

TOWN OF CORTLANDVILLE ZONING BOARD OF APPEALS
Public Hearings/Meeting Minutes - Tuesday, 26 April 2016 – 6:30 PM
Town Hall Court Room – 3577 Terrace Road – Cortland, NY

Board Members (*absent)

David Plew, Chairman
John Finn
Thomas Bilodeau
Lenore LeFevre
Joanne Aloï

Others Present

Bruce Weber, Planning/Zoning Officer
Joan E. Fitch, Board Secretary
John B. Folmer, Town Attorney

Applicants & Public Present

Pam Jenkins, Greg, Barb & Pat Leach, Andrea Niggli, Chad Niggli, Dan Bilodeau, Bob Howe, Bill & Larie Cifaratta, Nancy Space, Michael Barylski, Attorney Richard Lewis, Victor Siegle, Cheri & Chuck Sheridan, Sharon Stevans (Ch. 2 Volunteer).

PUBLIC HEARING

Leach Properties, LLC – 1813 NYS Route 13 – TM #77.00-04-10.000 – Request for Rehearing

The Public Hearing was opened at 6:30 p.m. by Chairman David Plew, who read aloud the Legal Notice as published in the *Cortland Standard* on 14 April 2016, as follows:

NOTICE IS HEREBY GIVEN that a public hearing before the Zoning Board of Appeals of the Town of Cortlandville will be held Tuesday, April 26, 2016 at 6:30 p.m. at the Raymond G. Thorpe Municipal Building, 3577 Terrace Road, in the Town of Cortlandville, New York, to consider the following applications pursuant to the 1986 Zoning Law:

1. *In the matter of the request of Leach Properties, LLC for property located at 1813 Route 13, Tax Map No. 77.00-04-10.000, as per the terms and conditions of Article XXI, Section 178-134, a request to rehear the Variance application previously granted by the ZBA on October 27, 2015.*

The above application is open to inspection at the office of Bruce A. Weber, Planning & Zoning Officer, Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, New York, call (607) 756-7052 or (607) 423-7490. Persons wishing to appear at such hearing may do so in person, by Attorney, or other representative. Communications in writing in relation thereto may be filed with the Board or at such hearing.

David Plew, Chairperson
Zoning Board of Appeals

(Note: Proof of Publication has been placed on file for the record.)

Chairman David Plew asked Town Attorney John Folmer to provide those present with the background on this request. Attorney Folmer addressed everyone: “Mr. Chairman. On December 29th of 2015, this Board adopted a motion to unanimously to rehear the application as you have just described in your Notice. Your resolution at that time indicated that you would rehear the matter at your February meeting. For a variety of reasons, that did not occur; hence the request to rehear comes before you again. I don’t need to remind you that a request to rehear must be based upon a motion made by one of the members of your Board, and it must be unanimously adopted to accomplish the consent to rehear. So the first thing that you need to do this evening is to determine whether or not you are going to reaffirm the motion that you made in December. Should you decide to do that, by the unanimous vote of this Board, it would be my advice to you that you attach to that resolution a condition that the rehearing will not take place until such time as the litigation, which is

pending concerning this matter, has been resolved by the Supreme Court. I do not know when that decision will be forthcoming, but it appears to me that it would be procedurally a problem should you proceed in advance of that determination because the Court could do one of three things that I can think of, depending on what else it might decide, but it seems to me that the Court could, one, annul your earlier determination with regard to the variance in total; secondly, it could delineate procedural irregularities that it finds and remand the matter to you for further proceedings in connection with this matter or, three, it could dismiss the Petition. Until you know which one of those areas the Court has decided to adopt, your rehearing of this matter, it seems to me, is premature. Secondly, should you again decide to reaffirm your ability, or your willingness to rehear this matter, the second thing that you are going to presumably do this evening is to submit a request to the Cortlandville Town Planning Board that it act as SEQRA Lead Agency. Some have lost sight of the fact that, as of this minute, the Variance that you granted in October of 2015 is still alive and well. The mere existence of the litigation does not negate nor annul that Variance. The Court's decision may, but as of right now the Variance is still in effect. Therefore, the Planning Board has no jurisdiction at this point to accept a designation as Lead Agency because, pursuant to the SEQRA regulations, a Lead Agency must be an agency that is, one, involved and, secondly, that has some approval authority. At this moment, the Planning Board has already made the approval in connection with the Variance that you granted in October. And so, at the Planning Board meeting, should you make that request at the Planning Board meeting, it is my intention to advise them that they should not act on your request to act as Lead Agency until the Court has made a determination in underlying litigation.”

In response to Member John Finn's question, Attorney Folmer added: *“If you did not agree to rehear, then the Variance that you have in place right now continues until such time as the Court makes its determination.”*

Chairman Plew asked if there was anyone present from the public who wished to speak on this matter; there were, as follows:

Pam Jenkins – 4023 Colleeview Drive – *“I'm a Cortlandville resident, and I'm one of the Plaintiffs in the Article 78 entitled Jenkins v. Leach and Cortlandville. We expect Judge Cerio's written Decision any day now and we expect that all of the variances and approvals and permits which have been granted to Mr. Leach will be annulled. In order to assist you in your deliberations regarding Mr. Leach's possible reapplication to the ZBA and Planning Board, I prepared these comments and some photos. So I'll begin with the chronology, starting with October 1st when the Zoning Officer submitted Mr. Leach's 9-acre expansion project located at Lorings Crossing on Route 13 to the Cortland County Planning Department. Then, on October 16th, the Cortland County Planning Department prepared a packet of recommendations for the Cortland County Planning Board. On October 24th, I'm sorry, on October 21st the Cortland County Planning Board passed Resolution No. 15-30 with their recommendations and all of these conditions.”* Ms. Jenkins then read a portion of the NYS Environmental Conservation Law, Section 617.3, General Rules, regarding the SEQRA process. She then continued, *“On 10/27, the Cortlandville ZBA granted a Use Variance to Mr. Leach. They made no reference to SEQRA because it had not been completed yet. The same night, the Cortlandville Planning Board also met and took action on Leach's application, granting a few things like a subdivision/lot line adjustment, a Special Permit for Flood Hazard Areas, and a Conditional Permit for Aquifer Protection District. The Cortlandville Planning Board recommended that the Cortlandville Town Board be Lead Agency for SEQRA which had not yet been completed although you realize that two boards already took application. Mr. Leach, at that time at the Planning Board, told the Board that he had begun clearing the land before he purchased it. On November 4th, I spoke during Privilege of the Floor, to the Cortlandville Town Board voicing my objections for what had occurred to date. Mr. Folmer instructed me to file Article 78 if I did not agree with the actions that the ZBA took so far. So then, on November 18th, we had a Public Hearing. The Cortlandville Town Board granted the Negative Declaration after filling out a Short Form, just a check-mark exercise, and they granted the Aquifer Protection Permit. During the Public Hearing, Mr. Leach's attorney, Don Armstrong—*

attorney at the time, handed in a list of equipment that Leach proposed to place on the nine acres. The public did not see the list of equipment, so we could not comment on the extensive list of large pieces of equipment which were planned to be placed on the expansion. So then, on December 4th of 2015 we filed Article 78 through our attorney, Doug Zamelis (sp?) of Cooperstown. Some of the points we made in our case was that Mr. Leach did not qualify for the requirements of a Use Variance.”

At this point, Attorney Folmer stated, “I don’t want to interrupt Ms. Jenkins, but what she’s talking about right now are the same issues that are pending in the litigation which I have just suggested to you should be resolved before you conduct any rehearing.”

Ms. Jenkins responded: “Okay, I’ll skip that section. Okay, so we were aware, at the time that we filed our Article 78, that we could have filed for a Temporary Restraining Order and . . . Preliminary Injunction, but we chose not to. We knew that all of the work Mr. Leach was doing on his property was done at his own risk to lose. On December 9th, Mr. Leach filed his Deed with the Cortland County Clerk. On December 29th, as Mr. Folmer indicated, you said you were going to rehear the application in February. You didn’t do that in February or in March, and you took no action at the March meeting. Then, on February 9th, oral arguments took place at the Cortland County Courthouse with the Honorable Judge Cerio presiding. In the meantime, although I did not see it at the time, on March 4th there was an email from the United States Army Corps of Engineers with an attached map delineating the area directly behind Mr. Leach’s transfer station. That is the only area they approved for him to disturb or fill. And I will read to you from what they wrote to him, to Mr. Leach: ‘No other filling or draining of your property should take place on the undeveloped areas of your property until the delineation can be completed in the spring, and the United States Army Corps of Engineers has delineated the boundaries of the wetlands. Once the delineation has been completed, I would recommend that you submit the report to this office and request that a jurisdictional determination be completed.’ Okay, when I show you the pictures I will show you that a picture from April 7th, which shows the new raised road and raised areas.....”

Ms. Jenkins was then interrupted by Mr. Leach’s attorney, Richard Lewis, who stated that “Mr. Chairman, this issue is not on the floor . . .” Ms. Jenkins did not stop her comments, but continued: “which Mr. Leach built after he was told by the Army Corps of Engineers not to disturb his land. It’s very important that you understand this.”

Town Attorney Folmer the spoke out: “Ms. Jenkins, the issues that you’re discussing, and I agree with you that they are important and should be considered in their proper perspective, but I’m wondering whether or not they are not issues that should be discussed by this Board, if at all, and found to be relevant. At the time of a rehearing, which this Board has not agreed to...”

Ms. Jenkins then interrupted Attorney Folmer, stating: “Okay, the reason I want to convince you about this is that Judge Cerio ruled that we have standing and he did not dismiss our case. He ordered the entire record to be submitted. Our lawyer has to submit part of it because you did not submit some of the record. So—“

Attorney Folmer responded: “I did not submit things that he felt were relevant and I was not—“

Ms. Jenkins: “Okay, the notes from the Public Hearing —“

Attorney Folmer: “It’s all before the Court at this time.”

Chairman Plew then commented that the Board was waiting for the Judge’s determination, and “All of this has much to do with—“

Ms. Jenkins continued, *“According to the Legal Notice, I was told in the Legal Notice that I could pick up the file from the Town Clerk’s Office. I did that. In that file was a letter from Mr. Lewis talking about how he’s going to redo this application, the exact same project, exact same application, and there was a proposed schedule where it was proposed how and when the Cortlandville Board should meet and how they should vote. Okay? I am pretty surprised to have seen that, let me tell you that much. Also there were copies of the permits and the Environmental Assessment Form. Now, on the 25th I spoke with Joe Dugolenski (sp?), the Cortland Regional Manager for the DEC. He had no idea that any work was taking place on Mr. Leach’s property. He told me to call the DEC in Syracuse who told me they had no idea that the work was taking place.permits had never been acquired. That’s the point, okay? So next, the Army Corps of Engineers confirmed to me that their determination has not been made. So, what prevails right now is that no other filling or grading of the property should take place on the undeveloped areas of your property until the delineation takes place. Okay? The Army Corps of Engineers did not give any permission for that road to be built.”*

Attorney Folmer: *“Once again, you need to be concerned with the fact that the Leach project considered by this Board has to do with a roadway that leads south from Lorings Crossing as opposed a road that has been constructed at an entirely different location on the property. In the end, what you are arguing at this point, or suggesting, is a discussion of the merits of the proposal..”*

Ms. Jenkins: *“No, no, ...I’m talking about Mr. Leach did not get a SPDES Permit, he did not get an okay from the Army Corps of Engineers, and he could have accessed his road, accessed the area that the Army Corps of Engineers said he could fill, by driving directly through his commercial driveway. He did not need to build this road off of Route 13 which nobody in this County, and no board, and this is in none of the documents, but it has been built.”*

ZBA Member Alois: *“Just in being by that area time and time again, that road might have had work done on it, but that entrance was there.”*

Ms. Jenkins: *“Oh yeah, I know, because the DOT, which also didn’t know –“*

Member Lenore LeFevre: *“It’s my understand that we’re, right now, deciding whether or not to rehear this today, or rehear it at a later date when litigation’s over, so what is your position on that*

Ms. Jenkins replied that her position was that *“Mr. Leach has demonstrated complete and utter contempt for all the laws which he is required to follow. Anything he loses was his to lose. He chose to ignore all the warning signs–“*

Member LeFevre: *“You’re not answering the question. We’re trying to decide right now whether or not to reopen and have another hearing today, or after litigation is over, or not at all; that’s all we’re deciding right now.*

Ms. Jenkins: *“And you absolutely know it’s improper to be hearing it now because the decisions have already been made. They’re in process, they’re in front of the – you can’t rehear something – “*

Attorney Folmer: *“No, no. Quite frankly, we do not know that the decisions that have been made prior to today . . . we don’t know that they are going to be found to be improper. You think you do. We don’t.”*

Ms. Jenkins: *“I’m saying that all of the boards have already made that decision. But anyway—“*

Chairman Plew: *“Ma’am, at this point, we’re not rehearing it right now. I thank you very much for what you have given us, but I think it’s time to—”*

Ms. Jenkins: *“Okay, all right. I just want to leave you with one picture of what the swamp looks now. There’s an effigy of a green something-or-other creature sitting in the swamp and a green effigy hanging from it. So if anyone in this room finds it at all offensive, I’d really like to know about that, okay?”*

At this point, Gregory Leach, who was in the audience, stood up and commented that he had heard enough from Ms. Jenkins and accused her of lying. He did not like that she had “taken a picture of my property.” When everything had calmed down, Chairman Plew recognized Richard Lewis, Attorney representing Mr. Leach.

Attorney Lewis: *“The reason we are here today is for the Board to make a determination as to whether to rehear, in accordance with its prior decision. Now first of all, Mr. Leach has not been cited for anything. Just to clear up some of the inaccuracies: number two, we have had SEQR approval. There has been a neg dec granted by this Board. Number three, I did send a proposed schedule; I certainly did not tell you how to vote, but I did send you a proposed schedule because I wanted to make it clear, obviously, that this was going to be a decision that had to be made over a period of time based on the various schedules, and it was as much a question as to whether that schedule would work or whether it would not work. What I would like to get across is this: number one, I have provided to Bruce, for the Planning Board, a variety of Long Form Environmental Impact forms. They are missing two things. Number one is the delineation of wetlands. Mrs. Jenkins is correct; there is some wetland there. But it is not all wetland, and we now have the delineation in process, it has been examined. Number two, once we have that mapped out, we will also add a site plan for this gravel driveway that we want to put it and which has been approved by this Board, by the Planning Board, by the Town Board, by the County Planning Department, by the Highway Department, etcetera. I would tell you that there’s a lot of allegations here that there have been illegal acts. The reality of it is, is you can clear your land, I believe, in Cortlandville, number one. Number two, Greg did that and it’s perfectly legal. Number three, the area that Mrs. Jenkins has been referring to is completely separate from where this project is proposed. Now, as Mr. Folmer indicated, the variance that was granted was granted by this Board and is still in effect. In front of the Court, and in front of Mrs. Jenkins’ attorney, we informed, and Mr. Folmer was part of this discussion, we informed the Court that we were going to be applying for a rehearing because there were some procedural errors. Not that everything wasn’t done and not that everything wasn’t accomplished that needs to be accomplished, but what was done was it was out of order. And that’s going to be a decision that’s made by the Court. And I think Mr. Folmer accurately indicated the possibilities there. So just to comment on what Mr. Folmer said, number one, we would like to have this rehearing, we’d like to do it efficiently, we’d like to present to this Board all of the information we have presented before, and we would probably present some additional information. And you have a right to hear that. Number two, we would like to do away with these, quite frankly, these scurrilous allegations that we didn’t do a long form. We did a long form. It’s not that much harder, and Bruce presently has it. Number three, we would like to do it in the proper order which would correct the procedural problems from the last time. And at that point in time we feel pretty confident that you’re going to see exactly what you saw the last time, something that is not a violation of any of the SEQR laws. You’re going to find something that is not going to be harmful to anybody and, number three, I think you’re going to find that all of these allegations—I know that you’re going to find—that all of these allegations that he’s trying to expand his business, that he’s trying to increase his capacity, that he’s doing all kinds of things that are corrupt, and that you’re corrupt, and that the Town Board is corrupt, and that the Planning Board is corrupt, and that the County Legislature is corrupt, is bizarre. And, candidly, we would like to just sort of stick to the subject today. And the subject is: we’d like to have a rehearing. I respect Mr. Folmer’s advice that the rehearing could be postponed until a Decision comes from the*

Court. The courts usually make the decisions within sixty days of the argument. The argument was, I don't remember the exact date, but probably about thirty days ago and, if that is the case, we will respect the Court's decision just as we respect your decision, and we will abide by that. Now, I want to say one other thing. There is another issue that is attempted to be intermingled with what is before this Board. And that is exactly what Mrs. Aloï indicated that there was an entryway there and that Mr. Leach has done some work to repair that etcetera. There is a question as to whether he exceeded a permit. As soon as he learned that, he went to the DEC. Apparently, Bruce, I guess he doesn't need a SPDES Permit; am I correct on that?

PZO Bruce Weber: *"That's a decision that the DEC will make."*

Mr. Leach: *"Correction. They made it. I called you and left a message. Fact. I left you the message. Tell the truth."*

PZO Weber: *"The truth is that the DEC makes the decision in regards to the permits."*

At this point, everything became contentious and very heated, with the result that Chairman Plew, on the advice of Town Attorney Folmer, called for a recess, which was **motioned by Member John Finn at 6:57 p.m., and seconded by Member Joanne Aloï, with all Board members voting in favor.**

At 7:10 p.m., the Public Hearing was reconvened.

Attorney Richard Lewis apologized for his frustrated client, Mr. Leach, who has experienced the removal of survey stakes, photographs being taken of his property, etc. Attorney Lewis then asked the Board to reaffirm the rehearing and make a referral to the Town Planning Board to serve as Lead Agency under SEQR. He also affirmed that Mr. Leach did not need a SPDES Permit as advised by the NYSDEC, and that he is taking every step possible to follow all of the rules.

Chairman Plew asked if there was anyone else who would like to comment on this matter, and the following ensued:

Michael Barylski – 2616 Ames Road – Question before ZBA is, is it right and is it procedurally correct for you to schedule and agree to a rehearing before it's truly right? Reality is that Board was waiting for an application; there was nothing to act on. If Court says that all decisions are valid, will you ever get a new application to rehear this? This is all for the expedience of Mr. Leach. Wouldn't the Board want to have the benefit of what the Judge's determination is? Wouldn't you want to have that information before deciding if appellant is entitled to a new hearing? It is not right to make this decision; you should be waiting until such time as you get the Judge's decision and you have an application in front of you to act on. To request the Town Planning Board to act as Lead Agency on an action that may never get to them seems inappropriate to me. Do the right thing and say no it's not right for us to agree to a rehearing unless and until you review the arguments that the Court has provided, and unless and until there's a new application with new information in it.

Attorney Richard Lewis – Explained that reason this Board did not hear this matter in January or February was because they were awaiting a ruling from the Court. After receiving that ruling, appellant was in touch with Code Enforcement and Town Attorney. We advised that our paperwork would be submitted in a timely fashion for this hearing; we made that timeline and got the papers in. This was with the full understanding of Judge Cerio, Attorney Folmer, and Ms. Jenkins' attorney.

Michael Barylski – Argued that application would be reheard if there was a complete one submitted. There was no valid application on the table for a rehearing. Attorney Lewis did not answer question as to whether or not an application would ever be forthcoming if Mr. Leach prevailed in the Court. This is not right for a rehearing.

Pam Jenkins – You cannot rehear this. It is improper to say that, sometime in the future, maybe we'll hold another vote if you don't get the decision you want from the Judge. The DEC is forwarding the complaint about no SPDES Permit to Syracuse when it's completed.

Nancy Space – 597 McLean Road – Understands that Mr. Leach wants to build a driveway onto Lorings Crossing Road so people could exit/enter Route 13 from there. This would have better sight advantage for public and employees' safety. Other wrangling back and forth aside, it's the safety of the people who come and go from business that should be of concern.

Steve Terwilliger – (did not sign Attendance Sheet) – Cortlandville ZBA has, in the past, approved variances that are not pursuant to the law. Want Board to understand that “if it's a self-created hardship, you can't prove it.” In this case, and another in December of 2014 where Board approved a hardship that was self-created. Wanted Board to go on notice that this was not legal. Will bring backup for that. He's a ZBA member in Virgil.

Robert Howe – 2188 E. River Road – Is customer of Leach's Custom Trash and J-Tech and sees no problem with driveway going to Lorings Crossing for the safety of the people.

Cheri Sheridan – Parks Road (one of Plaintiffs) – Drives road every day. Short distance between driveway and Route 13. Also trucking company there that parks right close to the road; it's a very dangerous intersection. Appellant wants to put road on wetlands. That's all we have left of the wetlands; over last 16 years has been filled in by one corporation after another. Touch one thing in nature and you'll find it is connected to the rest of the world. Read from prepared statement regarding wetlands (copy not received by Secretary).

Town Attorney Folmer interrupted Mrs. Sheridan, informing her that this was a merit discussion and not an issue as to whether or not we should even be hearing this. Chairman Plew thanked Mrs. Sheridan and advised that her concern at this meeting did not pertain to what the Board was to decide. Attorney Folmer then commented that after the Court makes its decision, the comments shared by Mrs. Sheridan are not only relevant, but are important regarding the rehearing.

Once again, Chairman Plew asked if there was anyone else who wished to speak; there was, as follows:

Lee Miller – (did not sign Attendance Sheet) – Lives in Cortlandville. Spoke about wrongfully granted variances given years ago. Has been involved in lawsuit for year and a half, which she won. Can we change something here?

**With everyone heard who wished to be heard,
Chairman Plew closed the Public Hearing at 7:25 p.m.**

DISCUSSION/DECISION

Chairman Plew and Attorney Folmer provided the Board members with the options they could take with regard to this matter. First, does the Board want to grant the request for a rehearing? Second, if Board decides to do so, does the Board then want to postpone or table that rehearing until after hearing from the Court? Or, does the Board want to say no, we are not going to agree to have a rehearing as we sit here tonight and grant permission to make that request if necessary subsequent to the Court's determination? If it's decided to grant the rehearing, then the Board needs to discuss whether or not to hear it before the Court's decision.

In response to Member LeFevre's question, Attorney Folmer that, “*In the telephone conference that Mr. Lewis made reference to, and he's accurate I was a party to that conference, he expressed to the Court that it was he and his client's intention to ask this Board to conduct a rehearing. The attorney for Ms. Jenkins strenuously objected to the fact that such a request, if it wasn't*

forthcoming, was merely going to delay this process even longer. And the Court said, ‘well, if you’re going to do that, I want those papers in the hands of the Zoning Officer on or before the 12th of this month.’ So he knew that the rehearing was going to be requested. I don’t think it would be fair to say . . . he expressed any opinion one way or the other as to whether or not a rehearing should be granted. I think that he merely indicated that if it was going to be requested, it had to be requested within the five-day period. And I believe that some paperwork was filed on time considering that schedule. I think it would be improper for me to say to you that the Court gave any indication, one way or the other, as to what the result of that request ought to be. What he was trying to do, I think, was to be sure that the process was going to move along.”

Chairman Plew stated he did not want another hearing until after the Board had received the Court’s decision. Various options for the motion were considered.

After a lengthy discussion, a motion was made by Member Tom Bilodeau that the Cortlandville Town ZBA agrees to re-hear, if necessary, an application to allow for the expansion of a junk yard (see Action #29 of 2015), but not until after they have heard the judge's decision, and asks the Town Planning Board to act as Lead Agency under SEQRA, if necessary. The motion was seconded by Member Joanne Aloï, with the vote recorded as follows:

**Ayes: Chairman Plew
Member Finn
Member Bilodeau
Member LeFevre
Member Aloï**

Nays: None

Motion passed.

This becomes Action #15 of 2016.

APPROVAL OF MINUTES – 29 MARCH 2016

A motion was made by Member Finn to approve the Minutes of the 29 March 2016 Public Hearings, as submitted. The motion was seconded by Member Aloï, with the vote recorded as follows:

**Ayes: Chairman Plew
Member Finn
Member Bilodeau
Member LeFevre
Member Aloï**

Nays: None

Motion passed.

This becomes Action #17 of 2016.

ADJOURNMENT

At 7:40 p.m., on a motion by Member Bilodeau, seconded by Member LeFevre, with everyone present voting in the affirmative, the meeting was adjourned.


Joan E. Fitch, Board Secretary

Emailed to KS/KP, Bd. Members, JBF,
BW, DD, DC on 6/8/16.