, these additions were put around it, they probably had bedrooms and bathrooms in the kitchen. I mean, they're probably a lot smaller, but once they were able to add on to these additions, they were able to, to maybe open up the kitchen a little bit more and have a dining room in there.

Mr. Cooper - Are you assigning that the mobile home at some point when it was, the parcel A was improved, that the, the kitchen and bathrooms, for instance, were incorporated into bedrooms and, and the bathroom and the kitchen were located in the stick built carpentry structure, is that what you're saying?

Mr. Belden - Well, be, before half the mobile home was removed, no, no... Yeah, be, before, before the mobile was, part of the mobile home was removed, there was a bedroom component in there. There was a bathroom, utility closet, kitchen, dining room and linked and linked from the mobile home to three stick built, if you will, three stick built bedrooms and a living room and also the front entrance to the home.

Mr. Cooper - Okay. So it's possible that they continued to use the mobile home kitchen as the kitchen, is that what you're saying?

Mr. Belden - That, that's right. Yeah.

Mr. Cooper - And the mobile home bathrooms, were they continued to be used as bathrooms in the..?

Mr. Belden - I, I mean, I'm assuming, I mean, it could've been refigured...

Mr. Cooper - Okay.

Mr. Belden - ...over the years.

Mr. Cooper - Let me ask you some other questions that are more basic. Were the, was the tongue, the tow tongue removed from the mobile home, the original mobile home on Parcel A?

Mr. Belden - I don't know that information.

Mr. Cooper - How 'bout the wheels?

Mr. Belden - I don't know that information.

Mr. Cooper - I'm not asking you when. Did you observe that there are wheels under anything under Parcel A?

Mr. Belden - No.

Mr. Cooper - You didn't observe or you don't... Or you did observe and the answer is no?

Mr. Belden - I have not observed. It's not, it's not something that's really visible. It's, it's in the rear of the house. It's not something that I've gone on the site with Mr. Schill or anybody that...

Mr. Cooper - Is your testimony that if there are wheels there, they could be buried, concealed by the structures that were built around and, and added onto the mobile home? Is that what you're saying?

Mr. Belden - It's, it's possible. But I guess more of my argument I, is geared towards that if, if this, if this was truly a mobile home, it was mobile, it was transportable, it, it would, in essence, ruin the, it would in essence ruin the home. I, I just... For that basic, I mean, for that basic fact, I don't think that this should, I don't think that this structure A should be considered to be a mobile home, but something else.

Mr. Cooper - Alright, we understand that, but let's just see if we can simplify this. Were walls of the mobile home breeched or modified, opened so that the bedrooms and living room could be constructed on it?

Mr. Belden - With the stick built additions you mean?

Mr. Cooper - Yes.

Mr. Belden - Yeah.

Mr. Cooper - Alright. And that was done more than six months before the application, as far as you know?

Mr. Belden - Yeah.

Mr. Cooper - Okay. And with regard to parcel B, which is the mobile home itself that they want to resume occupancy of and residency of, okay?

Mr. Belden - Yeah.

Mr. Cooper - That is a, in terms of it's physical plan, a stand alone mobile home with no additions or anything on it, correct?

Mr. Belden - That's correct.

Mr. Cooper - And if the property could be brought up to code, or whatever you require, before you issue a permit to be occupied and used, in theory, they could put wheels underneath it, attach a, the tongue of the mobile home to a trailer and haul it off and put it on another piece of property and use it as a mobile home there.

Correct?

Mr. Belden - Correct.

Mr. Cooper - Okay. Do you want to add anything else at this time, 'cause you'll get another opportunity after Mr. Schill gives his testimony.

Mr. Belden - I think, I think as long as, as long as the board is, is, ya know, understands what, what I'm saying and, and that it's just that there's, that, that the case law that, that Mr. Cooper had, had brought up, relies heavily upon there being two non-conforming uses on the property. My argument would be though that with regard to Mr. Schill's property, there is only one non-conforming structure on the property, and that would be the mobile home that, that he's basing his appeal on tonight.

Mr. Cooper - Your argument is if parcel A at some point, at least six months ago, before the applicant, the application was filed, ceased to be a mobile home and became a structure that used mobile home components.

Mr. Belden - That's right.

Mr. Cooper - But it was a residence in the sense that if somebody wanted to add onto a stick built house, essentially that's the way it was used.

Mr. Belden - Right.

Mr. Cooper - Correct?

Mr. Belden - Right, correct.

Mr. Cooper - Okay. Now can you list one, two, three, four, five, the facts that you think demonstrate that parcel B, the use of parcel B was abandoned, not abandoned. That's the improper word. Our statute stays if a non-conforming use is discontinued, which is significant, because it was abandoned, we'd get into proof of states of mind, and this doesn't require proof of states of mind. But if a non-conforming use is discontinued for a period of six months, further use of the property shall conform to this chapter or be subject to review by the Board of Appeals. So in this district, a mobile home is not, it wouldn't be an authorized new use.

Mr. Belden - That's correct.

Mr. Cooper - It's not a permitted use. So you could view this from that standpoint that the use was discontinued and they would have to come back to the board for a use variance to put a mobile home trailer in there, right?

Mr. Belden - That's right.

Mr. Cooper - Okay. Tell me... Tell me one, two, three, four, five the facts that you think support your contention that the use of parcel B was abandoned... I, (inaudible) again, (inaudible) spilt myself. ...discontinued more than six months prior to the following of this application.

Mr. Belden - Sure. I guess more importantly, my, my decision has, has weighed heavily on, on, on the idea of intent. That, that Mr. Schill, the property owner, they all, they all had, had, had a conscious intent to discontinue this use for a period of greater than six months. Like I, I said, with my opening, in February 18 of 2010, the property owner, with, on their accord, came in, made, made an application to discontinue water service at the, at the residence.

Mr. Cooper - Did the application indicate that it was not being used as a mobile home at that time?

Mr. Belden - I'm sorry. Could you ask that, can you ask that again?

Mr. Cooper - Did the application require a representation that it was not being used as a mobile home or did they require that the water be disconnected? Is that what you're... Is that what you're saying?

Mr. Belden - No. No, that's not it.

Mr. Cooper - What was the purpose of the application on February 18th.

Mr. Belden - The purpose of the application on February 18th was, was to turn off, was to turn off water.

Mr. Cooper - Okay.

Mr. Belden - It's, the application for water usage...

Mr. Cooper - A citizen would use this, say terminate my water because I don't want to pay water rent anymore, is that it?

Mr. Belden - Pretty much.

Mr. Cooper - Pretty simple, isn't it?

Mr. Belden - Yep.

Mr. Cooper - Somebody came to you on February 18, 2010 and said turn off the water and stop billing me for it. Right?

Mr. Belden - Right.

Mr. Cooper - And that's what this application you're talking about is?

Mr. Belden - Right. And, and depending on when you turn it off, you may be looking at half year's rate, no charge or, or the full year's. In, in Mr. Schill's case, they ended up not paying a bill for that entire year, for the water service, which they, which I'm sure Mr. Schill will point out, they, they had a tenant in there...

Mr. Cooper - Well, let's not be getting ahead of yourself.

Mr. Belden - Okay.

Mr. Cooper - On February 18, 2010, was the application granted?

Mr. Belden - Yeah.

Mr. Cooper - Alright, and did the application on February 18, 2010 require any representation on the part of the person making the application; that there was nobody living there and that therefore, nobody would be harmed by turning the water off?

Mr. Belden - No.

Mr. Cooper - Okay.

Mr. Belden - The, the appli, the application itself did not, did not (inaudible).

Mr. Cooper - Can you say from your memory that that representation was made to you at that time orally?

Mr. Belden - There, there had been... There had been... There's been... There, there had been contact by both the former tenants and, and the property owners with speaking, talking about demolishing the structure, hauling the structure off the property (inaudible) that their former tenant had moved out, taken things out of the home.

Mr. Cooper - Nobody said to you, anybody still living there?

Mr. Belden - The application isn't made through me. It's made through the Town Clerk's office.

Mr. Cooper - Okay. So they wouldn't know necessarily whether any statements were made in connection with the application. Is that right? I mean, you inferred that they were implying that they wouldn't be tearing it down if anybody was still living there. Correct?

Mr. Belden - Sure. Yeah, yeah.

Mr. Cooper - Okay. And this was made in conjunction... This was made known to you as Code Administrator or Zoning Administrator in, in conjunction with this application of February 18, 2010 just because it's a small town. All you town employees work together and by some

means, you became aware of this application had been made to the Town Clerk. Is that right?

Mr. Belden - That's right.

Mr. Cooper - Okay. Now what's your second (inaudible) of discontinuance of use.

Mr. Belden - I guess they had discontinued the water service.

Mr. Cooper - The water service was discontinued?

Mr. Belden - The water service was discontinued by the Water Department upon receipt of the application to discontinue it.

Mr. Cooper - So this would have been on or about February 18, 2010?

Mr. Belden - Yeah.

Mr. Cooper - Okay. Go ahead.

Mr. Belden - So be, between February 18, 2010 and the Summer of 2011, Mr. Schill had, had emailed me on a separate matter, but then within, within one of his emails which is attached to, to your, your packets there, there, there's email dialogue between him and I on which he says that he is, he wants to renovate the trailer next door. He would like to renovate the trailer next door, to which I emailed him back, told him that, told him... I actually quoted and bolded the section of the zoning ordinance which, which..

Mr. Cooper - Which is a discontinuance.

Mr. Belden - (Inaudible).

Mr. Cooper - And you say he wanted to re, renovate the trailer next door. For purposes of absolute clarity, we're talking about Parcel B. That...

Mr. Belden - Parcel B we're talking about.

Mr. Cooper- Structure B, he wanted to... Parcel probably is misnomer, but structure B, that's the trailer that, for which you understood water service had been discontinued on or about February 18, 2010.

Mr. Belden - And as of June... And as of our June emails, I will still under the assumption that there was still nobody living there. And then, and then the following day after I sent him back an email, he asked me to run through the appeals process for the trailer to possibly regain occupancy.

Mr. Cooper - Could you repeat that? I didn't pick up on that.

Mr. Belden - He stated, "could you run through the appeals process for the trailer to possibly regain occupancy?"

Mr. Cooper - So he asked you in the Summer of 2011 what procedure was required to regain the right to occupy the, structure B.

Mr. Belden - Yeah, that was on June 24 of 2011. Then he went on to ask me, as is, can it remain there and be used for storage or some other, or are there some other limitations that I need to be aware of? So, so, ya know, as you're probably referring, ya know, he... Ya know, what I, what I was getting from him was that nobody was living there. He was asking how he could possibly regain occupancy to the mobile home and, and then he was even asking, could it be used for a different purpose, like, like for storage. I mean, so that, that to

me is kind of a show of intent that, that, that he, that... Well, this, this has already been passed the six month window anyways, but there was this ongoing intent, this understanding between him and I that (inaudible) he wasn't really trying to occupy (inaudible).

Mr. Cooper - But at no point in time when he had these contacts with you did he indicate anybody was in there?

Mr. Belden - No.

Mr. Cooper - The understanding was, what do we got, what have I got to do, what does the property owner have to do to qualify structure B for occupancy again?

Mr. Belden - That's right. And had it not been for, had it not been for a leak within the water pipes, to which the tenants contacted the Water Department, they would have just been taking water from the Town of Warrensburg. They would have just continued to, as, as Mr. Schill in his application had stated, they would have just continued living there quote/unquote illegally. So..

Mr. Cooper - Well, we're not here to adjudicate whether they hooked up to the water system improperly or not.

Mr. Belden - No, I know that.

Mr. Cooper - But it is significant because you're telling me at some point in time, because of the water leak complaint, it came to the attention of you as the Zoning Administrator and Code Enforcement Officer that somebody was living there.

Mr. Belden - Correct.

Mr. Cooper - And when did that come to your attention? When did this complaint issue to the Town?

Mr. Belden - I was notified... Don't have an exact date, but I know it was, it was mid, it was mid September and it was before... It was, it was on, it was on, well, it was on or about September 20th. I, I had sent an email to Mr. Schill and a phone call, which I didn't receive an answer, but then I sent a letter, sent a letter on, I think it about the 23rd.

Mr. Cooper - Now did Mr. Schill or the property owner require a permit from you before anybody could move in there again or something equivalent of a C.O., certificate of occupancy?

Mr. Belden - A permit, in my opinion, would only be required if, if that six month period, as outlined in 211-50, had lapsed.

Mr. Cooper - But that was the impression you were under this Summer, wasn't it, that the six months had, had run out?

Mr. Belden - Right.

Mr. Cooper - And when you say a permit, what kind of permit would he have required based on your, the state of your mind you had this past summer? What's the name of the permit he would've required if the six months had run out.

Mr. Belden - If the six months had run out, he would've had to receive a use variance from the Board of Appeals and then need to receive a Land Use and Development permit.

Mr. Cooper - Alright.

Mr. Belden - From the Town of Warrensburg.

Mr. Cooper - A Land Use and Development permit, which would've allowed people to move it and occupy it. Correct?

Mr. Belden - Correct.

Mr. Cooper - Alright. Now in connection with the, the water hookup and the irregularity that you assert here, did you have any conversations with Mr. Schill about the rightness or wrongness of people living there?

Mr. Belden - Yeah.

Mr. Cooper - And did he make any admissions of any type that it had been vacant but the people had moved in, in the meantime?

Mr. Belden - I, I did find a date... I sent a letter out to him after not, after no contact from him, on the 20th of September, sent a letter on the 23rd of September, to which on September 27th, I received a phone call from Mr. Schill. He contested that there wasn't any violations, ya know, with, with... I know you guys aren't here to, to, to be concerned with the water code, but he did say that he didn't tamper with the device to turn the water on. He had said that he was willing to, to pay for the water service.

Mr. Cooper - Didn't you say to him at that time, when did the people move in? Why did you move people in? I mean, did you, was there any conversation of that...?

Mr. Belden - He, he did indicate that... He did indicate that his daughter had been, was living there. The, the letter had spelled it out, but I, ya know, I again stated that we were going to be turning off his water on October 20th, to allow the tenants to be moved out, but then, and at that time, I also stated that they would need to, that the tenants of the property, the daughter would need to vacate the premises.

Mr. Cooper - So how, is it fair to say at that time, he just said my daughter's there. We didn't do anything wrong with regard to the water and nobody pressed him for details when the daughter moved in. Can you just answer it the way I asked it?

Mr. Belden - Sure. Yeah. I mean, he, I, he, he didn't really spell out when exactly she moved in there...

Mr. Cooper - Alright.

Mr. Belden - ...but he just stated that she would not be leaving the property, but he didn't admit that he tampered with the, with the device, but he did state that he would be willing to pay for any water that would be, that was used while his daughter was living there. And I'm sorry, he had stated that his daughter had been living there, I can't remember the exact month date, but was living there in the Fall of 2010 and had moved out in December time or something because there was no heat in there, had moved back into the residence home, (inaudible).

Mr. Cooper - Slow down a little bit. She was in residence in the Fall of 2010?

Mr. Belden - That's right.

Mr. Cooper - Daughter in residence? Is that right?

Mr. Belden - That's right.

Mr. Cooper - Take it progressively, item by item thereafter, what he told you relevant to the issuance of discontinuance of use and these facts that you're alleging.

Mr. Belden - Sure. So like I said, he, he had said that his daughter had, had moved in there and was fixing it up. That she had moved back in to, from, from home B to home A, to live with them 'cause there was no heat in the trailer at this point. Then stated how...

Mr. Cooper - Are you saying she moved out because there was no heat after the Fall of 2010?

Mr. Belden - She moved... Yeah, she moved out of home B..

Mr. Cooper - Alright. So we'll say the Winter, you, your understanding was moved out for the winter of 2010, 2011, back into structure A, is that right?

Mr. Belden - That's right.

Mr. Cooper - Okay.

Mr. Belden - To, to... I mean, I had asked him, do you have any supporting evidence that she was living there, electric bills, those sorts of things, to which at one point he'd said that he was going to get them for me. I never got them though. So that was when, when it came down to shutting off the water, asking that...

Mr. Cooper - Well, wait. You're getting ahead of yourself. Did there come a time... So the next time you were aware that structure B was occupied was when this water business came up about the leak. Is that right? So we go from the Fall of 2010, you know somebody's in there.

Mr. Belden - I don't know that somebody's living there. This is all..

Mr. Cooper - Well, that's when he told you.

Mr. Belden - That's what he's telling me. And in the Fall...

Mr. Cooper - Alright. And then it was vacant for the Winter of 2010. You're sitting in your office thinking it's still vacant up until that time that there's a complaint issued about the water leak, is that right?

Mr. Belden - That's right.

Mr. Cooper - Okay.

Mr. Belden - That's right.

Mr. Cooper - And that complaint was issued in September of 2011, is that correct?

Mr. Belden - And I'm sorry. The, the...

Mr. Cooper - The water leak complaint?

Mr. Belden - Was in, was in, was in mid September of, of 2011.

Mr. Cooper - Okay. I'm going to mark. I'm going to mark your letter to the Board of October 25th as Board Exhibit 1. The October 20, 2011

letter to Tom Belden, water, Warrensburg Water Department as Board Exhibit 2. That's a two page exhibit. The letter of September 23, 2011 to Roseanne Braley as Board Exhibit 3. The email to Chris Belden from Steven Schill of October 4, 2011 is Board Exhibit #4 and attached to that is a reply to Mr. Schill by you which proceeds over onto the next page which is, I'm going to consider still part of Board Exhibit 4.

Mr. Belden - Okay.

Mr. Cooper - Now...

Mr. Belden - Just, just so the Board is, is familiar with how this is laid off. The emails unfortunately, they kind of, they read from back to front.

Mr. Cooper - Okay. Well, I guess if this case gets taken to the Court, the Judge'll have to read it back to front, so I'm going to mark the email dated June 24, 2011 and the replies...

Mr. Belden - It would've started on the 20th, I'm sorry.

Mr. Cooper - ...as Board Exhibit 5. And the email dated June 17, 2011 as Board Exhibit #6, and this, this next item, Exhibit E indicated, stamped on it on the application, is that the request to terminate the water service?

Mr. Belden - Yes it is.

Mr. Cooper - I'm going to mark that Board Exhibit 7 and the short form EIF, why did they have to do that?

Mr. Belden - For the use variance.

Mr. Cooper - Is there a use variance application in front of us?

Mr. Belden - Yes.

Mr. Cooper - So there is. Okay, are you offering all these exhibits as part of your case, Mr. Belden, to support your position in this matter.

Mr. Belden - Yes, I am.

Mr. Cooper - Okay. Unless the... Do you have any objections, Mr. Schill?

Mr. Schill - No.

Mr. Cooper - Let the record reflect the applicant has no objections. Gentlemen, do you have any objection to receiving this as exhibits?

Mr. Moffitt - No.

Mr. Cooper - The board is unanimous. We'll receive these exhibits. Do you have anything else you want to offer, Mr. Belden?

Mr. Belden - Not at this time.

Mr. Cooper - Okay, Mr. Schill, it's your turn. Let me explain to you about use variances, okay. Assuming we get to the finding that the structure B that we've referred, do you understand that to be the mobile home, stand-alone mobile home?

Mr. Schill - Yes.

Mr. Cooper - If we find that that use was discontinued for a period of six months, then you would be required to get a use variance from us to continue it in that position. Use variances are intended by

the law and our zoning ordinance reflects to be hard to get. The reason being that the theory is that you have a community where a zoning district has been created and it's relatively homogeneous and that something that's, wants, sought to be put there, which is inconsistent with that homogeneity is not in, in conformance with the overall guidelines of the zoning ordinance for an elderly neighborhood, an attractive neighborhood, the peace and quiet of the neighbors and so forth. It may be absurd to you because Commercial Avenue, as I'm familiar, across the street is a, Cal Engle used to have a mobile home there. And is it still there?

Mr. Schill - Most of the residences are mobile homes on that road.

Mr. Cooper - So that... I'm sure that seems silly to you, but that's what the, the criteria is. The other thing you have to understand and the burden of proof you have to meet, if we get to that stage, is that you have to show that the lot, as it presently exists, cannot be used for any other reasonable purpose; that the conditions are such that you incur a hardship which the law recognizes should be relieved because the rest of the lots can't be used for the purpose that's permitted by the ordinance, which is particularly tough for you in this situation because the rest of the lot is being used for a residence, structure A. So this burden that you have, although you may be able to come up with some creative evidence that I can't think of as I sit here. My mind is still open about this, but it appears that you've got a tough row to hoe to get a use variance for the mobile home. I don't want to discourage you from offering any evidence in that regard.

Mr. Schill - Understood.

Mr. Cooper - Or if you want an adjournment to gather evidence because you didn't understand the law and now that you do, you think you could, you've got evidence you can rustle up 'cause it's not here at hand tonight, we would probably be receptive to adjourning the matter. Okay? But let's get to the issues of the, the factual issues that Mr. Belden testified to. Okay?

Mr. Schill - Okay.

Mr. Cooper - Would you like to give a, a narrative testimony or would you like me to ask you questions, draw it out?

Mr. Schill - I can start with a quick narrative and you can question later.

Mr. Cooper - Okay. Go ahead. Why don't you talk about your relationship to Rose Baker and your relationship to this property for starters.

Mr. Schill - Okay. Rose is my mother-in-law. I'm married to Julie and that's her daughter. So that's the relationship there. We... I don't know exactly when we moved in. I would say June of 2008 we actually moved into 25 Commercial Avenue, as we've indicated, parcel... Not parcel, but building A. Okay?

Mr. Cooper - Hm hm.

Mr. Schill - And have been trying to clean up that area. It has a lot, a lot, a lot of junk there and we've been trying the best we can to clean it up. (Inaudible) trailer next door. We want to try and keep things orderly. So at any rate, the trailer was rented out. (Inaudible) problems with the tenants, which was a, a very long drawn out issue.

Mr. Cooper - When you say the trailer, can we say from now on...

Mr. Schill - B.

Mr. Cooper - When you say trailer, everything refers to structure B.

Mr. Schill - Structure B.

Mr. Cooper - I'm not going to compel you to use structure B, but when you say trailer, that's what I'm going to be thinking. Okay?

Mr. Schill - Structure B was rented out.

Mr. Cooper - Okay.

Mr. Schill - And not getting into the trials and tribulations there, basically we had to evict them. And the reason why the water was shut off initially was because the pipes were broken.

Mr. Cooper - What year was this water shut off relating to this applicant, application to discontinue use? He says 2010, February 18th. Is that consistent with your memory?

Mr. Schill - That's correct.

Mr. Cooper - Alright, and that is the time it had to be shut off 'cause the pipes broke.

Mr. Schill - Yes.

Mr. Cooper - Okay. Go ahead.

Mr. Schill - We weren't able to legally, to get him out of there until April.

Mr. Cooper - So you had a tenant in there with no water for several months?

Mr. Schill - We don't know what he was doing, to be honest with you. And yes, he was there. He was there quite often. He had dogs in there, and he would come in the middle of the night after maybe, maybe he wasn't living there anymore, and to basically strip the trailer. He pulled out the furnace, hot water, windows, everything that weatherization had put in, over \$5,000 worth of stuff.

Mr. Cooper - Did you go to the police and file a police report?

That's simple, yes or no.

Mr. Schill - No.

Mr. Cooper - Okay.

Mr. Schill - Because at that... Technically, we had sold the trailer to them, not the property. They couldn't move the trailer, so they got pissed off at us seeing as they couldn't move it. (Inaudible).

Mr. Cooper - So the pipes broke. You became aware of it and you went and filed an application to have the water discontinued and the guy may have been living there, rough camping as they say in Britain, you don't know. He might've (inaudible) gone, but he certainly looted

and, and vandalized the structure for a period of weeks after February 18th, right?

Mr. Schill - When he was off with his girlfriend, he'd be back at the trailer.

Mr. Cooper - And...

Mr. Schill - (Inaudible).

Mr. Cooper - So as a result of this vandalism of this guy, and he was doing it under claim of right because you had some kind of a, at least a handshake agreement with him or your mother-in-law did, you didn't file any police report? It got too messed up, too sticky and what was the point?

Mr. Schill - There's nothing we could file.

Mr. Cooper - Okay. So in the winter of 2010, the late winter 2010, going into March, you said there were windows taken out. I thought you said he removed windows.

Mr. Schill - That would've been 2009 to 2010. That's when the pipes froze and the water had to be turned off.

Mr. Cooper - Pipes... Okay, the pipes broke sometime before February 18th, 'cause that's when you applied to have the water turned off.

Mr. Schill - Correct.

Mr. Cooper - So you're saying before the time, the windows were taken out and the..?

Mr. Schill - No, they were taken out during that February, March, April time.

Mr. Cooper - Okay, 2010.

Mr. Schill - Correct.

Mr. Cooper - And the furnace was stolen at that time, right?

Mr. Schill - He ruined that as well.

Mr. Cooper - Okay.

Mr. Schill - He indicated freely that he was going to take everything out of there.

Mr. Cooper - Well... Okay, this was a kitchen sink operation. He was determined to show you, you couldn't push him around, right?

Mr. Schill - Yeah, basically.

Mr. Cooper - Okay. So through the late winter and early Spring of 2010, he engages in this course of behavior. What happened after that? When was the next time somebody came to live in the property?

Mr. Schill - I wasn't really involved so much at that point, so I can't give you names. There were several people interested, I think Combs, one of the Combs individuals, I don't remember which one was...

Mr. Hall - Could you speak up just a little bit please.

Mr. Schill - I'm sorry. One of the... A individual by the last name of Combs, I don't remember which one it was, was interested at one point. He went in and looked at it...

Mr. Cooper - Why don't you take the microphone off of here. Will the cord reach to his chair there?

Mrs. Corlew - Yes, it will.

Mr. Schill - And said that...

Mr. Cooper - You don't have to stand up. You can just take the mike to your chair.

Mr. Schill - ...said that he was not interested and we had, ya know... I think there were other individuals that had stopped by and, and they, ya know, were looking it over and doing things. This was probably May, June-ish.

Mr. Cooper - 2010?

Mr. Schill - Correct.

Mr. Cooper - Nobody's living there, but you have interest in the property for purposes of purchase or residence as tenants?

Mr. Schill - For these other people?

Mr. Cooper - Yes.

Mr. Schill - No. They would have to take it and get it rid of it. They had to get it off the property if, if they were interested in it.

Mr. Cooper - Okay. That's what was being...

Mr. Schill - That was what was the original plan for Dave and Tanya, the tenants. They purchased it. They were taking it off the property.

Mr. Cooper - Okay.

Mr. Schill - They weren't able to do so.

Mr. Cooper - Gotcha. So obviously these plans didn't come to fruition 'cause structure B is still there.

Mr. Schill - Structure B is still there.

Mr. Cooper - Okay. So let's go to the Summer of 2010, are you still talking to people about possibly taking the, structure B off the property or is that, you've given up on that idea at this point?

Mr. Schill - By July, that had been given up and there were just paneling boards put up in the doorways and windows and so on, ya know, rain was going to start getting in there. So I needed to start... I wasn't going to just let it go to waste and I started putting in windows and the doors and so on.

Mr. Cooper - In the Summer of 2010?

Mr. Schill - Well, it took... I probably didn't start until August.

Mr. Cooper - Okay. So did you, did you replace the furnace at some point in time?

Mr. Schill - I, I did not, no.

Mr. Cooper - When was the furnace replaced?

Mr. Schill - That would've been... When did you guys get in there?

Mr. Oliver - September.

Mr. Schill - They put one in, in September this year.

Mr. Cooper - September 2011?

Mr. Schill - Correct.

Mr. Cooper - And so between February 2010 and September 2011, there was no furnace in the structure. Is that your testimony?

Mr. Schill - That's correct.

Mr. Cooper - Okay. And some of these windows and doors began to be sealed up because you wanted to protect the integrity of the structure starting in August of 2010. Is that your testimony?

Mr. Schill - Correct.

Mr. Cooper - And you didn't do it all at once. You did it when you got a couple bucks ahead, maybe could go buy a window, something like that.

Mr. Schill - I just took storm windows basically, just so it was buttoned up. Ya know, I did seal it, but it was, it wasn't the best way, it wasn't the proper way to do it, but it was what I had available. I didn't go buy anything for it.

Mr. Cooper - Okay. The, did there come a time when the water got turned back on?

Mr. Schill - I don't know what happened with the water. All I know is, ya know, we were having some problems with our daughter, Dani, as being an older teenager. She was in her last year in school and we agreed to disagree and said fine if you want to stay over there, you can stay over there, but you come home for meals, that type of thing.

Mr. Cooper - She started camping out over there?

Mr. Schill - Basically.

Mr. Cooper - Okay. So if she had to use the toilet or something, she came over to your house?

Mr. Schill - Well, she used the toilet and said, hey the water's on. Okay, well the water's on. I didn't... It's not my property. I didn't know. I had no idea. Julie's mom, Rose, the property owner, we do pay the water, the water tax and school taxes and whatever comes along. She just tells us when it's due and we pay it.

Mr. Cooper - So when did your daughter start "camping out" in the, structure B?

Mr. Schill - In September of 2010.

Mr. Cooper - And she told you at that time the water was turned on?

Mr. Schill - Hm hm.

Mr. Cooper - And your testimony was that the... Let me stop at this point, 'cause I forgot to swear you. Okay? Will you raise your right hand please? Swear to tell the truth, the whole truth and nothing but the truth?

Mr. Schill - I do.

Mr. Cooper - Okay. And the testimony you've given so far you affirm that that was truthful?

Mr. Schill - Correct. Yes.

Mr. Cooper - Under penalty of perjury?

Mr. Schill - Yes.

Mr. Cooper - Okay. So but there was no furnace in there. So she's camping out. She's got water, but she doesn't have any heat, right?

Mr. Schill - Correct.

Mr. Cooper - How long did that condition exist?

Mr. Schill - Basically right up to about Thanksgiving.

Mr. Cooper - What year?

Mr. Schill - 2010.

Mr. Cooper - Okay.

Mr. Schill - They had space heaters that she was using.

Mr. Cooper - So she moved out at that time; moved back in with you and parcel, structure A?

Mr. Schill - Correct.

Mr. Cooper - And spent the winter in your house in structure A, is that right?

Mr. Schill - Yes.

Mr. Cooper - And the following Spring, which is, now we're in 2011, she moved back in structure B.

Mr. Schill - Yes.

Mr. Cooper - And do you know that any improvements were made at that time by her or yourself to make it more habitable in...

Mr. Schill - Well, in the winter I would go in and make sure that things weren't going awry as well, and kept the snow, ya know, had to keep the snow off the roof. We have some stuff stored in there. She was, ya know, really just in one room and the living room area. It wasn't like the whole thing. Because a lot of it was in, in pretty bad shape. So she, ya know, she (inaudible) just a little area for herself and, and that was how that worked out.

Mr. Cooper - Okay.

Mr. Schill - In, in the Spring, when she went back in, then she had full intent of getting everything up to par and so on.

Mr. Cooper - Spring of 2011?

Mr. Schill - Correct. So her and her boyfriend, Matt, who's right here, they both worked on that together, mostly in May and June. Right?

Mr. Oliver - Hm hm.

Mr. Schill - Yeah.

Mr. Cooper - In 2010, when your daughter was camped out in there, and I don't mean to say that in a derogatory way.

Mr. Schill - Nope, you are not.

Mr. Cooper - Did she, did she cook for herself in there and if so, how did she do that? What did she use for fuel? What did she cook on?

Mr. Schill - We, as I said, she had, we made an agreement she'd come home for meals. I mean, if she went and bought something, that was her own accord.

Mr. Cooper - You can buy a sub and eat it anyplace, but...

Mr. Schill - Correct.

Mr. Cooper - ...as far as making, preparing food.

Mr. Schill - Well, there's just a microwave. I had an extra microwave, but there was no facility like as far as a stove, like that...

Mr. Cooper - Okay.

Mr. Schill - ...worked or anything like that.

Mr. Cooper - Did there come a point in time, when a range got hooked up in there? Was that like September this year, when this furnace was replaced?

Mr. Schill - When, when did you guys have that ready to go? About June probably?

Mr. Oliver - (Inaudible).

Mr. Cooper - So your, your daughter's boyfriend is indicating to you that in June of 2011, things, improvements may have progressed to the point where they could live there normally, in terms of...

Mr. Schill - With the exception of the furnace, that is correct.

Mr. Cooper - Okay.

Mr. Schill - Everything was hooked up and running. They had electricity in their name and, yep. Prior to that, ya know, we just ran an extension cord over there.

Mr. Cooper - When... Okay, well, that's significant. When did, when did they get the electric hooked up in their own names?

Mr. Oliver - Well, June.

Mr. Schill - Yeah. June.

Mr. Cooper - Would you raise your right hand please? Do you promise to tell the truth, the whole truth and nothing but the truth?

Mr. Oliver - I do.

Mr. Cooper - State your name and address for the record please.

Mr. Oliver - Matthew Oliver, 21 Commercial Avenue.

Mr. Cooper - You have to slow down 'cause I didn't pick it up. I'm old and my ears don't work as good as they used to.

Mr. Oliver - Matthew Oliver.

Mr. Cooper - Matthew Oliver.

Mr. Oliver - 21 Commercial Avenue, Warrensburg, New York.

Mr. Cooper - Okay. And you're the boyfriend of this man's daughter?

Mr. Oliver - Yes.

Mr. Cooper - She's sitting next to you there?

Mr. Oliver - Yes.

Mr. Cooper - Okay. What do you know about the... You can put your hand down now. What do you know about the range and the other, the toilet and all the other stuff.

(END OF SIDE A)

Mr. Cooper - Okay. We just started... The tape ended, and so I'll repeat the last question. There was no other discussion off the record. Is that right, sir?

Mr. Oliver - Yes.

Mr. Cooper - What do you know about the range and the water and the other facilities necessary to live there in a commonly accepted way of occupying premises in the year two thousand, in our age, in other

words, we're not talking about colonial America. We're talking about at our point in time. When, when was it fit for all of that stuff?

Mr. Oliver - June.

Mr. Cooper - June?

Mr. Oliver - Yes.

Mr. Cooper - Of this year?

Mr. Oliver - Yeah. I (inaudible) furnace (inaudible) and had some complications getting it and the stove was there (inaudible) was there. I purchased things...

Mr. Cooper - When, when do you know about whether there, the... This is Mr. Oliver speaking in answer to my questions because the record may not reflect it. What do you know about when the electricity was hooked up again and who's name was it hooked up?

Mr. Oliver - It was in my name and June.

Mr. Cooper - June of 2011?

Mr. Oliver - Yes.

Mr. Cooper - Prior to that time, you relied on an extension cord from structure A over to the house for...

Mr. Oliver - Yes.

Mr. Cooper - ...whatever needs there were?

Mr. Oliver - Yes.

Mr. Cooper - Okay. Alright, that's all I have for you, Mr., Mr. Oliver for now, unless you want to add some comments, something that your, let me use this expression loosely, your father-in-law, but I'm having trouble grasping for the relationship, the proper name, okay.

Mr. Schill - That's fine.

Mr. Cooper - Okay. Anything you want to add to what he said, relevant to the questions I asked him and the responses he gave?

Mr. Oliver - No (inaudible).

Mr. Cooper - Okay. Mr. Schill, can you tell me about... I want to change the subject now and go back to structure A, okay. What do you know about the wheels in the, in the traveling hardware for the trailer. Do you know, of your knowledge, whether they were ever removed?

Mr. Schill - Absolutely, I do. Because we were doing... Since we are, and I am still doing the demolition... Well, demolition's taken place and we're doing the rebuild of part of the structure exactly as Chris has told you. The rear of the trailer is what is the portion that was demolished, and that's the portion that had the axles and the wheels which were intact until the demolition, and that took place in September.

Mr. Cooper - Of this year?

Mr. Schill - Yes.

Mr. Cooper - Okay.

Mr. Schill - The axles still worked. Everything was functional. It even had the taillights on it. The tongue is still on the front.

Mr. Cooper - Prior to that time, was the, a wall of the trailer ever opened up for purposes of an addition of a living room or a bedroom or any other purpose prior to that time?

Mr. Schill - I would have to say yes. I don't know personally. I don't know what doors existed. I believe there was a back door, which continued into the one bedroom that was added on. There's a front door, which went out to a porch which turned into a bedroom that was added on. As far as the living quarters and another bedroom, I would only have to guess that those portions of the trailer were opened up to access those areas.

Mr. Cooper - Okay. So let's just hypothesize here for a minute. Suppose a tractor trailer came along and was able to hook up to that tongue...

Mr. Schill - Hm hm.

Mr. Cooper - And pull that thing away from all these other structures, what would you see if you walked around the trailer? Would there be any walls breeched or missing as a result of these doors that were constructed and additions that were put on?

Mr. Schill - Yeah, you'd have holes there. Correct.

Mr. Cooper - And that would've been... Well, how long have you lived there? I forgot...

Mr. Schill - About three, three and a half years now.

Mr. Cooper - And that condition would've existed three and a half years ago?

Mr. Schill - Hm hm.

Mr. Cooper - Okay.

Mr. Schill - It existed... I mean, I've known, ya know, since I've been married to Julie, so probably 13, 14 years it's always been the same, the structure.

Mr. Cooper - Well, I didn't mean to cut my other board members off with Mr. Belden. So at this time, I'm going to ask you, Mr. Hall, do you have any questions for Mr. Belden, and then we'll get to questions for Mr. Schill.

Mr. Hall - Okay, and yes, I do have. Okay. How is that assessed? On the tax rolls, is that listed as a, structure listed as a mobile home. Is it listed as a mobile home with an addition.

Mrs. Corlew - (Inaudible).

Mr. Belden - And it also shows the additions on it?

Mrs. Corlew - Yes.

Mr. Belden - Okay.

Mrs. Corlew - Not all of them though. (Inaudible).

Mr. Belden - Yeah, we were just looking at this the other day. It's listed, it's listed on the assessor's inventory as a manufactured home and it does list the other additions; however, it, it kind of appears, looking at the assessor's inventory that those additions are, I mean, are, are, the square footage is, is probably incorrect. So I, I guess it's safe to say that there could be some, some

irregularities or, or some mistakes that might've been made. I mean, with regard to the assessor's inventory.

Mr. Hall - That one, in other words, (inaudible) other places in town, are listed as a mobile home with an addition on it.

Mr. Belden - Correct.

Mr. Hall - On your tax rolls.

Mr. Belden - Correct.

Mr. Hall - And when a real estate would go to sell that, therefore if they put the property up for sale, it's going to be listed as a mobile home; not a stick built structure, right? Mobile home with addition?

Mr. Belden - It's hard to say. I mean, if, if you were to go through and look at every single parcel of property in town and look and see what's on the inventory for those properties, they're not always going to be 100%. I mean, the assessor's assumption or idea of what a property is might be different than, than how the zoning office interprets things to be. So...

Mr. Cooper - This isn't unique, is it? Because there's, there's multiple examples in the town where people have taken mobile homes and been quite creative in improving them.

Mr. Belden - Absolutely.

Mr. Cooper - Correct?

Mr. Belden - Absolutely, absolutely.

Mr. Cooper - So this isn't unique in that way, but the assessor has to...

Mr. Belden - Call it something.

Mr. Cooper - ...has to call it something.

Mr. Belden - And if it's, yeah... So, it's hard to say. I mean, I... I mean, I use, I use the assessor's, the assessor's information to kind of use on my mapping program to understand things, but you kind of got to take those things with a grain of salt because, just because the assessor has marked it down as something... I mean, he has a limited of options when, when he's categorizing what a property is and things. Like Mr. Cooper said, he's got to call it something. So what, what I'm trying to say is that just because the assessor's inventory says it's a manufactured house, doesn't necessarily mean that, that it needs to or has to be my, my opinion.

Mr. Cooper - Do you have any examples in town where people have exactly or have constructed a structure completely surrounding an original mobile home, so that if you looked at it, it would be very difficult to tell that it was originally a mobile home at all? I think I've run into that once here in town, but...

Mr. Hall - Mickey Mayes' place.

Mr. Cooper - Well, Mr. Hall indicates the...

Mr. Belden - That's a very good example. And that, because they did sell, I think... You're talking about the corner of Gold and Warren, right or Adirondack maybe.

Mr. Hall - (Inaudible) him a permit to build a addition around that?

Mr. Belden - That's, that's a pretty good example. I mean, and that was recently, I think, removed, as well as some other mobile homes that were on this property. But I mean, if you were to look at it, it was kind of melded into the rest of the house and it, it's, yeah. It's not as... You could just look at it and say that's a mobile home. There was another property...

Mr. Cooper - Do you know with your own knowledge if the assessor continues to maintain them in his indexes as manufacturing housing even they've been subsumed by a conventional stick built structure.

Mr. Belden - I don't know that off the top of my head, but I know and I thought about another example, actually one that was before you guys, I guess this past year with Dawn Brunner on Prospect Street. Well, she... You didn't see it for this sort of situation but she had a regular stick built home, but then I'm not sure which came first, the mobile home or the stick built home, but there was a mobile home kind of running parallel to the street and then a home off the back of that. So it's a little bit, it's a little bit different than, than Mr. Schill's because that was right in the forefront.

Mr. Cooper - Well, let me ask you this, if, ya know... You've had this job for how long, a year and a half, couple years, something like that?

Mr. Belden - Almost two years.

Mr. Cooper - If Mr. Mayes' house ceased to be occupied for a period of six months under our code and he's in a district that prevents residential structures, correct?

Mr. Belden - Yes, he is.

Mr. Cooper - You wouldn't violate him, claiming that the structure was nonconforming because underneath the stick built part, originally it was a mobile home, would you?

Mr. Belden - Right. I think what you're saying is that I wouldn't tell him that he couldn't use half of, or part of his home just because part of it's a mobile home and that, that it ceased to exist, ceased to...

Mr. Cooper - So such circumstances in your mind there's been a conversion from a mobile home into a traditional residence.

Mr. Belden - That's right. It's just like you had said earlier, that, that it's merely a component of, of, merely a component of, of the rest of the home.

Mr. Cooper - Alright. Mr. Hall, does that answer your question?

Mr. Hall - As close as can be.

Mr. Cooper - I think that's about the most honest you can (inaudible).

(Laughter).

Mr. Cooper - Do you have any other questions for Mr. Belden?

Mr. Hall - No, because the other trailer that I was going to point out as an example isn't actually on her own property up on Prospect Street. That's a different...

Mr. Belden - That's a different, yeah.

Mr. Hall - That's a different one.

Mr. Cooper - Do you have any questions for Mr. Schill or Mr. Oliver?

Mr. Hall - (Inaudible).

Mr. Cooper - Mr. Moffitt, do you have any question for Mr. Belden?

Mr. Moffitt - No, he's answered about everything I can think of asking.

Mr. Cooper - How about Mr. Schill or Mr. Oliver?

Mr. Moffitt - No. I understood what they were talking about.

Mr. Cooper - Mr. Schill, you have an opportunity to ask Mr. Belden questions or to refute anything he said if you want to take this opportunity to do so. So does Mr. Oliver, for that matter.

Mr. Schill - I just want to go back basically and kind of reiterate what you've said and although I have an application for a use variance, that is my intent tonight. Chris did suggest to do that because that way it's just one fee put in both applications, (inaudible) kind of thing (inaudible) throw it in there. And I agree. From how it reads and how that, ya know, how you have to go about a use variance is, it would be very hard to, to go that route. My reason for being here is simply that it was never vacant and also that as you have discussed, if you have a nonconforming unit, which is already occupied on the property, which is the trail, which is structure A trailer, prior to my demolition/rebuild, then the other structure...

Mr. Cooper - Gets to ride along.

Mr. Schill - And as you said, this did come up with Julie and her prior husband when they had removed the trailer and didn't get the other one in there in quite six months. It was like six months and two weeks or something of that nature. But at any rate, they had gone through the same procedure and came to the finding that we already have a trailer and at that time, the structure A is the same as it was prior to me doing this demolition/rebuild.

Mr. Cooper - Are you telling me that this Board has heard an application on this property before?

Mr. Schill - That's what you told me.

Mr. Cooper - No. I said...

Mr. Schill - You said in the beginning of...

Mr. Cooper - ...there was a precedent for that set of issues.

Mr. Schill - (Inaudible) absolutely.

Mr. Cooper - Somebody came to us and filed an application that we ruled on with regard to this Commercial Avenue property? What was their name and when did it happen?

Mr. Schill - Julia and Danny Desantis.

Mr. Cooper - Do you remember when that was?

Mr. Schill - I'm going to say 1990, but I'm not confident on that.

Mr. Cooper - Well, if we found at one time that structure A was a mobile home and the testimony that was given tonight indicates there was no substantial change between then and now, we're going to have to find that structure A is a mobile home and that the structure B rides along with it, but I don't remember of my own memory this Desantis application, but I guess Patti will try to find it in the meeting, in the interim, between now and when we reconvene in January so that we can make a decision with that additional piece of evidence. Okay? That's a biggy. I mean...

Mr. Schill - Absolutely. That, that's why I'm, my first... I, ya know, we're not, ya know, in any violation, ya know, (inaudible) of that nature.

Mr. Cooper - I want to correct what I just... I want to correct what I just said. We can come to a different conclusion, but we're going to have to convince a court if you take us to court about this, that the reason we came to a different conclusion was based on a misunderstanding of the facts or evidence and so I, I don't want to say it's, it's absolutely certain that we would come to the same conclusion because just like courts overrule themselves, Boards have a right to do it too, but they can't be capricious about it. They just can't be whimsical and say well, I like this applicant. He was courteous and the other guy screamed and hollered, ya know. We can't make our decision based on something like that.

Mr. Schill - Understood.

Mr. Cooper - But based on that fact, there's no way we can make a determination tonight 'cause I want to see this other case and see what our determination was. And we'll have to adjourn this matter for a month, for January.

Mr. Schill - May I make a request that we can petition or request to have the water turned off now (inaudible) point where (inaudible) spent a lot of time and money putting everything back in this place because we don't want it to be some crappy place that just falls down and makes things worse. We want to keep things as (inaudible) as possible.

Mr. Cooper - I understand all that, but it's beyond the competence of this Board to direct that, and I guess if Mr. Belden went to the Supervisor and the Supervisor said, ya know, cut 'em slack for another 30 days or something, provided you stipulate as you sit here now that this isn't going to be used as evidence that the Town reconnected the water.

Mr. Schill - Absolutely not.

Mr. Cooper - They might do it on a humanitarian basis, but it wouldn't preclude them from taking a position on this application that was consistent with their earlier position. Do you understand that?

Mr. Schill - I do understand that.

Mr. Cooper - And you wouldn't use this fact to, as a lever to get a different result in the case?

Mr. Schill - No. This is all after-the-fact.

Mr. Cooper - And I'm saying that just as a citizen and a tax payer that I would assume that there would be some compassion shown on the part of the town for your circumstances, but maybe not. They have their rules, and they might figure this water had been stolen and they're not pleased about it. I have no idea.

Mr. Schill - And I agree 100%. The first thing I said to Chris, "don't know how; don't know when, but I would be willing to pay from February when it was turned off," because fair is fair, ya know. I don't have...

Mr. Cooper - Could you step up here a minute please?

Mr. Schill - And, ya know, to add with that, if this, just being, ya know, honest, if I, if I or anybody had turned the water on and not doing it properly or (inaudible), why would we call the, the Water, the Town, to come and turn it off to fix a leak, if it was something that we were trying to hide. Ya know, I have nothing to hide.

Mr. Cooper - Well, I don't...

Mr. Schill - I don't have tools to do...

Mr. Cooper - I don't argue...

Mr. Schill - There's a special tool you need to use...

Mr. Cooper - Yeah, I know how you turn water on. It's a long, unusual tool you stick in the ground. But people who do things illegally don't always go logically.

Mr. Schill - Well, I'm a pretty logical person.

Mr. Cooper - Alright. I'm showing you this aerial photograph of the Commercial Avenue. You see it labeled Commercial Avenue?

Mr. Schill - I do.

Mr. Cooper - North is, from your perspective, at the top of the page. Could you point to me which, which is building A and which is building B?

Mr. Schill - This is A.

Mr. Cooper - Okay.

Mr. Schill - And this is B.

Mr. Cooper - Okay, I'm going to label 'em as such on here. You agree that I just marked A and B where you indicated?

Mr. Schill - I agree.

Mr. Cooper - Okay. We're going to make this aerial photograph Board Exhibit 8.

Mr. Belden - Okay.

Mr. Cooper - Now, do you have any other oral testimony you want to give, Mr. Schill? You got any questions you want to ask Mr. Belden? This is your opportunity to do that?

Mr. Schill - Again, the only testimony is going in to do the, to get the permits for the construction and demolition and so on and so forth, it all revolved around that the fact that structure A is

considered a trailer and everything structurally has to match that and then, ya know, that's why we have to go and get special plans drawn up and stamped and approved through an engineer, an engineer stamped (inaudible). But it has to meet... It's kind of like the weakest link in a chain, (inaudible).

Mr. Cooper - Is your argument..? I, I'm not buying your argument completely because it was, it was a trailer, but if it's, a trailer is just a component, it's like saying I'm going to use a (inaudible), or I'm going to use steel two by fours, okay, for my, for my (inaudible). It's just that, ya know, the, the trailer happens to be a component for the structure. You have to show that the engineering using this component, the plan renders it to be safe and habitable.

Mr. Schill - Hm hm.

Mr. Cooper - As opposed to our issue, which is it a trailer as a matter of fact? Two different things. Is the trail... One... Your argument is equally consistent with arguing that it's a component as it is with the argument that it's a trailer. Okay?

Mr. Schill - (Inaudible).

Mr. Cooper - Okay. So I don't find that to be conclusive, but I'll take it and give it some weight. Alright? Do you have anything else you want to say? Do you have any documents, photographs, bills, history of use of the property, anything that would circumstantially show that it was consistently used as a mobile home over this period of time?

Mr. Schill - For structure B?

Mr. Cooper - Yes.

Mr. Schill - Just, well, since June, as Matt had indicated. Other than that, as I said, we ran a lead cord and I can get everybody on the street as a, all witnesses.

Mr. Cooper - Well, I'm going to keep... I'm going to keep this public hearing open, although I'm about to adjourn. It'll take... You know, we might go on for another ten or 15 minutes, depending on what develops here, but we're going to keep the public hearing open and reconvene in January and you can offer more evidence at that time. I'm not going to foreclose you from saying, well, you didn't do it in December so we're just going to go ahead and make our decision now. Do you understand?

Mr. Schill - I understand.

Mr. Cooper - So if in the meantime, you come up with some better evidence or something you think circumstantially proves your case, by all means, bring it in January, and we'll take a look at it. Alright?

Mr. Schill - Okay.

Mr. Cooper - That goes for any other, your... Is this lady behind your, related to you?

Mr. Schill - No.

Mr. Cooper - No? This is your daughter here.

Mr. Schill - Correct.

Mr. Cooper - And Mr. Oliver, right? Okay. Mr. Belden, do you have any questions for Mr. Schill based on the things that he said?

Mr. Belden - I don't know that I have any questions. I think I'd like to point out that Mr. Oliver or Mr. Schill had pointed out... I think it was Mr. Oliver that pointed in out. That they had a fully functioning home in, in, in this day in age, complete with a stove, a refrigerator and all those things, but I think it was Mr. Schill that pointed out that there was, the furnace was actually replaced in September of 2011, so there, there's just some, some contradiction, I think, between the two of 'em, on when this was actually a complete, full house.

Mr. Cooper - Well, he says he covered that by having a space heater, for which, ya know...

Mr. Schill - I believe...

Mr. Cooper - (Inaudible) have a heating source, I guess you could say that anything is arguably a, a furnace, whether it's a salamander or a kerosene or, or a woodstove for that matter.

Mr. Belden - Right. He wouldn't have been using heat in the summertime anyways.

Mr. Cooper - Right.

Mr. Belden - However, I just wanted to kind of point that out, that they were saying that it was a fully functioning house in June of 2011. However, the furnace, by their own admission, wasn't actually put in until September of this year.

Mr. Cooper - Well, believe it or not, Mr. Belden, that didn't go over my head. Okay?

Mr. Schill - I... Can I speak or no?

Mr. Cooper - Sure, go ahead.

Mr. Schill - I just said, with the exception of the furnace, which is (inaudible) September. That was what I actually...

Mr. Cooper - Well, we understand that, and we understand that she didn't live there in the inclement months, and except perhaps on the shoulder seasons when perhaps she used a space heater. Right?

Mr. Schill - Correct.

Mr. Cooper - Okay. Anything else, Mr. Belden?

Mr. Belden - I don't think, I don't think at this, but I think you'll agree that I have a chance, if I'd like to add anything further, I can do that at our next hearing?

Mr. Cooper - Yeah, we'll give you the same opportunity we gave Mr. Schill. Patti, were you able to find the case he referred to?

Mrs. Corlew - I found the date, it was March 19, 1991 that a hearing was held for the Desantis' to replace...

Mr. Cooper - Will you give us a...

Mrs. Corlew - ...the, B with a larger mobile home.

Mr. Cooper - Okay. Will you give us the minutes of those proceedings and the Decision that I rendered too?

Mrs. Corlew - Sure.

Mr. Cooper - Send it to all the Board members.

Mrs. Corlew - Hm hm.

Mr. Cooper - Now what's going to happen in January is we'll probably have our other two board members back.

Mr. Schill - Okay.

Mr. Cooper - And the law says if they read the minutes and they're satisfied they understood what took place, they can vote on the matter. From your standpoint, it's better that that be the case because tonight if we were to vote, you'd need a unanimous board, three votes would have to be issued to, to give you the relief you want, but in January, you're just going to need a majority, okay, so you can get three of the five, and you'd still be in good shape, unless... Those was no county impact found, was there?

Mr. Belden - There was no county impact found.

Mr. Cooper - In which case you'd need a super-majority. You'd need four, but there was none, so you only need three votes. There may be five people here in January, and there's only three here tonight.

Okay, do you understand that?

Mr. Schill - I do understand that.

Mr. Cooper - Anything else, Mr. Belden, you want to be, bring before the Board on that, on this application?

Mr. Belden - I don't think so. Not at this time. I'm sure I'll have more to say in January.

Mr. Cooper - Okay. Mr. Schill?

Mr. Schill - Do I reserve the right to bring my attorney at that time at the next meeting?

Mr. Cooper - Yes, you do.

Mr. Schill - Okay.

Mr. Cooper - But you know to make sure that he gets a copy of the minutes. This young lady here does an extraordinary job with the minutes. They're verbatim minutes. So every huh, and uh and yeah, what not, generally ends up in 'em, and she'll do 'em in due course. She's not going to rush the job for your benefit, but they'll be available, what a week or two before the, the meeting?

Mrs. Corlew - A week.

Mr. Cooper - A week before the meeting.

Mrs. Corlew - Yeah, 'cause it's (inaudible).

Mr. Belden - There's a holiday.

Mr. Cooper - Yeah, let the record reflect that it's now 8:25 and we started at 7:00, so she'll have a lot of work to do, unfortunately, but that goes with the high salary that they pay you. Any other comments or..? Alright, I don't see anybody wanting to talk. So what else do we have on the agenda tonight here?

Mrs. Corlew - Nothing.

Mr. Cooper - Any letters that came in or anything?

Mrs. Corlew - Just your Towns and Topics.

Mr. Belden - Just the Town and Topics.

Mr. Cooper - Okay. Anybody want to make any comments for the record?

Mr. Hall - Just remember in January, we'll have to come up with a new Board.

Mr. Belden - Appoint officers.

Mr. Hall - (Inaudible) we have to...

Mr. Cooper - Well, we've been discussing this in this committee I'm involved with, with rewriting the zoning ordinance, and actually it turns out that the, the Town Board is supposed to appoint the Chairman.

Mr. Hall - Oh yeah?

Mr. Cooper - Yeah.

Mr. Hall - Whoopee.

Mr. Cooper - I'll, I'll tell Kevin that he should put that on his agenda for, generally it's like the 2nd of January the Board meets and they go through a routine thing where they appoint the dogcatcher and, and make resolutions and so forth, and they probably ought to do it at that time. Maybe they'll appoint you, Al.

Mr. Hall - I will be coy. Kevin appoint me anything? (Laughter).

Mr. Cooper - Alright, so...

(Tape inaudible; people talking at once).

Mr. Moffitt - ...declining.

Mr. Cooper - So if there's nothing further, I'll declare the meeting adjourned, and we'll reconvene in January. Okay? Meeting is adjourned.

The Zoning Board Appeals meeting of December 8, 2011 was adjourned at 8:27 p.m.

Respectfully submitted,

Patti Corlew
Recording Secretary

Zb12082011