

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
October 3, 2011

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:00 p.m. on Monday, October 3, 2011 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mrs. Jordan, Mr. Brennan
Alternates: Mr. Burdyl and Mrs. Smith-Law
Town Board Liaison: Paul Hotaling
Town Attorney: Matthew Chauvin
Town Planner: Mrs. Zepko
Secretary: Mrs. Mikol

Chairman Hansen commented that Mr. Burdyl, Alternate would be voting tonight in the absence of Mr. Rose.

Motion was made by Vice-Chairman Tedrow and seconded by Mrs. Jordan that the minutes from the September 6, 2011 meeting be approved. Motion carried.

Valerie Parker, 444 Route 146

Chairman Hansen commented that the applicant is here for a public hearing for an extension of a formerly existing non-conforming use. A building that was used as a single-family residence and then used for several years as a beauty parlor. The house is now being rented by a family member and used as a single-family home.

The public hearing opened at 7:04 p.m. Chairman Hansen asked Ms. Parker to explain to the Board why she is asking for an extension of a non-conforming use.

Mrs. Parker commented that the house is in a C-1 commercial zone and it was put on the market 4 years ago. I have an offer on the house but the person interested in purchasing the house would like to use it as residential property not commercial. There are residential homes next to the property and across the street it would be best for everyone that currently lives there. It was on the market for 4 years, the economy is not good. This is my only offer and I would like to accept it and someone would have a home.

Chairman Hansen asked if anyone from the public would like to speak. No one responded. Chairman asked the Board if they had any comments?

Mrs. Jordan asked how long she was renting the property?

Mrs. Parker responded 3 months it was a family member and he has vacated the property. I was hoping to close on the house next month if possible.

Vice-Chairman Tedrow asked that while the property was up for sale did you have any interests at all for a commercial use?

Mrs. Parker responded yes, I had one offer, which fell through probably for the best. In 4 years this is the only offer I have had and it's for residential use.

Mr. Burdyl commented that you are asking to convert this to a single-family residential use.

Mrs. Parker responded yes.

Mrs. Jordan asked, on either side of you and across the street is it residential?

Mrs. Parker responded yes.

Chairman Hansen commented that, "No nonconforming use shall hereafter be extended except following authorization by the Board of Appeals. When any presently nonconforming use of land/or buildings has been discontinued or has not been in use for two years, the land and buildings shall thereafter be used only in conformity with this chapter, except that the Zoning Board of Appeals, after a public hearing, may permit the resumption of said nonconforming use."

Chairman Hansen commented that the Zoning Board has the authority to allow the non-conforming use of residential to continue if we deem necessary. There are no precise considerations that we have to make to do that other than to hold the public hearing and make a decision. It's not the same tests that we have to do for the use variances and area variances.

Chairman Hansen is requesting a motion from the Board to close this public hearing so that a decision can be made.

Vice-Chairman Tedrow made a motion to close the public hearing. Seconded by Mrs. Jordan. Motion was carried to close the hearing at 7:10 p.m.

Chairman Hansen read the letter from the Saratoga County Planning Board. The County Planning Board disapproved the request. "It is the recommendation of the Saratoga County Planning Board (SCPB) that the appellant submit to the Town of Halfmoon an application for an extension of the non-conforming use. This would permit the residential use of the property in the C-1 District without burdening the town with a use variance to run with the land in a duly defined commercial corridor."

Chairman Hansen asked Mrs. Mikol if the Board had received any other comments in writing for this application.

Mrs. Mikol responded, no we did not.

Mrs. Jordan made a motion for an approval for the extension of a nonconforming use for 444 Route 146 to resume the residential use. Seconded by Mr. Brennan. Motion was carried.

Stewarts, 454 Route 146

Chairman Hansen commented that the Stewarts Shop at 454 Route 146, is requesting an area variance to re-develop the existing site by adding a 0.34-acre parcel to the existing 2.35-acre site and to re-locate and re-build not only the Stewart's Shop but also the gas pumps with canopy on the expanded site as well.

Vice-Chairman Tedrow commented that he would recuse himself from this project and as it proceeds through the process. You may want to appoint an alternate member of the Board to take his place.

Mrs. Smith –Law will be acting in Vice-Chairman Tedrow's behalf with respect to the Stewart application.

Mr. Tom Lewis, Real Estate Representative for Stewarts and partner Jennifer Howard were present. A hand out was given to the members of the Board showing the evolution; which is relevant to the proposal. It shows the contract area, the new gas island and the new building.

Mr. Lewis commented that they were before the Planning Board on September 12, 2011 where they received a denial on the basis that the proposed gas pump canopy does not meet the minimum front yard setback for Plant Road as described in Zoning, 165 Attachment 1 – Schedule A-Commercial District in the Town's Local Laws.

Chairman Hansen commented that they received a list of concerns of the neighbors that are on file and will give a copy to Mr. Lewis. The list of concerns will be gone over at the public hearing. If the Board determines that the application is complete we will set it for a public hearing for the first meeting in November.

Chairman Hansen asked if anyone from the audience had any questions, no one responded.

Mrs. Jordan commented that if we meet at the site prior to the November meeting we could set a public hearing for the November 7, 2011 meeting.

Motion made by Mrs. Jordan and seconded by Mrs. Smith-Law that the public hearing will be set for Monday, November 7, 2011 at 7:00 p.m. Motion was carried.

Chairman Hansen commented that the Board will be meeting at the Stewart's Shop on Saturday 10:00 am November 5, 2011.

John Forino, 14 Upper Newtown Road

Chairman Hansen commented that the proposal is for a use variance at 14 Upper Newtown Road to use a barn for a welding shop. The applicant was before the Planning Board on August 22, 2011 and was denied the light industrial type use in an AR, Agricultural Residential Zone pursuant to Article V, Section 165-9, Part A of the Town of Halfmoon Zoning Code.

Chairman Hansen opened the public hearing at 7:25 p.m.

Mr. Rabideau, VanGuilder Associates representing John Forino of 14 Upper Newtown Road. Mr. Forino purchased the property in January 2008 from Mrs. Jennings. The property is surrounded to the east by the railroad, south and west by Tironi property, and the Town's walking trail. This variance request is for a portion of the property. Most of the property is AR, Residential. Mr. Rabideau showed the LIC zoned area across the street from the proposal on Upper Newtown Road. The intent is to use the existing metal building for fabrication, welding and storing steel and equipment.

Mr. Rabideau commented that Mr. Forino is in the process of down sizing his current business from building fabrication; which is fairly intense, to small fabrication of interior things. The intent is to keep all the operations within the building and no equipment or steel outside the building. The building is big enough for the operation Mr. Forino envisions. That is when the Planning Board locks it in and it would be set up so he couldn't expand the business.

Mr. Rabideau commented that he needs clarification on what exactly is being voted on tonight. We are looking for a variance for a specific use on this piece of land. We are not asking for a zoning change just on a specific use. Mr. Rabideau is looking for clarification on that.

Chairman Hansen commented that we refer to Mr. Chauvin our Town Attorney for that information. What you are saying is that you don't want it re-zoned for any Light Industrial Commercial use, you want a use variance given for a specific use.

Mr. Chauvin stated, " Mr. Chairman, the applicant is seeking a use variance only for this particular portion of the property purchased by your client. The property was purchased in 2008".

Mrs. Zepko commented that she would like to clarify for the Board and the neighbors that it is a portion of the larger parcel that is being subdivided off to be a separate parcel. The smaller parcel with the barn on it will be a separate parcel from the larger parcel. The entire parcel will not be receiving the use variance just the parcel they are creating with the barn.

Mr. Rabideau commented that as the process has gone through, my client has offered the possibility that if the Board or neighbors have a problem with the granting of the use variance on the 3.2 acre parcel we would be willing to go back to the Planning Board to change the lot line up a workable distance of about 50' in back of the building so the use would be only on 1.3 acres instead of 3.2 acres.

Mr. Chauvin commented that the issue before the Board is for an application for a use variance. This Board has to evaluate to determine if the use variance is appropriate. It is a very specific 5-prong test straight out of Section 165-79 of the Town Law; the burden is on the applicant to meet each and every one of the prongs. If the showing is not made substantially and to your satisfaction the Board must deny it. I haven't heard anything yet that would meet those criteria.

Mr. Rabideau commented that we do have documentation to give to the Board. It will pertain to some of the questions that the neighbors may have. Some things may not apply unless it comes up. That is where the nuts and bolts will be addressed: like how big the operation can get, hours of operation, outside /inside storage and use of the metal building near the railroad tracks.

Chairman Hansen commented that when I open the public hearing you would need to speak into the microphone. We will need your name and address for the record. The audience will be using the podium microphone. The public hearing opened at 7:30 p.m.

Mr. Dave Kopeck, 225 Lower Newtown Road commented that he lives right next to the Pingelski home and his great friends Frank and Butchie. When the application for the subdivision was submitted to you, when they subdivided the property, was it known what the land usage was going to be?

Chairman Hansen commented that the subdivision was never submitted to this Board it was submitted to the Planning Board. The Planning Board dealt with that proposal and yes, it was approved.

Mr. Dave Kopeck, 225 Upper Newtown Road further asked that at that time, it was already known that the property was for residential?

Chairman Hansen commented that you are asking me questions that I don't have the answers to.

Mrs. Zepko replied that she could answer those questions. The applicant, Mr. Forino did subdivide the property and was aware of the zoning on both parcels and now all three parcels prior to subdivision. He was pursuing this subdivision whether he received this use variance or not.

Mr. Dave Kopeck, 225 Upper Newtown Road commented that when you look at this the subdivision that we are talking about, the 3.23 acres where he wants to put his business is specific. There is no modification or adjustments to that; it's specific that is where he wants to put his business. It is not residential or a home.

Mr. Chauvin commented that the subdivision is legal under the land use or the geographic or the size requirements that are needed for a standard land subdivision. The subdivision does not run with the use they are totally separate.

Mr. Dave Kopeck, 225 Upper Newtown Road asked if you have to put a purpose down?

Mr. Chauvin replied no you don't. It has nothing to do with a purpose. It's just about the land size and dimensions.

Ms. Kim DeFelice, 36 Upper Newtown Road commented that she would like to present a petition that she gathered around the neighborhood not in favor of the use variance. I have obtained a petition and shared with the neighbors a copy of the Forino Lands that I obtained through FOIL as well as some information in regards to Mr. Forino's business Kodiak Steel from a state web site. I presented the map, this information and also information regarding the city sewer that we are not getting when I went house to house. I learned several names from my neighbors. First of all I learned someone wouldn't put his or her name on the paper because of harassment. When I showed them the map and that Mr. Forino owned Kodiak Steel most of them were surprised because they asked if this subdivision would be for a business and was told no. One neighbor said that Mr. Forino told him that he was going to do a little bit of welding in his garage and with the information we have here it's a little bit more than throwing a little bead or two on your son's bike.

Another question that came up with the neighbors is that Mr. Forino told neighbors that city sewer was coming to Upper Newtown Road. I was very surprised to hear that because I spoke with Mr. DiPasquale from the Saratoga County Sewer District and there is no sewer being planned for Upper Newtown Road. There is sewer coming in Betts Lane, Hayner's Farm and it will pick up Glen Meadows and Swatling Falls the new subdivisions. The questions comes in how do you run a steel fabrication business with no city sewer. What happens to all the run off and toxics that are generated from a fabrication type business? I would be very interested in seeing the site plans of what is going to be done with that as well as privacy issues and fencing. None of the neighbors want to look at a business. Unfortunately where that property is located it is in plain view coming either up or down the road. You will see the petition I am presenting tonight the same names that are on Mr. Forino's because the neighbor's felt they were not given truthful information. The neighbor's don't want a business. I will be glad to share the information from the web site and the state as well as the petition and the sewer information from Saratoga County Sewer District.

Mrs. Jordan asked, "Where does Mrs. DeFelice lived?"

Mrs. DeFelice replied 36 Upper Newtown Road about a ½ mile from Route 4 & 32. She is on the corner of Dubois Lane and Upper Newtown Road. I would like to know the dollar amount of business that will be produced there per year.

Mrs. Jordan commented that this is general welding and light fabrication. After hearing Mrs. DeFelice and what she is thinking it does sound like the applicant plans to down size his current business to move here. The Board needs to hear from the applicant on what exactly he will be doing with his business at this building.

Chairman Hansen commented lets take the issues that are raised and then let the applicant have an opportunity to address them.

Mrs. Jordan commented that he should address them now. It may not be the huge monster that is being portrayed by Mrs. DeFelice.

Mr. David Kopeck, 225 Lower Newtown Road commented that when you say monster I need a clarification on that. I have lived here for 12 years and Sheldon Hills has come and houses are popping up all around the place. I came from Loudonville to Halfmoon for a quality of life in the country. My grandfather had a dairy farm in Halfmoon I am coming back home. When you say a monster any kind of machinery, diesel fuel, steel, whatever it may be we need to have the answers. We also need to find out what the master plan is for Halfmoon. Where are we going? What is going to be business? What is going to be residential? I would like to stay in my house. I don't want to see a Tire Warehouse in the field across from my house because that is considered to be "Light Industrial".

Mrs. Jordan commented that she understands his concerns I am hearing very diverse descriptions on the business maybe if we clarify that now, it would save a lot of trouble in understanding what people are talking about.

Mr. David Kopeck, 225 Lower Newtown Road asked if there is a master plan for Upper Newtown Road? Does the Town have a Master Plan on what will be green space, what will be residential, and what will be commercial?

Mrs. Jordan commented that yes, the Town of Halfmoon has a master plan.

Mrs. Zepko commented that yes the Town created a Master Plan in 2003. It is on file in the office of the Planning Department, you can stop in anytime to take a look, along with a zoning map, which outlined what uses, are intended for which areas. I believe that is what you are looking for. Both are on file in the office of the Planning Department for anyone to take a look at.

Chairman Hansen commented that specifically this property is zoned AR Agricultural Residential.

Mr. Burdyl commented that he would agree with Mrs. Jordan that maybe we should deal with one of these issues one at a time rather than a list. We should be sure each issue is covered.

Chairman Hansen commented then does the Board want to ask the applicant to further describe the nature and extent of the business being proposed.

Board replied yes.

Mr. Forino, 14 Upper Newtown Road approached the podium and commented that the nature of his business will be on Upper Newtown Road with small miscellaneous iron fabrication which will include ornamental iron railings do a lot of specialty staircases for developers that want something elaborate. I do a lot of components for banks, architectural pieces that include a lot of metal. I do repair for people coming in off the street. As far as my past, I was a relatively large company. I am being pro-active right now the economy is not so well. I watched my Dad in the same business take it right to the end in the 70's and when he retired he lasted 4 years and died. He never really got to enjoy his retirement. I have 2 kids. I have done a lot of buildings and fabrication in Clifton Park. I am tired. Workers Comp Insurance is very high, the economy is not good, and my insurance is outrageous. In order for me to survive I am trying to consolidate from where I am to where I live. When my kids get off the bus they can spend the day with me. As far as my business goes I have downsized quite a bit probably 60-75% of what my actual capacity was.

Mr. Burdyl asked Mr. Forino what he expects to be the largest piece of work that you would do at that site, what would be the size and scope of what you would consider to be a large project?

Mr. Forino replied, with my downsizing it would be like sometimes in Saratoga, I would do a lot of work for developers who like to give a reproduction of what once was in a building where it was damaged. It may involve a two-story spiral staircase which was damaged and I would make a new one to match so when you put the two together it would be very close, almost an exact replica. So probably a 2-story staircase and maybe some repair work on some structural steel that may come in on railings. I do a lot of work for Price Chopper doing components that fill up most of the stores that you are in. I do the rotisseries for the chickens to everything pretty much that is in their kitchens. Sometimes I will do railings that are 20-25' long so when I do install them it's in large enough sections where it's not that much work to install them because I am making up a lot of distance with the railing and I don't have to do so much core drilling through the concrete.

Mr. Burdyl asked if you have a large piece of structural steel what would be the length of something like that that you would have to deal with?

Mr. Forino commented that the largest piece would be, about 2 weeks ago I did a 30' column that had a lot of connections on it and it looked like a Christmas tree that was to fit into an existing building that was to match a lot of existing steel to re-support and re-connect. That was 30' long.

Mr. Burdyl asked that in the future do you feel you could handle that size material within the inside of that structure.

Mr. Forino commented oh yes, let me tell you about the inside of that building. If I was to make the building 25' shorter I would be happy with it. The building is bigger than what I actually need but it's an existing building and it's a lot cheaper for me to utilize what is there rather than to start from scratch. But what I may end up doing is to partition part of the building off to save on heat. I really don't need that size building but it's there. I have no choice, it is what it is. I am working with what I have.

Mrs. Jordan commented are you the only one working there?

Mr. Forino replied no, in the past I have had several employees of course with the type of work I used to do. I have 2 people that I always keep in Price Chopper that are there everyday. They live in the area. Out of 12 months they are in the shop for maybe 2 months out of the year. They have 2 trucks that are out there. They only come back for an oil change. As far as me, I just want to make it clear to everyone that I am not in that building everyday. My work is pretty much outside the building on the road. If I do have anyone in that building it would be one employee. If I were to have another employee I would have to address the Board with that in the future I will, but for now just one employee. I have 2 that are constantly out.

Mr. Chauvin commented that you are saying "that shop". Are you referring to this building when you say "that shop"? Are you using that building actively now?

Mr. Forino commented yes I am referring to that building. No I am not doing any work out of that building. I have not been in the building at Route 67 either, not for months. I have been working at Price Chopper for months. I am working with Armando and Sons general welding and if anyone has a question with me having steel in my shop right now I sold that iron, I have that bill of sale. I gave the people until October 15th to clear the shop out. I don't use that structure anymore, I sold it. I am not working in the shop at all.

Mrs. Jordan commented that to help her to understand the nature of your business what kind of machinery would be there? I was recently in the building for a site visit and it was empty except for some storage from someone's house right now.

Mr. Forino replied the storage is from my house. I have a lift truck, a vertical band saw it's very quiet. The noise it makes would not even escape the building with the door open. I have an ironworker that is a hydraulic machine that actually cuts metal it's a sheer it is not huge but it punches metal. It's hydraulic and it doesn't make a lot of noise either. If you want to come up for a demo you can, I have it set up. I have a scissor lift and they would be moved to the barn. I have one trailer. If anyone notices any trailers up at my shop they are not mine they are being used to haul steel out. I only have one trailer.

Chairman Hansen asked if he uses the trailer to transport steel.

Mr. Forino commented that he has a dual wheel pick up truck with a 5th wheel hook up with a 26' flat bed trailer and he uses that and goes about his business. It holds 12 tons, which is plenty big enough for what he may need it for. I get my own materials. I may get a delivery once a month if it's a halfway decent month. I will carry some shall inventory which would be inside the building. The building is so big I would not have a reason to store anything outside.

Mr. Brennan asked if he could describe the bi-products that would be left over and how you plan to dispose of them.

Mr. Forino commented that as far as cutting, I cut with plasma. It's a nice clean operation. You get metal slag from cutting. I have an 8" concrete floor in that building and what I usually do is when you fabricate in one area I usually sweep it into a bin that I pick up with my lift truck and fill it. Its recyclable metal so whatever miscellaneous pieces I do cut goes in the bin. If I were to buy a 20' piece of metal and cut 15' out of it and have 5' left over, that is a piece that I can't use anymore, then I would put it in for recycled scrap. On a Saturday I would take about 2 hours and take a load out to a scrap yard. They pay so much a ton for it. It keeps me going.

Mr. Brennan asked because one of the tests is changing the natural character of the neighborhood, does your business produce anything that would be determined as hazardous waste.

Mr. Forino commented hazardous waste? I have been doing this forever and so did my Dad. You will weld and create an arc. If that is called hazardous I don't know.

Mr. Brennan commented that you have obviously done this for a while so I am just asking what your experience has been as far as the regulations from the state as far as hazardous materials.

Mr. Forino commented that when I weld you need proper ventilation in the building. It is an OSHA approved exhaust system. It filters any particle at all. As far as a contaminate, welding is welding> How much does the exhaust of the train push out of the exhaust when it goes past my house everyday? I don't know.

Mr. Brennan asked do you have any special use permits that deals with hazardous materials through the state?

Mr. Forino commented no, I have had several inspections from OSHA because of my type of business and I have never been sited on anything that I have had in my shop and I have never been sited at any job site that I work at in my course of years in business. I have been doing this business since I was 18 years old and my Dad before that; I am 51 years old now. I have a good track record for all the years I have been in business I have a lot of references from people that I have worked for. It proves the caliber of person I really am.

Chairman Hansen asked the Board if they had any questions regarding the use of the variance request?

Mrs. Jordan commented that she has a better understanding of what the use is. Thank you.

Lori Stockdale, 32 Upper Newtown Road commented that she has a lot of concerns and I have done a lot of homework on this. I contacted several real estate agents both in residential and commercial. I have been told by everyone that as a residential customer or representative, that my property value depreciated by 5-22% depending on the type of business going in. My concerns are that I have spent hundreds of thousands of dollars on my home. You are looking out for your best interest and you're a nice guy, I can appreciate that, but I have to do that too. Like you, this is my retirement right here and I can't afford in today's housing market for my home to depreciate in value even more. I do have several names of realtor companies that I did contact as far as this information is concerned. One question that I have to ask is with regard to driving materials back and forth. Ever since Upper Newtown Road became an alternate detour route, when they were doing the Mechanicville Bridge over, it became a thoroughfare for tractor-trailer trucks coming up and down the road morning, noon, and night. I am concerned with a welding business at the end of the road, with even more truck traffic coming through a residential town road. I have concerns that it is a residential area. We bought our home and the property knowing it was residential up and down both sides of the road. I am trying to protect my interest, as you are yours.

Mr. Forino commented that he was glad that Mrs. Stockdale came to the hearing. As far as truck traffic, I don't have much truck traffic at all. I think that what you should do then is to limit the traffic of the trucks that do come by that I can't stop.

Mrs. Stockdale, 32 Upper Newtown Road commented that she understands that but I don't want a business opening up on my side of the street 2 houses down from me. Period. I know you had the Zoning Board at your property on Saturday for a site visit but I don't want a business on this road. It affects my property value.

Mr. Kopeck, 225 Upper Newtown Road commented that when you purchased this property and your downsizing your business. You are selling your property on Route 67.

Mr. Forino commented that the property on Route 67 was my Dad's land that he worked all his life. It is the last thing I would ever do. I am leaving that for my kids. What I do with that shop is my business.

Mr. Kopeck, 225 Upper Newtown Road commented; your right, it is your business, but when you bought this property it became our business. If you bought the property with the assumption that it would be a business and you bought in a residential area then you should have known that you were going to get some head wind by the people that live here.

Mr. Chauvin commented, Chairman we are deviating vastly from the perimeters of the public hearing relative to how it should be conducted. You are not able to pick up the back and forth on the microphone we need to have one person come up, state their concerns, the next person come up, state their concerns, the next person come up, state their concerns, then the applicant can respond. Please avoid talking over one another and please avoid duplicating the same thing that has already been commented on. We are really far up field and we are not going to accomplish what I think everyone here wants to accomplish. I do understand everyone's frustration on both sides. It has to be conducted appropriately.

Chairman Hansen commented thank you to Mr. Chauvin.

Mr. Forino commented that when I purchased the property the thought was never in mind to put my shop there. It was not the method to my madness because it was residential agriculture. It was not my intent, I had no plans. The economy got worse; it was the only way I could go.

Chairman Hansen commented that the last thing we heard was about the property value, did you want to continue your comments?

Mrs. Stockdale, 32 Upper Newtown Road commented that she had concerns with respect to noise pollution. The subdivision meeting on September 17, 2011 the Planning Board said that the town has no way of measuring noise levels. The Planning Board explained that they would have to put a limit on the hours of operation. If granted, would you be able to regulate the hours of operation and would he be allowed to work on weekends? We all have 2-acre lots on the properties and it's open fields and we will be able to hear the noise. I really don't want to see a business on my side of the street. There is the one section across the street zoned Light Industrial Commercial and the one little corner on the other side of the trail and that is all it should be. The rest of the land is residential. I have nothing against you personally John, and I know you are looking out for your best interest but I have to look out for my best interest too. I have concerns with noise, pollution, traffic and my property value.

Brian and Debra Martin, 28 Upper Newtown Road commented that they are 2 properties up from Mr. Forino's property. I am going to rehash Mrs. Stockdale's concerns because we have the same concerns regarding the property value, traffic and noise. Whether we stay there or move is a big concern of ours. I am not really sure about any extra traffic but certainly the noise is a concern of ours as well. We bought our house and we plan to live in a nice residential area on a nice country road. Upper Newtown Road is just that. We are very much against the addition of a business operating on that road. It is not a personal thing with Mr. Forino it wouldn't matter if it were one of you or one of our other neighbors we would have the same objection and that is to have no business on our side of the road in that area, which is currently residential. Another concern is that knowing that any type of variance needs to come before the Board but lets face it, as soon as a variance is granted in one area with a business it will encourage someone else to do the same thing. It will be a concern of ours expanding the existing or the currently non-existing business footprint to become much larger. I listen to some of the comments that Mr. Forino and Mr. Rabideau have made and I have some questions: there were statements being made about working inside the building and not being outside. Where will all the raw material be stored? Now there appears to be raw material outside the building already. I think Mr. Forino tried to explain that but I don't know where the raw material would be stored.

It's going to be large in some cases. Another comment is the type of equipment being used in the building. I can't imagine anyone talking about metal work and shears and punch presses being quiet. Those are not quiet pieces of equipment. Most fabrication that involves cutting, not arc type of cutting but ban saw type of cutting, or any type of cutting like that metal working, are done with some kind of coolant. Coolant run off is considered by the state as hazardous material if not contained properly and I know that from my personal experience from working at G.E. I would like to expect that the concerns raised by the neighbors and myself would carry some significant weight in whatever the decision is.

Charles Patenaude, 64 Upper Newtown Road commented that this is what everyone should do when they get up to speak. They should slow down a little bit. I have lived at this location for the past 44 years. I am so in love with this location that I have induced my brother and son and their children to live adjacent to me. It is a beautiful and wonderful place to live. I love it, I love the neighborhood, I love the business and I am so private about my lovely place to live that I have seen my neighbors for the first time in 2-3 years tonight. I want to read a letter to you. I didn't hear half of what anyone said here tonight because no one was properly speaking into the microphone. Including some of the Board members. I only caught half of what was said.

My wife says I need a hearing aid and I told her that I only want to hear half of what she has to say. I wrote this letter on behalf of the person that is perusing the business. I will just remind everyone that I have lived here for 44 years and that I love my place. My neighbor's places are beautiful. They have gorgeous places as well. Our newest neighbor has a beautiful big house next to a car dealership. Everyone has a chance to have what he or she wants to do with his or her property. I think that is their right. Here is my letter that I sent to Mr. Forino; I gave him a copy of it.

It is addressed to the Halfmoon Town Government Zoning Board of Appeals. The letter is attached to these minutes as exhibit 1.

I personally don't care if they turn that into a big housing project down there. They certainly did at the other end of the road. Look at the beautiful homes they built. I want to take the mystery out of the fabricating shop I have been in the construction business all my life. I knew his Dad; we grew up on the same street. Railroad Street in Mechanicville in the 40's. I am not saying that I'm that old but they are nice people. They are good people. They are honest people. They will always stand by what they say they will do. They are drawing a picture of a metal fabrication shop. Down at the other end of Route 4 & 32 is Kivort Steel that is a big metal fabrication shop.

The pollution that is likely to come from a small facility or shop that Mr. Forino wants to install or operate there would be less smoke coming from his place than the chimney of my fireplace. That is the truth.

He is cutting iron, welding bumpers, car frames. You cut it with a torch it drops hard steel. You grind it you have hard grindings, you sweep it up and you take it to the dump. There are no pollutants there are no hazardous chemicals. No more than the brake line of your car. I don't have any problems with any of my neighbors. I have never talked harshly with or had any problems with them and I never will. Mr. Jennings took advantage of his political situation when he was farming that area and spreading lime with 10 wheelers going in and out. It never bothered me. He was there before me. He was a nice man. Well most of the time he was a nice man, except when they burned his hay field down then he wasn't so nice. He grew the hay because he used to supply the Saratoga Race Track in the summer time with the oats and straw. He continued to run the lime business with 10-wheel trucks, 3-4 of them at a time. Before that he belonged to a molding sand company. The very sand that Mr. Jennings took off the property where my house was built and was the sand was sent all over the world. This man wants to grind a few wheels and cut a little bit of steel and support himself with a minimum income so he can continue to live and survive. I think that the Town Board and the nonsense that has been raised about this is more than we need. KISS, Keep it simple stupid.

The man wants to take a shop that is on his land. He is going to put siding on it and make it look nice. This was back when there were only 20-25 people living in the town. They were all farmers and met in an old bar on Old Route 146, the Clifton Park Hotel back then. They would shake your hand and say ok you got what you want for now we will cut that piece out and it will be agricultural. This guy just wants to go back to the way it once was.

Mr. Rabideau commented that the meeting is going around in circles a little bit and this is an appropriate time to submit our documentation to the Board so the Board can cruise through it while the conversations are going on. Some of the comments are directly related to our documentations.

Lillian Hamel, 63 Upper Newtown Road commented that Mr. Forino is a great neighbor he doesn't bother anyone. I just want to state that I have lived there for 26 years this month. It is a nice residential area. I run and walk the road every single day. I don't want to set precedence by letting one business come in even if he says it's a small business and he is downsizing. When you downsize a business from a million to half a million it is still quite a large business. I don't want to have one business on the road and have other ones on the road. I like the road the way it is I have been there for 26 years. I want to keep it residential.

Darren Farrell, 796 Hudson River Road commented that he is not too sure Mr. Forino says he is in the welding business but I think he is in the excavating business also. Do we have any permits needed for sediment control or soil disturbance?

Mrs. Zepko commented I could answer a question if you can be specific?

Mr. Farrell asked if the Town has any kind of variance on sediment control or soil disturbance.

Mrs. Zepko commented that we have town codes that require permits for soil disturbance if it meets certain thresholds, then, yes.

Mr. Farrell commented that he had some photos that he took a few weeks ago; a copy was given to the Board for their file. This is what Mr. Forino does when he is not working. He is busy creating swales and has storm water run off that he is sending to other properties. Does he have a permit for this?

Mr. Chauvin commented to Chairman Hansen: I just ask that perhaps we direct the comments to relate to the issues that are relevant to the use variance. I understand that there may be concerns about other activities going on at the site that will properly be directed toward the Code Enforcement office or the Planning Department if you have concerns. They can go down to look at the site and investigate any allegations that you may have.

Mr. Farrell asked who Mr. Chauvin was?

Mr. Chauvin commented that he was the Town Attorney. If you want to direct your concern to either the Code Enforcement or the Planning Office they can investigate them. This is not the proper forum to make those allegations. If you have any questions or concerns with this particular use you may continue.

Mr. Farrell commented that he would move forward. Mr. Forino is stating that all the steel will be stored inside the building, correct.

Chairman Hansen commented that yes that is what the applicant said.

Mr. Burdyl asked Mr. Farrell where exactly his home was located on the map.

Mr. Rabideau asked Mr. Farrell if he now resides there?

Mr. Farrell commented that he owns the property and pays the taxes there.

Mr. Rabideau asked Mr. Farrell if he resided in Stillwater?

Mr. Farrell replied correct. I still own the property and pay the taxes in Halfmoon. Mr. Farrell showed a picture of the steel that was to be stored inside the building.

Chairman Hansen commented that yes we saw this the other day when we were down there.

Mr. Farrell commented that Mr. Forino is downsizing his business for now. What happens if the economy picks up?

Chairman Hansen commented that we didn't say any of that. The applicant said that.

Mr. Farrell, 796 Hudson River Road said that Mr. Forino said that he was downsizing his business because of the economy. Now if the economy picks up and he starts getting more work, what will that entail? Can anyone answer that? The old Kodiak Steel says specializing in heavy equipment repair. Are we talking about vehicle trucks, front-end loaders, bull dozers what are we talking here? The old sign says fabrication, specializing in heavy equipment steel cast aluminum and stainless welding. My biggest concern is will this piece of property turn into the place he has up on Route 67. Most of the neighbors have been for a long time they are great neighbors but let's face it we are talking about \$270,000 homes on the road. What happens to these folks when they are ready to sell their homes? Are they going to get for their homes what they invested in them? If the business grows and expands they won't. It's a huge concern of all of us. What is in our future if the business expands will we see diesel trucks and start welding trucks, who is going to stop him, who is going to stop the steel from being on the one little parcel from moving onto other parcels on his property, who will enforce that? Will it be me calling the town?

When the Town Supervisor says to me oh that may a civil issue between you and your neighbor and you may to talk to your attorney about that; that happens quite a bit. I am not picking on anyone here but that happens. I have some pictures to submit to the Board of what the site on Route 67 looks like and I am hoping that the site on Upper Newtown Road doesn't ever look like that. When growing up did you ever drop a firecracker in a trashcan? It makes the sound a little louder. When we talk about a metal fabricated building grinding and cutting steel inside the building trying to confine the noise on the flat parcel. Can any of you see the building from your house? No, I don't think so. All these nice fancy houses in the area they don't want to look at that. Twenty years down the road, you want to sell your home. Mr. Forino will have his kids running the business with 30 employees. By then he will be dumping the steel on his property. Will there be a working bathroom in there? Will they urinate outside on the side of the building where the walking path is for the Town of Halfmoon?

Mrs. Jordan commented that all those issues go to the Planning Board to be addressed if this should be approved.

Mr. Farrell, 796 Hudson River Road commented that all of the questions need answering. All these nice people deserve the answers. They are concerned about their property value and I don't blame them one bit. I still own property there and I still pay my taxes. How many commercial vehicles will be at the property at one time? Three maybe four? Can they park inside? In the field? Will there be screening for this building so we don't have to look at it? Right now it's an eye sore.

Mr. Chauvin commented to the Chairman that a lot of these issues would be properly addressed to the Planning Board and would be taken under consideration during the course of the site plan review and would certainly be taken into very serious consideration at that stage, but this Board does not have the authority to regulate that particular issue.

Mr. Farrell, 796 Hudson River Road commented that he only had a few more issues. Oxyacetylene do you know how explosive that is? I am sure he has some oxygen tanks down there along with some acetylene tanks as well. Is there an OSHA approved fire suppression system to protect the residents in this neighborhood? Do you know how far an oxygen tank will explode? It will level three houses down there. Oxygen is significantly volatile. These are the questions that have to be answered.

Chairman Hansen commented that these items would all come up at the Planning Board if it were approved for the variance request.

Mr. Farrell, 796 Hudson River Road asked have you ever smelled galvanized steel when you cut it or weld it?

Chairman Hansen replied, yes I have.

Mr. Farrell, 796 Hudson River Road commented that if you were outside cooking hot dogs and hamburgers on your deck for your kids what do you do? Run in the house when he cuts a piece of galvanized steel? You will be sick from the smell. Does anyone else want to add to any of this? Is there a noise ordinance in the Town of Halfmoon?

Mr. Chauvin commented that there is no decibel regulation for a noise ordinance within the town. It is governed and regulated by site plan for commercial activities so the Planning Board would govern it. They set certain operation times, etc., during the course of their review for sites that are proposed or applications that are made. The Town Code Enforcement Officers enforce that.

Mr. Farrell, 796 Hudson River Road asked if you would call them the following day?

Mr. Chauvin commented that you would call them when the condition existed.

Mr. Farrell, 796 Hudson River Road stated that if Mr. Forino decided to go out and cut steel at 10:00 p.m. at night whom do I call?

Mr. Chauvin further explained that you would call the Town's Code Enforcement Office. You can leave a message and it will investigate the issue the next day.

Mr. Farrell commented that the act would already be done.

Mr. Chauvin further responded sir I am not sure what you are asking me.

Mr. Farrell commented who will enforce this the Sheriff or the Town?

Mr. Chauvin again responded the Town Code Enforcement Officer. They have policies and procedures in place to do that.

Mr. Farrell commented that he was done.

Mrs. Patricia Patenaude, 44 Upper Newtown Road commented that Mr. Farrell mentioned oxygen. Oxygen is volatile. My husband is on oxygen he has 6-8 oxygen tanks in our home. Should I warn the neighbors of that? According to Mr. Farrell I should. The noise ordinance, Mr. Farrell said it was going to be too much noise from Mr. Forino. When Mr. Jennings owned the property he had a motor cross set up with the hills and the driving and all you could hear all weekend long was these motorcycles going full speed for hours and hours and hours and nobody said anything because we were neighbors. I think the noise of Mr. Forino will be a lot less than motor cross motorcycles speeding around a track all weekend long.

Mr. John Keating, 810 Hudson River Road commented that he lived in his home for 34 years. I want to second what Mrs. Patenaude stated before me. The improvement to the site since the motor cross left there is incredible. I don't think you could possibly have any LI-C use at that property that would come even close to the annoyance and noise level that we endured for over a dozen years with the motor cross on Mr. Jennings Property. Any industrial use inside a building will be much more controlled. You will not have the constant noise at all hours and the dust. There is also a constant use of outdoor bathroom utilization. There was no outhouse on the property. The change of use here is an acceptable change for the better. Historically there is a map on file in Saratoga County Clerk's Office that shows it as Smith's switch, back to 1918. The railroad has records of that switch being put in prior to that when they constructed the rail line through there. This has been an on-going long-term use in that area for more than 100 years. To say that this is something new on this road is not true. There has been intense usage for a long time. Across the street is also LI-C zoning and if someone were to apply for that type of use they would not have to come to the Zoning Board, they would go directly to the Planning Board for a site plan review and approval. The concerns of the neighbors having a business by their homes exist by the current zoning across the street. I am not sure what this one additional piece changes. From what I listened to tonight I have not heard anything that really would affect this small existing use. It was an existing use when I moved here they were unloading rail cars into that building and running lime trucks constantly. It wasn't anything that was really noticeable because they're where trains that stopped there constantly. There were trains passing by there all the time. The train traffic has increased quite a bit. The traffic on the county road, Upper Newtown Road has increased since the detour but it is a county road and I am not sure how the town would address that issue. I think this use would be an improvement to what was there in the past and I see no negative to this at all.

Mrs. Lori Stockdale, 32 Upper Newtown Road commented that when we bought our property, it was residential and I know these fine people that have lived here forever and a day that have gone back and forth on what it was back then and how much better having something turned into an industrial site now compared to what it was then but when we bought our property it was residential. When Mr. Forino bought his property it was residential and I would like it to remain residential because it affects us and all the new homes that have been built since that time.

Mr. Patrick Demarco, 88 Upper Newtown Road stated I have lived here for 41 years. Why is everyone so upset about a small business being run from a small barn? That barn is so far off the road you can hardly see it to start with. The property has improved 100% since Mr. Forino bought it. If you start at Route 146 and come down Upper Newtown Road you will see a place called 1-800-GOT-JUNK. I don't know if that is the name of the business or the name of his property. Then there is another small business I believe on Pohl's corner called Steel Welding and at the bottom of the hill there is another business with landscaping and lawn mowing. Are they all businesses isn't it all residential? I don't know I am asking the Board.

Chairman Hansen commented that I believe that everything west of the Champlain Canal is Agricultural Residential, which would make it all residential.

Mr. Frank Robyck, 127 Upper Newtown Road commented that I agree with Mr. DeMarco we have businesses on the road that don't belong there and no one does anything about it. Why not let this man come in, it's a small business that the Town will control. If he goes above and beyond what he says he will do then the Town can shut him down. I say let him do it; he cleaned the place up. Before it was Mr. Jennings and it was bad there. I think it's great and my wife and I signed a petition stating we were against it and now we want to remove our name. We are all for it.

Mrs. Jordan asked to see the progression of the zoning and how it relates to where the residential is and where the small businesses are located and where the LIC is located.

Mr. Rabideau showed the area from Route 146 to Route 4 & 32.

Mrs. DeFelice, 36 Upper Newtown Road commented that she has one of those businesses being run from her home; it's a landscaping business. We do not produce a product we provide a service. There is no business being run from my residence.

Mrs. Zepko commented that if someone has something to say it needs to be said at the podium by stating your name and address for the record. I am reminding you all that this is a public hearing.

Mr. Rabideau commented that you all have an 11x 17 map that is attached; a copy of the petition is attached for all the neighbors that are for the proposal. (Petitions will be attached to the minutes as exhibit 3) As a Board you need to look at where the names are and compare it to the mapping. The people living to the west of the Towpath can't even see the project. Through conversation the question came up with Mr. Forino's business in Stillwater, Kodiak Steel. He is removing the iron from the site and there are letters in the binder from Armondo and Sons and from DA Collins. Armondo and Sons is where Mr. Forino has been working from July 2, 2011 to present. He states in his letter to the town that he is down sizing his building and relocating his business and further stated that Kodiak Steel will no longer fabricate commercial buildings and is changing the nature of his business to general welding and light fabrication. (This letter will be attached to the minutes as exhibit 2) The letter from DA Collins states that the Forino Family has been their neighbor for over forty years that they are a quiet, clean and professional neighbor and create very little traffic. (This letter will be attached to the minutes as exhibit 4) There is documentation in the binder that the 2-acre parcel was listed and could not be sold within 544 days and the reason given was because of the train. Now everyone is concerned about the noise, it is an issue, however when you have train tracks and a new rail yard going in the intensity will increase substantially that is a huge issue. A letter was submitted from D & H Railroad stating that they have no objection to a zone change back to commercial since it was previously used as a commercial business. (This email will be attached to the minutes as exhibit 5 it will also include a map depicting the Jennings Railroad stop, an Industry Track Agreement with Jennings from July 29, 1963 and right-of-way track map showing the location of the Jennings stop) The Smith's family has owned property since 1916 using the railroad for commercial purposes as well. Mr. Farrell has an on-going lawsuit against Mr. Forino and the intensity of the question was extremely harsh so please take that into consideration. Mr. Rabideau commented that they do have photos of the Albany Sand and Gravel. Everything east to the old canal should have been LIC to begin with. Light industrial is across the road and across the tracks. There has been a documented history of this parcel being used for commercial and light industrial use since 1916. It has been used for residential use since Mr. Forino bought the property and now we are before the Board looking to bring it back to the LIC use that it's been used for since 1916.

Exhibit 2

Remo Cianfarani
2014 114 VanQuisting Ave.
Schenectady, NY 12305

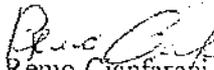
July 15, 2011,

To Whom It May Concern,

John Forino of Kodiak Steel, Route 67, Stillwater, NY has been temporarily working out of my place of business, Armondo and Sons General Welding in Schenectady NY, from July 2, 2011 to present. As he has decided to downsize and relocate Kodiak Steel with the acquisition of a use variance at his property on Upper Newtown Road, Mechanicville, NY, John Forino has begun the arduous process of clearing out the materials and equipment he will no longer need for future business. Kodiak Steel is no longer a fabricator of commercial buildings and has changed the nature of his business to general welding and light fabrication.

During the course of his stay at Armondo and Sons, I can personally attest to John's work ethics. His close attention to detail, organizational skills, cleanliness, and call for safety in his work environment speaks for itself. John has proven himself to be an asset to our establishment and will be greatly missed.

Sincerely,


Remo Cianfarani

I am in support of John Forino and the relocation of his welding shop to 14 Upper Newtown Road, as he agrees to operate his business to the towns specifications. He will follow the Town of Halfmoon's ordinance and regulations pertaining to the use variance ~~issued~~.

PRINT NAME	ADDRESS	SIGNATURE	DATE
1. Michael Pugliese	838 Hudson River Rd	Michael Pugliese	9/13/11
2. Joyell Pugliese	838 Hudson River Rd	Joyell Pugliese	9/13/11
3. Tanya Runyon	832 Hudson River Rd	Tanya Runyon	9/13/11
4. Amy DiModugno	798 Hudson River Rd	Amy DiModugno	9/13/11
5. Carol McMullen	839 Hudson River Rd	Carol McMullen	9/13/11
6. Carol R. Kinney	836 HUDSON AVE	HARRY KINNEY	
7. Cynthia Vida	802 HUDSON RIVER ROAD	Cynthia Vida	9/14/11
8. JOHN KEATINGE	810 HUDSON RIVER RD	John Keatinge	9/14/11
9. Allen R Batchelder	862 Hudson River	Allen R Batchelder	9-14-11
10. Rebecca Patenaude	46 Upper Newtown Rd	Rebecca Patenaude	9/14/11
11. CHARLES PATENAUDE	64 UPPER NEWTOWN	Charles Patenaude	9/14/11
12. Patricia Patenaude	64 Upper Newtown Rd	Patricia Patenaude	9/14/11
13. John Stephenson	82 Upper Newtown	John Stephenson	
14. John Stephenson	82 Upper Newtown Rd	John Stephenson	
15. Tracy Surprenant	92 Upper Newtown	Tracy Surprenant	9/14/11
16. MIKE MASON	827 Hudson River Rd	Mike Mason	
17. Daniel Patregnan	812 HUDSON RIVER RD	DANIEL PATREGNAN	9/14/11
18. Patrick PATRICK	88 UPPER NEWTOWN Rd	Patrick Demarco	9/14/11
19. Sydney SYDNEY	88 UPPER NEWTOWN Rd	Lynne DeMarco	
	LYNNE DEMARCO		

I am in support of John Forino and the relocation of his welding shop to 14 Upper Newtown Road, as he agrees to operate his business to the town's specifications. He will follow the Town of Halfmoon's ordinance and regulations pertaining to the use variance issued.

<u>PRINT NAME</u>	<u>ADDRESS</u>	<u>SIGNATURE</u>	<u>DATE</u>
20. Salvatore Viola	802 Hudson River Rd	Salvatore Viola	9/14/11
21. Michael Galeo	830 HUDSON RIVER	Michael Galeo	9/14/11
22. Eileen Galeo	830 HUDSON RIVER	Eileen Galeo	9/14/11
23. Debra Greco	808 Hudson River Rd	Debra Greco	9/15/11
24. Cynthia Patenaude	627A Upper Newtown Rd	Cynthia Patenaude	9/15/11
25. Tammy G. Erika	820 HUDSON RIVER MECHANICVILLE, N.Y.	Tammy G. Erika	
26. Rick Van	800 Hudson River Rd	Mechanicville NY	
27. Bonnie Delise	69 Upper Newtown Rd	Mechanicville, NY 12118	9/15/11
28. David Delise	69 Upper Newtown	Mechanicville, NY 12118	9/16/11
29. Joe West	B.W. STEER 864 HUDSON RIVER RD. MECHANICVILLE N.Y.	12118	9/16/11
30. Sharon Lee Holmes	816 Hudson River Rd	Sharon Lee Holmes	9/16/11

I am in support of John Forino and the relocation of his welding shop to 14 Upper Newtown Road, as he agrees to operate his business to the towns specifications. He will follow the Town of Halfmoon's ordinance and regulations pertaining to the use variance issued.

<u>PRINT NAME</u>	<u>ADDRESS</u>	<u>SIGNATURE</u>	<u>DATE</u>
31. J. Thompson	88 Hudson River Rd	J. Thompson	9/16/11
32. Jim McGloine	79 Upper Newtown Rd	Jim McGloine	9/17/11
33. Conrad O'Connor	96 UPPER NEWTOWN RD	Conrad O'Connor	
34. Margaret O'Connor	96 Upper Newtown	Margaret O'Connor	
35. FRED LA ROSE	100 UPPER NEWTOWN	Fred LaRose	9/17/11
36. Ron Blanchette	91 upper Newtown	Ron Blanchette	9/17/11
37. Larry Lowe	798 Hudson River Rd.	Larry Lowe	9/17/11
38. Dan Crepula	843 Hudson		9-28/11
39. Jean Sojette	849 Hudson	Jean Sojette	9/18/11
40. Charlotte Bayard	851 Hudson River Rd	Charlotte Bayard	9/18/11
41. Scott Swatling	162 Upper Newtown Rd	Scott Swatling	
42. Melissa Swatling	162 Upper Newtown Rd	Melissa Swatling	
43. Janet Swatling	162 Upper Newtown Rd	Janet Swatling	
44. James Buntley	842 upper NEWTOWN RD	James Buntley	
45. Eric R Hess	860 HUDSON RIVER ROAD. SARATOGA SPRINGS	Eric R Hess	
46. Peter Grassi	394 Burgoyne RD.	Peter J. Grassi	9/24/11
47. John Gorsky	108 upper Newtown Rd	John Gorsky	9/25/11
48. Amelia Pingelski	221 Upper Newtown Rd Mcville, NY 12118	Amelia Pingelski	9/27/11
49. Frank Pingelski	221 Upper Newtown Rd Mcville, NY 12118	Frank Pingelski	9-27-11

I am in support of John Forino and the relocation of his welding shop to 14 Upper Newtown Road, as he agrees to operate his business to the town's specifications. He will follow the Town of Halfmoon's ordinance and regulations pertaining to the use variance issued.

PRINT NAME ADDRESS SIGNATURE DATE

50. Anthony Grand 748 HUDSON RIVER Anthony Grand II

51. Don Pingelski 213 Upper Newtown Don Pingelski

52. Karen Pingelski 213 Upper Newtown Road Karen Pingelski 9/30/11

53. William Pohl 15 Pohl Dr

54. Elizabeth Pohl 15 Pohl Dr

55. Ruth McClement 23 Pohl Dr. Mech. Ny. 12118

56. Walter C Fair 174 Upper Newtown Rd. Mechanicville, NY 12118 9/30/11

57. David Garfield 124 Upper Newtown Rd Mechanicville 12/18

58. Joe Coppola 119 Upper Newtown Joseph Coppola

59. Chris Abate 14 Bedford circle Chris Abate

60. Patricia Hurick 87 Upper Newtown Rd Patricia Hurick 9/30/11

61. D-Andy Herrick 87 Upper Newtown Rd D-Andy Herrick 9/30/11

62. CLIFFORD VICKERY 300 Bocca Ln Clifford Vickery 9/30/11

63. _____

64. _____

65. _____

66. _____

67. _____

68. _____

Exhibit 4

269 Ballard Road
Wilton, NY 12831
518.661.9855 Phone
564.0925 Engineering Fax
518.661.9191 Accounting Fax

A Proud Member of the
D.A. COLLINS COMPANIES



D.A. COLLINS CONSTRUCTION CO., INC.

Town of Halfmoon
2 Halfmoon Town Plaza
Halfmoon, New York 12065

September 29, 2011

Re: Kodiak Steel/ John Farino

To Whom it May Concern,

Kodiak Steel has been a company encompassed by land on three sides by our property located on Rt 67 in the Town of Stillwater. D.A. Collins Companies has been a neighbor with Kodiak Steel operated by the Farino family for over forty years.

Kodiak Steel has been a very good neighbor. Their operation is quiet, clean and professional. They create very little traffic and we would recommend them to be allowed to bring their operation into your town.

Sincerely,

A handwritten signature in cursive script, appearing to read 'David Collins'.

David Collins
D.A. Collins Companies

Forino, Donna [REDACTED]

From: Gerry Edwards [Gerry_Edwards@cpr.ca]
Sent: Tuesday, September 20, 2011 4:53 PM
To: Forino, Donna [REDACTED]
Subject: Attention: John Forino
Attachments: MD 10209 (A-6).pdf

John- as per the correspondence below, attached is a copy of the most recent sidetrack agreement covering the siding which served what I believe to be your property. Our records show the first sidetrack agreement was executed on August 13, 1921 with a company known as Albany Sand and Gravel. The agreement was amended at six times subsequent to that. Unfortunately, we only have the most recent agreement in our files, and have no record of the termination date of that agreement.

It is quite clear the property was previously used for commercial purposes. Be advised the Delaware & Hudson Railway would have no objections to a zoning change back to commercial or comperable. Best of wishes on your endeavor.

Gerard F. Edwards
Area Representative Real Estate
Canadian Pacific
Delaware & Hudson Railway
200 Clifton Corporate Parkway
Clifton Park, New York 12065
518-383-7204 Fax 518-383-7222

From: Graeme Dales
Sent: Tuesday, September 20, 2011 4:09 PM
To: Gerry Edwards
Subject: RE: Can you scan and send the following D&H docs?

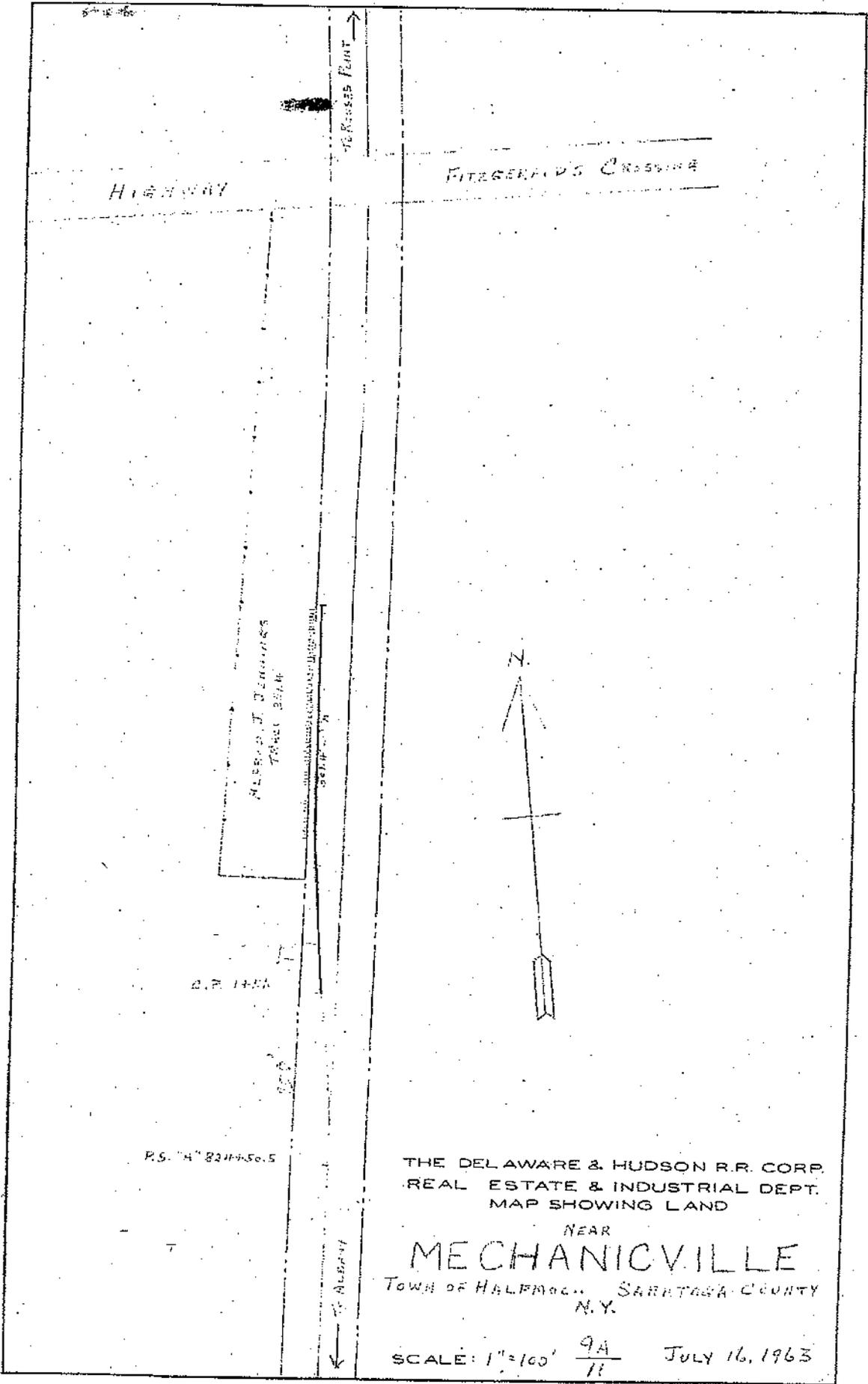
Hi Gerry,

The only agreement that was included in the MD records was 10209 (A-6), which looks to be the most recent of the bunch. It does mention A-5 near the top of page 1, so I'm guessing all the previous agreements superseded one another as the new ones were signed. I added colour to the plan as well, as it scanned in B&W.

Graeme Dales | Corporate Records & Legal Analyst | Suite 920 401-9th Avenue SW Calgary
AB T2P 4Z4 | 403-319-3831
Canadian Pacific Driving the Digital Railway

From: Gerry Edwards
Sent: Tuesday, September 20, 2011 1:36 PM
To: Graeme Dales
Subject: Can you scan and send the following D&H docs?

Map No. 9A



HIGHWAY

FITZGERALD'S CROSSING

ALBERT J. DENNIS TRACT 35.14

R.S. 14-11

R.S. 'A' 8344-50.5

THE DELAWARE & HUDSON R.R. CORP.
REAL ESTATE & INDUSTRIAL DEPT.
MAP SHOWING LAND

NEAR
MECHANICVILLE
TOWN OF HALFMOON SARATOGA COUNTY
N.Y.

SCALE: 1"=100' 9A 11' JULY 16, 1963

M.D. 10209 (A-6)

THE DELAWARE AND HUDSON RAILROAD CORPORATION

9.159-36

INDUSTRY TRACK AGREEMENT (Formerly covered by M. D. 10209(A-5))

This agreement made this 29th day of July in the year 1963
by and between THE DELAWARE AND HUDSON RAILROAD CORPORATION, party of the first part,
hereinafter called the Railroad, and

ALFRED J. JENNINGS, R. F. D. #2, Mechanicville, N.Y.

party of the second part, hereinafter called the Industry:

WITNESSETH: (Fertilizers)

WHEREAS, The Railroad owns the sidetrack located on its land serving the Industry at.....

Mechanicville Station, County of

Saratoga State of New York described as follows:

Said sidetrack has point of switch at Railroad Valuation Station 824/50.5 and extends northerly a distance of 507.4 feet on the westerly side of the right of way of the Railroad.

Portion of track covered by this agreement and to be maintained by the Industry begins at the clearance point station 1/56 in said track, and extends northerly 351.4 feet to the end of said track,

in accordance with plan No. V-9A/11 hereto attached and hereby made a part hereof; and,

WHEREAS, The operation of cars and engines over said sidetrack at other than the regularly established station facilities of the Railroad involves the risk of damage to or destruction of property and injury to or death of persons.

WHEREAS, It is desired that the ownership, maintenance and operation of said sidetrack be covered by a written agreement.

NOW, THEREFORE, in consideration of One Dollar by each to the other in hand paid, the receipt whereof is hereby acknowledged, the covenants and agreements herein contained to be kept and performed by the parties hereto, and of the payments hereinafter to be made, it is mutually agreed that the said sidetrack shall be maintained, and the Railroad hereby agrees to operate the same under the following terms and conditions:

RIGHT OF WAY

1. Entire sidetrack as of the date of this agreement is located on the right of way of the Railroad.

MAINTENANCE

2. Said sidetrack shall be maintained and renewed to the satisfaction of the Chief Engineer of the Railroad; the work shall be performed and the cost thereof borne as follows:

In consideration of the facilities afforded, the Industry agrees to assume all expense of maintenance and renewal of that portion of said sidetrack hereinbefore described as covered by this agreement, such maintenance or renewal in no way to change ownership of said sidetrack as provided in paragraph three hereof.

CANCELLATION, TERMINATION AND REMOVAL

10. It is expressly agreed and understood that if for the space of six consecutive months the business of the Industry is not operated, unless prevented by a strike or strikes, or if the title to said business becomes vested in or the operation thereof is transferred to some party other than the Industry, or if any other party operating said business refuses to adopt this agreement and to agree in writing to be bound thereby, or if the Industry fails to keep and perform any of the covenants, agreements, terms or conditions hereinbefore set forth to be by it kept and performed, then the Railroad reserves the right to terminate this agreement upon THIRTY days written notice to the Industry.

Upon termination of this agreement the Railroad shall have the right to enter upon the property of the Industry and remove any and all material owned by the Railroad, and shall not be liable to account in any way to anyone for any moneys paid or expended on account of said sidetrack or tracks covered by this agreement, nor for any damages resulting from the removal of any or all material owned by the Railroad as aforesaid.

Until terminated as hereinbefore provided, this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

REMARKS: It is mutually understood and agreed that the premises referred to in section 8 of this agreement includes for the purposes of this agreement all that portion of track and right of way covered by and included in this agreement.

This agreement covers sidetrack formerly covered by agreement between the Railroad and Harold M. Sickler, dated August 4, 1950.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

WITNESS: ATTEST:
By [Signature] Secretary

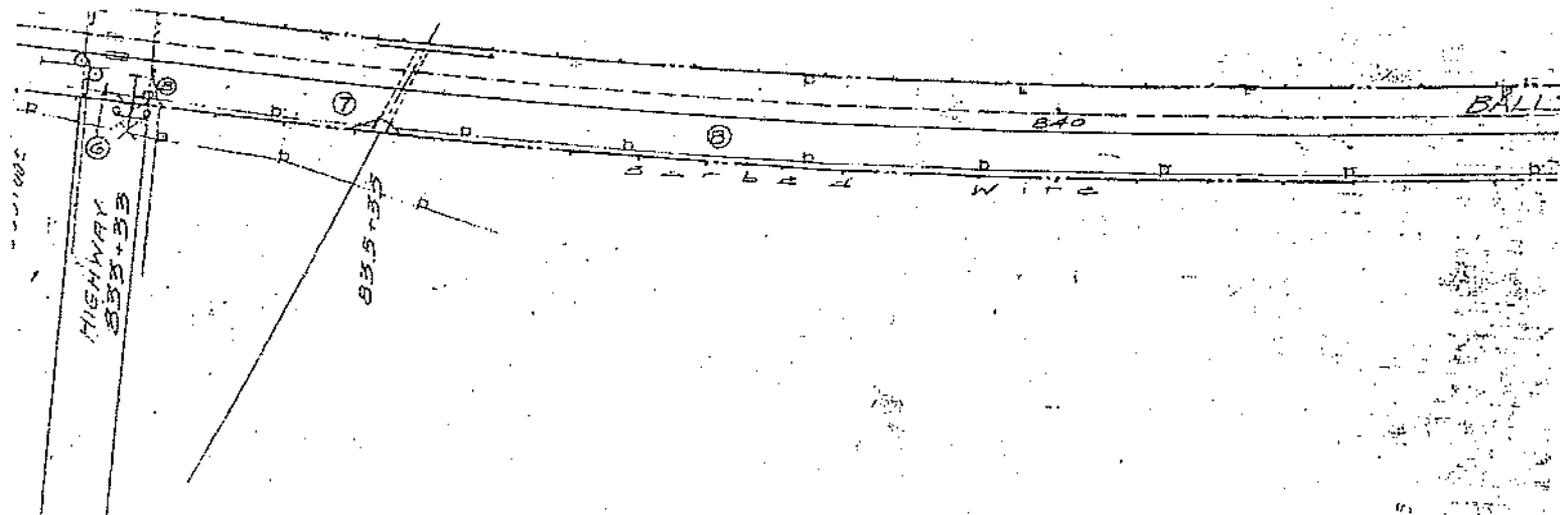
THE DELAWARE AND HUDSON RAILROAD CORPORATION
By [Signature]
Vice President and General Manager.

WITNESS:
By Harold M. Sickler

INDUSTRY ALFRED J. JENNINGS
By [Signature]

APPROVED AS TO FORM:

[Signature]
Vice President and General Counsel.



RIGHT OF WAY AND TRACK MAP.

THE RENSSELAER & SARATOGA RAILROAD COMPANY

OPERATED BY

THE DELAWARE AND HUDSON COMPANY.

-SARATOGA DIVISION - MAIN LINE - WATERFORD JCT. to BALLSTON-

STATION 790+57 TO STATION 844+21

SCALE 1"=100 FT.

JUNE 30, 1916.

Office of Chairman, Valuation Committee

ALBANY, N.Y.



Albany Sand and Supply Company Wagon

Mr. Chauvin commented that Section 3 listed a letter from Assist to Sell and on the reverse side it relates to 18 Upper Newtown Road and we are talking about 14 Upper Newtown. Please show us on the map where 18 Upper Newtown Road is located? Then we will know what property we are referring to. (This will be attached as exhibit 6) Just so I am clear the Assist-to-Sell letter that is referred to in your submission is not in relation to an effort to sell the parcel or the portion of the parcel that this building is on.

Mr. Rabideau replied that is correct it is only for the two 2-acre parcels near the road.

Mr. Chauvin further commented that it doesn't directly relate to the subject of the application.

Mr. Rabideau commented that yes, that is one other criteria why you can't use the parcel for residential. We are showing we have 2 approved lots with public water that cannot be sold for 544 days as stated by the realtor. It is really that there is LI-C on the other side and the railroad crossing. The problem with the area down there is that it's not just along the tracks, it's the crossing where the train blows the horn and basically, people do not want to deal with that. People that live there get used to it but new people coming in are a killer.

Mr. Chauvin commented that I just wanted a clarification as to that specific letter as to what parcel it was referring to and it was not in specific relationship to this parcel in the listing itself.

Vice-Chairman Tedrow commented that on the same page it shows the land price. Did the land sell?

Mr. Rabideau commented that it did not sell and it was taken off the market. It is at the point now in serious consideration of annexing both parcels back to the parent parcel because of tax situations. They can't sell it. The decision would be made due to tax issues.

Mr. Brian Martin, 28 Upper Newtown Road commented that there are a lot of comments and criticisms about a number of folks that are further up the road on Upper Newtown Road. People need to understand that there are 3-4 immediate neighbors on Upper Newtown Road that are not in favor of this. We are the ones that will see the disruption; the extra added noise, because we have always had a train going by there. The train was there when we bought our property.

Assist 2 Sell

BUYERS & SELLERS REAL ESTATE

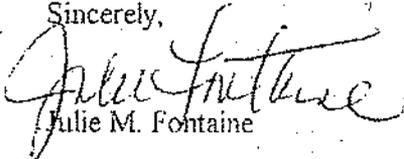
June 23, 2011,

To Whom It May Concern,

The two parcels located on Upper Newtown Road, lots 1 & 2, were listed on the multiple listing as two acre lots each. The average one acre lot on Upper Newtown Road sells for \$50,000-\$70,000. Neither lot 1 nor 2 sold for even 1/2 of what others asked for one acre lots on the same road. There was no interest in the two acre parcels even at such a low price and they were listed for 544 days without one offer.

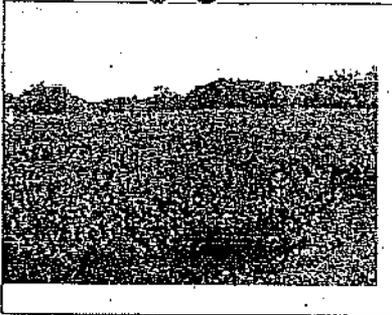
In my experience, it is the close proximity to the railroad tracks that makes the property a very undesirable parcel. The entire 20+ acres owned by John Forino is an extremely difficult property to develop or list as an agricultural residential parcel. This property would be a more attractive property if zoned commercial light industrial like the property directly across the street.

Sincerely,


Julie M. Fontaine



Property Type VL - Vacant Land Full Agent Report



MLS#: 28121444 Area: 354 List Price: \$60,000
 Status: Closed (Final Sale) Map: 69EAS2 Orig List Price: \$70,000
 Spec Mkt Cond: No Special Conditions Sale Price: \$31,500
 Address: 18 UPPER NEWTOWN RD Zip: 12065
 City/Town: Halfmoon
 Village:
 County: Saratoga School District: Mechanicville
 Locale: Projected School:
 Section: 0 Block: 00 Lot: 000 APN: 413800 0-00-000

Documents Avail: Survey, Legal Description, Approved Building Lot, Approved Septic Water: Public
 Utilities Avail: Electric at Road, Telephone Available, Cable TV Available Existing
 Structures On Site Sewer: Septic
 To Be Brought In

ANNUAL TAXES		OFFERING TERMS		Photos:	
General:	\$	Cash Only		Lot Size:	
School:	\$	Assum Mtg:		Desc: Level, Cleared, Treed, View	
Village:	\$	Balance: \$		Zoning:	
Total:	\$ 802 Actual	Rate:		Frontage:	
Spec Assess:	\$	Rate Desc:		Acres: 2.000	

Remarks: Approved 2 acre building lot in the Mechanicville School District. Lot cleared and water to be installed by seller. Septic installed by buyer.

Directions: Hudson River Road (Route 4&32 to Upper Newtown Road or Rt 236 to Upper Newtown Rd

Call CSS @ 738-0001 to show

LO: Assist 2 Sell Buyers & Sellers - Office: Office: (518) 371-9827 Sign: Yes
 LO Code: 38A Fax: (518) 688-0007 List Team:
 LA1: Julie M Fontaine - (518) 694-2148ext. 0 Owner: On File
 LA1 Code: 9290 julie@a2sellhomes.com Owner 2:
 LA2 Possession:
 Sub-Ag 2.5% Buy Ag 2.5% Bkr Ag 0 Depository: Bank of America

List Date: 10/10/2008 Expire Date: 5/31/2010 Sale Terms: Cash
 Pend Date: 4/7/2010 Status Date: 5/24/2010 Sell Office: Assist 2 Sell Buyers & Sellers - Office: (518) 371-9827
 Closed Date: 4/23/2010 Sell Agent 1: Julie M Fontaine - (518) 694-2148ext. 0
 Days On Market: 544 Sell Agent 2:
 Owner Contribution: No Sld Rmks & Contribution \$:
 Virtual Tour URL:

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.

There were not any businesses there and there was no promise of any businesses when we bought our homes. We will see the property de-valuation if there is any, which every realtor company we have spoken to say that there will be, and it will affect to the 3-4 immediate neighbors the most. The range of loss is 5-20%.

Mrs. Jordan asked Mr. Martin of 28 Upper Newtown Road if he knew that the property across the street was LIC?

Mr. Martin, 28 Upper Newtown Road commented that the property across the street from his property is not LIC. All the houses that are the most immediate there are AR, Agricultural Residential.

Mrs. Jordan corrected herself and said did you know that the property across the street from the proposed parcel is LIC?

Mrs. DeFelice, 36 Upper Newtown Road commented that the piece directly across my house is LIC and was LIC before I moved there 23 years ago. If you check your records you will see it never sells. Most of the land is wetlands and that is why hasn't it been sold.

Mrs. Zepko commented that she couldn't respond to that question without looking at a map.

Mrs. DeFelice, 36 Upper Newtown Road commented that through the years there have been several people looking at putting offers in on that property because there is too much wetlands there. Mr. Jennings lost that property to taxes because he couldn't afford to sell it when he was alive and it was all due to wetlands. It will stay that way until somebody fills it all in and then it won't be wetlands any more.

Mrs. Jordan asked if Mrs. DeFelice could point out on the map where her home is located?

Chairman Hansen asked the audience to calm down.

Mr. Charles Pattenau, 64 Upper Newtown Road showed the Board where he is located on the map. At the far end of Upper Newtown Road in the LIC zone. My company that I had a partnership in, www.patenaude&sons is now retired and owned that piece behind the treatment plant at the bottom of the hill coming into Mechanicville. It doesn't show the lot on this map. It does join this property, which is why I am familiar with the area going up to the canal, its LIC.

That is true. I tried to put a shop on the opposite side of the canal adjacent to Route 146 where the Canal Road goes in. We owned those 18 acres. We were denied permission to change the zoning to put a shop there. They said if you want to move to the other side of the canal go ahead but you can't build on that side of the canal. The Town denied us. That is why I question why anyone would evaluate his or her home based on the historic significance of that. The whole Route 787 was built of sand that came out of McDonalds Creak because it was zoned LIC all the way through. Troy Sand and Gravel operates a business. Someone has personal differences and has riled up a little firestorm here and is applying personal feelings toward the rights of a man to operate a business in a legitimate fashion and approach the zoning board to do that.

Mr. Brennan asked for a short recess.

Mr. Monroe, 26 Upper Newtown Road commented that he wanted to show everyone where he lives on the map. I am the closest parcel to Mr. Forino I never knew him before this. He came to the door and approached me as to what was going on. I know there are some personal battles going on here. My question is between Mr. Forino and myself and has nothing to do with the battles we hear going on. My neighbors have nothing to do with the personal agenda going on with the other things going on here. If I were in Mr. Forino's shoes I would do the same thing that you are doing, it makes viable sense. There are some things that can't be guaranteed to the fellow property owners that need to be taken into consideration. I want to be friends with you after this I hope there is no hard feelings. My grudge is not with you personally. I have to protect my property. I don't think there will be a problem with the noise. I don't think there is an environmental problem. There is no problem with the traffic. I believe Mr. Forino when he says there will a truck delivering every 2 weeks that is not the issue. The people talk about the motorcycle track, if I knew about that 5 years ago I would have never built a home there. It's irrelevant now, its not there now. What matters are what is there now. What it was used for 40 years ago is irrelevant. It is what it is zoned now when we all bought our homes. I understand it was zoned commercial 50 years ago, that was great there were no homes there then but now there are homes there and it's zoned AR. We know about the wetlands across the street we knew about it and we took a chance to build our home knowing it was LIC and loaded with wetlands. There are issues there and we are hoping that it will never be built on. That was our risk to take.

I knew about the train when I moved there, folks are saying "oh the train noise compared to him". I knew about the train when I built my home I didn't know there may be a business next door to me in an AR zone. If Mr. Forino hits the lottery in a year and wants to sell the property; someone can come in and operate a business under this variance without getting an approval as long as they are operating a steel shop under the same parameters that are supposedly given to Mr. Forino, it will get approved. I think Mr. Forino will keep the yard clean; I don't think he will make a lot of noise. That doesn't mean that the next person who buys it next will do the same thing. No offense to the Town of Halfmoon, I have seen things with empty trailers on yards, trailers on driveways and junk cars on properties; enforcing those things are virtually impossible. You hand the violator a \$25 ticket he laughs at it, throws it on the kitchen table. It has happened on my street where people got tickets for months and months and the trailers never got moved. I don't trust that that will get enforced. The biggest thing to take into consideration that none of you can guarantee me 100% is that the value of my property does not go down with what is going to happen there. You cannot guarantee that. Is this setting a bad precedence where someone 4 lots up the street isn't going to ask for the same thing and then it starts to snowball, can you guarantee that will not happen? No. Can you guarantee that if Forino's property is ever sold and someone moves in they will have the same restrictions as Mr. Forino has and doesn't stay within the parameters of the approval? No you can't guarantee that either. Until you can guarantee us, the neighbors, all of that then you have an issue. I want to be friends with Mr. Forino after this but you can't guarantee me that my property will not change because of this. I moved in there knowing it was residential and that no business was going in there.

Mrs. Jordan commented when you bought your property did you know that directly across the street from the property we are talking about that it is LIC.

Mr. Monroe replied yes I knew it was LIC in front of Mr. Forino's property.

Mrs. Jordan asked would that devalue your property if someone were to put something there that is LIC?

Mr. Monroe replied my builder built 2 houses. There are wetlands across the street and there are wetlands behind my house. Someone was just inquiring about the lands behind my house. There is 20 acres and due to wetlands they could only use 4 acres of it for building. Most developers will not go in there with that type of ratio to build homes.

Mrs. Stockdale, 32 Upper Newtown Road commented that last week she had an appointment with Mrs. Zepko to go over exactly what was considered Agricultural Residential in this area versus what was Light Industrial Commercial and I was told that there was all wetlands in this area (shown on the map).

Mrs. Zepko interrupted that we did not have a discussion about wetlands while you were in the office. We discussed the zoning for the parcel, for the record. I would be more than happy to discuss wetlands with anyone. You can stop by the office and I can pull some wetlands plans to discuss it with anyone interested. I went over the zoning and what that property was particularly zoned while you were in the office.

Mrs. Stockdale, 32 Upper Newtown Road commented that the area in front of her house is AR and LIC is from the trails down past the road. It was all residential when we built our homes and that is why we built our homes.

Mrs. Jordan commented that the adjacent property to Mr. Forino's land is LIC were you aware of that.

Mrs. Stockdale, 32 Upper Newtown Road commented that she was not aware of that when she bought her house. She was told that everything on Upper Newtown Road was AR. That was why when I went to the meeting on September 12, 2011, I was in shock about the LIC. It was then that I made an appointment to find out about the zoning.

Mrs. Jordan commented that I only asked that because something LIC could propose to come in there. There goes your property value concern again. The threat is there.

Mrs. Stockdale, 32 Upper Newtown Road commented that when it goes before the Board that I am assuming that we would have a say as to what kind of business can be there. There may be some LIC businesses that would be less intense.

Chairman Hansen commented that the Planning Board reviews those applications. They would not come to the Zoning Board of Appeals if a small industrial commercial facility wanted to go in a properly zoned area. We don't get involved with it. It would go before the Planning Board with a site plan for whatever they wanted to do. The Planning Board would impose any restrictions regarding the landscaping, hours of operations, etc.

Mrs. Stockdale, 32 Upper Newtown Road, asked if she would have to go to the Planning Board meeting.

Chairman Hansen commented that I have not been on the Planning Board but maybe our Vice-Chairman could help us out with that one. They don't have to have a public hearing on every site plan they review. All town meetings are open to the public but you may not be able to make any comments unless they open it to the public at your request.

Vice-Chairman Tedrow commented no they do not.

Mr. Chauvin commented that we could hold a public informational meeting for something like that. For a project of that size there would definitely be a public meeting and the Town Board may also to hold a public informational meeting.

Chairman Hansen commented for just a site plan?

Mr. Chauvin commented that if they are going to disturb the wetlands there would be a significant environmental impact and the neighbors would be notified for an informational meeting.

Chairman Hansen commented that is discretionary and up to the Planning Board.

Mrs. DeFelice commented that Mr. Chauvin commented that according to Town Law 267, that you must show the 4 issues must be discussed.

Chairman Hansen commented that at some point we will be reading those and for the benefit of the audience I would read them now.

"No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restriction have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate the following to the Board of Appeals:

1. That for each and every permitted use under the zoning regulations for the particular district where the property is located, the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
2. That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.
3. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. That the alleged hardship has not been self-created.

The Board of Appeals in the granting of the use variances shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.”

Chairman Hansen commented that he just quoted it directly from the zoning ordinance.

Mrs. Puglisi, 838 Hudson River Road commented that I believe I am the closest neighbor to Mr. Forino. I just recently met him and I don't have a problem with him running a business from his property at all. Since I bought my house 4 years ago my property value has dropped considerably and it has nothing to do with any agricultural property around me at all.

John Higgins, 31 Cary Road commented that I am not a direct neighbor of this applicant at all. I am coming here tonight to express a concern that I have personally and several of my friends also have regarding the circumventing of the Town's zoning by the applicant in this process. As Mr. Chauvin mentioned previously and you just read there are four requirements the applicant has to meet and prove to this Board that they are appropriate for the application he is presenting tonight. I have been sitting here listening and so far, I have heard a lot of people voicing opinions both for and against the application. But the applicant, in my opinion, has not addressed the four requirements sufficiently to show there is a unique hardship on this site. We are also concerned that this is a very important precedence for the Town. There are discussions about previous uses that predated the Town's zoning. The Town's zoning has been in existence for a number of years. This applicant only recently purchased this property. He knew at the time of purchase what the appropriate zoning was and if he wanted a commercial use he should have gone to another piece of property in the Town that was properly zoned for that use.

This is indeed a self-inflicted hardship for this applicant. It is not a Town inflicted hardship. Again my friends and myself are very concerned that this is going to present a precedence that in long term will effect the Town. We are aware of several other applicants that are watching what is going on here tonight and are looking at the results of this Board's action for other locations that are not even close to a good commercial site where they want to bring commercial into a residential area. That is why we are concerned and again I have not seen anything that this applicant has expressed tonight that comes anywhere close to meeting the four requirements.

Mr. Rabideau commented that the requirements for the four prong test keeps coming up and normally other boards take all the input and then ask the five questions. Then we answer the four questions.

Chairman Hansen commented that is how we handle it as well.

Mr. Rabideau commented that he wanted to clarify that because what opportunity did we have to do that? We needed the public input first.

Chairman Hansen commented that we needed the public input and the applicant's input. We have to consider all of it.

Mr. Rabideau asked do you want to do this now or later?

Chairman Hansen commented that the Board has to make a decision tonight based on what we know at this point or we have other options. Mr. Forino do you have something else to say in addition to what Mr. Rabideau just said?

Mr. Forino commented that he didn't think he had to stoop this low, seriously and I am kind of surprised at a lot of people here that we were good friends with for a really long time but apparently no one wants me to be here.

Mrs. Zepko asked the audience to calm down. Only the person at the podium can speak, one at a time, everyone is out of control.

Mr. Forino commented that Mrs. DeFelice operates one business called DEBAS 2 with her son that began in 2005. On line they claim they make over \$65,000.00 a year. Her husband has a business DEBAS Landscaping, no permit, no variance. I never said a word since 2005. We were good friends; I didn't care. I am going through all the motions and the money to do this legally for a variance I will do whatever I can to get it and I will do whatever I can to keep it. I am not going to loose something that I will never get again. This is my livelihood. If I screw this up I have no work and I can't make a living. One last thing is that Mr. Farrell is complaining that my shop is a little bit unorganized. I have proof that I sold my material from my yard I can't help what people do right now removing material out of my yard. I just want to tell everyone, and you are all aware, that on Route 4 & 32 is Mrs. DeFelice's business, the Pallet Place, that Mr. Farrell is living next door to just 4 houses down and he is worried about me almost 1/2 mile away making noise and creating a mess. This is what Mr. Farrell is living next door to. Photos were submitted to the Board for the Tironi Pallet business on Route 4 & 32.

Mrs. DeFelice, 36 Upper Newtown Road commented that it is commercial property and they pay commercial taxes. They have for over 50 years and it has nothing to do with Upper Newtown Road. It is not zoned commercial. There is no property on Upper Newtown Road that is zoned commercial.

Mr. Martin, 28 Upper Newtown Road commented to Mr. Forino that he takes serious offense to you that we do not want you here. What we don't want is a business. I stated this before and I told you face to face when we met this is not personal. What is personal to me is the loss of value to my property and other things. It has nothing to do with you. To say that my immediate neighbors, and me do not want you there is bologna and you should not have said that.

Chairman Hansen commented to the Board since there are no further comments the Board should close the public hearing.

Mr. Chauvin commented that the Board should close the public hearing before the Board starts making any comments and inquiries.

Mrs. Margaret Tironi, 788 Hudson River Road commented that I have paid commercial taxes for over 50 years. The lady that was up here talking saying that when she bought her property it agricultural residential was so right and it's been there for over 50 years.

Motion made by Mr. Brennan and seconded by Vice-Chairman Tedrow that the public hearing be closed at 9:30 p.m. Motion was carried.

Mr. Brennan commented that area is zoned residential what is the permitted use on that parcel under that zoning. Residential is easy enough to understand but what about agricultural.

Vice-Chairman Tedrow commented that from the ordinance Architectural uses are as follows from the ordinance:

- "1. Farms, equestrian (horse) facilities and customary uses incidental thereto as well as commercial woodlot or reforestation areas.
2. One-family dwellings.
3. Two-family dwelling.
4. Identification sign or nameplate as regulated by Article X of this chapter.
5. Accessory uses or structures including private gardens, garden house, tool house and similar uses for the exclusive use of the residential only; customary agricultural operations, barns, silos, livestock shelters or greenhouses".

Farms and related structures or one and two family homes are the basic uses.

Chairman Hansen asked the Board if they were ready to go through the tests with the applicant.

Mrs. Jordan commented that she would like the applicant go through and let them tell us how they passed each standard. I don't think that we have given them the opportunity and that is what Mr. Rabideau had questioned.

Chairman Hansen asked Mr. Chauvin if that would be appropriate and would the hearing have to be re-opened to do that?

Mr. Chauvin commented no the hearing is closed.

Mr. Rabideau commented that the first one is:

1. "That the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

Mr. Rabideau commented that we have the listing from Assist-to-Sell for the 2 vacant parcels and basically they were on the market for over 500 days and because of the railroad track. The use variance we are requesting is only near the railroad track not the entire parcel. From past history we are trying to sell two parcels that are 200-300' away from the track versus doing something right near the track. We feel that residential would not work there.

2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.

Mrs. Zepko commented that you are going off the area variance tests and not the use variance tests.

Mr. Chauvin commented the next test is: "that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood".

Mr. Rabideau commented that he is taking it off the use variance application.

Chairman Hansen commented that the application you are working off of needs to be revised.

Mr. Rabideau commented that we are having a technical problem.

Mr. Chauvin commented that the applicant has somehow obtained an application that does not necessarily contain all of the elements that he is required to meet under the zoning code. We should allow him the option of either going forward to completion tonight or table the issue and allow him to fill out an application that is correct and that would address those issues.

Chairman Hansen asked if the Board wants to table this issue until the next meeting.

Vice-Chairman Tedrow asked if the applicant has to agree to that.

Mr. Rabideau commented well we have these questions answered but the ones in the book we don't have answers to tonight.

Mr. Chauvin commented that the public hearing portion of the program was sufficient to answer the questions because you did direct them from the proper source of material. I am suggesting for completeness sake that you consider.

Chairman Hansen commented that we would adjourn this until the next meeting and look over the ordinance and regroup.

Mr. Chauvin commented that the burden falls to the applicant coming prepared I am not implying any requirement on the Board to table the issue merely raising the opportunity for you.

Mrs. Jordan commented that it's not the applicant's fault that they were not prepared. They are working off the wrong set of questions.

Mr. Rabideau commented that he spoke with his client and he prefers to table action to the next meeting so he can be better prepared.

Motion was made by Mr. Burdyl and seconded by Vice-Chairman Tedrow that we table action on the Forino use variance until the November 7, 2011 meeting of the Board. Motion was carried.

Chairman Hansen commented that all meetings of the Zoning Board of Appeals are open to the public. However, you are all welcome to come to the meeting but it will not be open for the public to speak because we closed the public hearing. You are welcome to come to hear the outcome of the decision of the Board. At this point, I can only answer a procedure question.

Someone commented that it was stated that Mr. Forino had to meet all 5 of the tests and #1 he absolutely did not meet.

Mr. Chauvin commented that he did not state that, I said that one is not applicable here because there is no claim of a personal issue.

Someone commented that if he can't meet five tests he would be denied.

Chairman Hansen stated that there are only four tests.

Mr. Chauvin commented there are a total of five total criteria one is an optional applicability relative to whether the circumstances would warrant it. I was advising the Board as to where the blame of the statue came from in the beginning of the hearing. Through the course of the presentation we are obviously not dealing with the claim of a personal issue, which is addressed, in the statue so it would not apply here. It is a fifth optional prong.

Someone commented what is an example of a personal issue.

Mr. Chauvin commented that he couldn't render legal advice to him; I can direct you to the statue.

Mr. Chauvin commented that there is a difference between an economic hardship created and personal problems as the statute defines them. There is no claim of personal problems here.

Mrs. Stockdale asked if the Board could make a decision at tonight's meeting. Next month you will make a decision.

Chairman Hansen commented that we have 62 days to render a decision once the public hearing is closed. The public hearing is closed but we don't have to make an immediate decision, until 62 days. Within 62 days we have to make a decision yes or no.

Mrs. Stockdale commented that after the decision is made she could file an Article 78 to the Town depending on the decision.

Chairman Hansen commented only after a decision is made. Once a decision is filed you have a number of days to file an Article 78 with the Town. A decision does not have to happen in November, but definitely has to be rendered by the December meeting. If there is not any other business tonight I ask that someone make a motion to close the meeting.

Motion made by Mrs. Jordan and seconded by Vice-Chairman Tedrow Motion was carried.

Respectively submitted by Denise Mikol, Secretary
Town of Halfmoon Zoning Board of Appeals