

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
April 7, 2008

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:05 p.m. on Monday, April 7, 2008 at the Halfmoon Town Hall with the following members present:

Members: Chairman Hansen, Vice-Chairman Mr. Tedrow, Mr. Brennan, Mr. Rose and Mrs. Jordan
Alternates: Mrs. Smith-Law, Mr. Burdyl
Secretary: Mrs. Mikol
Attorney: Mrs. Murphy
Planner: Mrs. Zepko

Motion made by Mr. Brennan to approve the minutes from the March 3, 2008 meeting and was seconded by Mr. Rose. Mrs. Jordan abstained. Motion was carried.

Chairman Hansen commented that all members are present tonight therefore, alternates will not be voting.

Elliott and Bonnie Hughes, 117 Dunsbach Road

Chairman Hansen commented that this item was adjourned from the last meeting. There was a fire in the building that they are requesting the variance for. The Hughes's haven't resolved the issue with their insurance company as to what will happen to the building so they asked for another adjournment. Chairman Hansen commented that for the record we have to open the hearing and then if the board agrees to adjourn the hearing it will carry over to the May 5, 2008 meeting of the Zoning Board.

Chairman Hansen asked if there was anyone in the audience for the Hughes hearing. No one responded.

Motion made by Mrs. Jordan to open the public hearing and was
Seconded by Mr. Tedrow.

Resolved to adjourn the Hughes public hearing to the next meeting of the Zoning
Board of Appeals on May 5, 2008.

Motion was carried

RJ Valente, 118 Button Road

Chairman Hansen commented that this item is a carry over from our last meeting
for an extension of a non-conforming use, which was also adjourned. Mr.
Valente was supposed to send in information and respond to a letter from Mr.
Chauvin, Deputy Town Attorney. To our knowledge, it has not been responded
to.

Mrs. Murphy commented that she spoke with their attorney on Thursday and
again on Friday and was assured that the information would be delivered by
Monday so that the Board could proceed but nothing has been received in
writing detailing what exactly is going on at the site. Mrs. Murphy advised the
Board not to proceed unless and until the applicant has provided all the
necessary information upon which to make a determination on the application.

Mr. Rose asked Mrs. Murphy if there was a timetable on when Mr. Valente would
be getting back to the Town. Mrs. Murphy responded that she gave Mr. Valente
until noon on Friday to respond back to the Town. Mr. Valente's attorney
contact Mrs. Murphy today and requested that the letter be submitted by this
morning (Monday, April 7, 2008) and Mrs. Murphy responded that as long as it's
in writing that would be fine. The written response has not been received as of
yet. Mr. Valente's attorney knew of the consequences (that was in writing) of
not having the information to the Town and that the meeting would be
adjourned to the next meeting of the Zoning Board of Appeals.

Mrs. Jordan commented that the problem with that is it is to their benefit to keep
stalling and the neighbors have no remedy to the problems they pose. Can the
Town ask for a stricter time line so that by the next meeting the Board will not
have to adjourn again?

Mrs. Murphy commented that she will advise the applicant that if the Board doesn't have enough information to precede the Board will take the appropriate action based on an incomplete application and the applicant could resubmit. Mrs. Murphy did caution the Board if once the information is received and the Board continues with the public hearing if something is brought up by the neighbors the Board may want to adjourn it just to research the additional information or whatever the public brings up to you. Mrs. Murphy doesn't want to tie the Board to that date but from a legal standpoint can tie the applicant to that date.

Mr. Rose commented that at the last meeting of this board we asked for specific information to be submitted for tonight in a motion with regard to the Town's Engineer review. Was any of that information submitted to the Board? Mrs. Murphy commented that we did receive some of the information but not all of it therefore; the Engineer has not been to the site based on the fact that they don't have all the background information that they need. Mr. Rose asked about the information we requested from DEC. Mrs. Murphy commented that we did receive everything from the applicant that was submitted to DEC.

Vice Chairman Tedrow asked if there was any pending enforcement action on this? Does the Board's adjourning the hearing hold off some on going enforcement action? Mrs. Murphy commented, "No, it is her understanding that there is an enforcement action not taken by the town that will proceed regardless of this Board's action".

Chairman Hansen asked Mrs. Zepko for the DEC response that was sent in since the last meeting. Mrs. Murphy commented that the letters would predate the last meeting because the Town asked for information concerning the applicant's application to extend the Life of Mine and it was modified and we did receive a copy of the modified application. Mrs. Zepko responded that she had a copy of the current application dated 2-21-08. Chairman Hansen had a question regarding what DEC was doing with SEQRA. Has DEC made a declaration on SEQRA? Mrs. Murphy commented that she believed that there are outstanding issues regarding SEQRA, which is part of the DEC enforcement action that is occurring between the applicant and DEC.

Chairman Hansen asked how that would affect the Board, would the Board be lead agency. Mrs. Murphy commented that DEC is primarily involved with storm water, erosion control and dust issues. The Board would not be lead agency with respect to the application currently before the Board. Mrs. Murphy further commented that the Board needs to wait to see what the applicant is proposing in writing specifically before any determination is made on how the Town is to proceed because based on the information the applicant is going to provide to the Town in writing, we don't know what is happening on that site as the applicant has not been clear with the numbers in regards to the types of businesses being run there. Mrs. Murphy can't advise the board on additional environmental information based on what Valente is proposing to do because we don't know 100% what they are proposing to do.

Mr. Rose commented that the applicant should have given the Board a completed application so the Board has something to review. The Board is waiting for something that Valente hasn't done yet. Mrs. Murphy replied that they completed an application, the public hearing was granted, and upon review of the application and in comparison with the information that was provided to DEC, it was determined that something wasn't accurate. There were differences between the application provided to the Town and the application provided to DEC. Based on these differences information was requested. At the public hearing some concerns were raised by the neighbors, which caused the Town to have additional questions, which is why the Town holds a public hearing. Based on the application, the Board could have proceeded but because of new information gathered by the neighbors and the comparison of the two applications the Town determined the application is not complete as was submitted and the normal course for this Board is to adjourn until the application is complete. If at the next meeting the board feels that the application is not complete you can decide to vote based on that fact alone.

Chairman Hansen commented that looking at the short form EAF, it is incorrect. One question is what is the present land use in the vicinity of the project, the answer should be R-1, they have Commercial. Chairman Hansen asked the Board if they should act on this project tonight. Mrs. Murphy said that it was her understanding that Board wanted to have as much information as possible and have the engineers review the packet of information, and then make a determination as to what was appropriate. At this point in time the Board does not have all that information. Mrs. Murphy suggested that the Board adjourn this until they have all the information to move forward.

Chairman Hansen opened the hearing to the residents and stated that the residents do not have to restate what they mentioned at the last meeting it is already on the record.

Tom Koval, 97 Button Road commented that he understands that we need to take this step by step and the Town doesn't have a completed application from Mr. Valente. Mr. Koval commented that the Town was supplied with DEC letters from Mr. Valente and he feels that the letters should come directly from DEC because they would supply you with all the letters and Mr. Valente would only give you what Mr. Valente wants you to have. Also, at the last meeting we were told that the garbage trucks were no longer there and that they were pulled off the site. The garbage trucks are still sitting there and they are there tonight too. How long do the residents in the Town of Halfmoon in the vicinity of Valente's pit have to put up with this while Mr. Valente takes his time dragging his feet putting papers together? The Town is basing their decision on the DEC Mine Permit or what that encompasses. It was made very clear in the Planning Board minutes from the day this was approved that this building is not part of the Life of Mine Permit. It is allowed to be there, as part of their Mine Permit but has nothing to do with their Mine Permit. It is a C-1 Commercial Building in an R-1 Residential Zone. It never had public approval, it was never before any meeting, and 2 members of the planning board approved it. The Board is waiting for DEC. DEC has nothing to do with this building. The Town has everything to do with this building. The Town dropped the ball from day one allowing this commercial building located in a residential area. Mr. Koval said that short of the engineering and what the Town can do to make it right, the bottom line is it's not an approved use regardless of the DEC Mine Permit, it's not an approved use for that area, and it's an existing non-conforming use. It did not exist this time last year; it is a new building in a residential area. Mr. Koval commented that it's getting glazed over that it's a new building and that Valente got away with putting it up.

Mr. Koval commented that the Town Planning Board dropped the ball on this from the beginning and ultimately the Planning Board will be held liable if this goes wrong. The neighbors don't want to eat this building so that the Town can save face. It's an illegal use and it should be dealt with as an illegal use. If the Town doesn't want to do that the neighbors have to take it to the next step. Mr. Koval understands that Mr. Valente's argument is that the Town let him put the building up and he invested all this money and then the Town says Valente can't use it. The reason Valente invested the money was the Planning Board told Valente he could do it. Mr. Koval feels for Valente and feels for the neighbors the one side Mr. Koval doesn't feel for is the Planning Board who got involved with the Town's loss for getting involved with the Town's own loss when they approved this site.

Chairman Hansen commented that he wanted to make a correction of what Mr. Koval said, RJ Valente applied for an extension of a non-conforming use but the Town has not made a determination that that is appropriate or that we would approve it. The Town is gathering information. Mr. Koval commented that the Zoning Board of Appeals is making a huge attempt to make this right but Mr. Koval wants to make it clear where this problem all started and it wasn't with Mr. Valente it was the Planning Board. Chairman Hansen commented that maybe Mr. Valente thought it was part of his mining permit and that was why he proceeded with the Planning Board review process. The Planning Board deals with the Route 9 corridor and all the commercial and residential development in the Town. How could the Planning Board somehow over look an 8000 sq. ft. truck garage business in a residential zone?

Mr. Koval commented that he doesn't want to live in a commercial zone. This building has decreased the value of Mr. Koval's house and the neighbor's homes. Mr. Koval asked if the Board Members had a chance to drive by to see the mud hole. The area they park their trucks is a mud puddle. No matter how much stone is put down the mud will percolate up through. In a few weeks when the mud dries up it becomes a dust storm and Mr. Koval can't open the windows to his house. Mr. Koval doesn't want to fight the Town but this is disgusting. It is the nature of the business to generate a tremendous amount of mud.

Chairman Hansen commented that the Board was there on Saturday. Mr. Rose asked what the current understanding of what the applicant is requesting is and is this to be added to the Life of Mine Permit or not? How are they proceeding? Has the applicant indicated that? Mrs. Zepko responded that currently the building they put up is in the boundary of the Line of Mine Permit. Mr. Rose asked if it was logical to see that before us next month? Mrs. Zepko replied that the approval of Valente's renewal for his mining permit maybe held up by some violations that DEC has cited them with.

Mr. Koval commented that it's a pole barn and he has never seen one with a stone front, granite counter tops, and couple yards of concrete. Mr. Koval wished that he could afford to build a temporary building like that.

Mr. Dean Marotta with RJ Valente asked Mr. Rose to repeat his question. Mr. Rose asked Mr. Marotta when the Board comes back next month will Valente come back with all the information that we requested? Mr. Marotta commented that yes he would have all the information the Board has requested. Mr. Rose asked if the building is included in the Life of Mine Permit? Mr. Marotta commented that it is in there now under the old permit. Valente is not getting a new permit; they are renewing the existing permit. This is a renewal of the old permit and the intent is to keep the new building under the Life of Mine Permit.

Mr. Marotta stated that DEC has jurisdiction over the engineering around the entire building, how to direct the water, control the dust, do the landscaping, do the paving but now the Town says they will have their engineers tell RJ Valente what to do too. Mr. Marotta asked who has jurisdiction over the land? Mrs. Murphy commented that the Town couldn't answer that question until we know what is going on inside the building. DEC has jurisdiction over the building if it's all in your mining operation. The Town has no idea if that is the case or not the case. Based on what we have seen it appears not to be the case, which would give the Town jurisdiction. Mr. Marotta commented that DEC would not have jurisdiction on that part of the mine the Town would take that over.

Mrs. Murphy commented that the Town would have jurisdiction over the site plan and the building as it relates to those uses that do not related to mining. That would open up the traffic, the lighting and the landscaping. The Town has been working on this with DEC and is aware of what they plan to do. We will work with DEC to make sure everyone needs have been satisfied.

Mr. Marotta commented that the detention pond and the way it should be drained is the violation that we received from DEC. The detention pond picks up other waters off secondary roads, that information is supplied to us from DEC, it is important that RJ Valente knows who is responsible DEC or the Town. Mr. Marotta commented that they thought they had answered Mr. Chauvin's question to the best of their ability. This Board thought it was very vague and asked RJ Valente on Thursday afternoon to answer the questions again. Joe did try to get all the information together in time for the meeting, however, when Mr. Marotta read the notes he didn't think it would be acceptable to the Town. RJ Valente wants to know exactly what you want. RJ Valente runs a sand and gravel business that is what they do and the business is being run out of the new building. The Town knows that RJ Valente has thoroughbreds but he runs that out of his house. All paperwork for that goes to his house.

Mrs. Jordan commented that Mr. Marotta has mentioned that he has delivered salt in the middle of the night. Mrs. Jordan commented that it is not part of the mining business. Mr. Marotta commented that its dump truck business not mining business. Mrs. Jordan commented that salt deliveries have nothing to do with extracting sand and gravel from the mine, that is what DEC regulates. Mr. Marotta said it was Mrs. Jordan's opinion. Mr. Marotta said they deliver sand and gravel with trucks so if they deliver salt with trucks what does it matter. Mrs. Jordan stated that delivering salt is another business. Mr. Marotta asked how is that another business? Mrs. Jordan said that Mr. Marotta had just said he was a sand and gravel business. Mr. Marotta said it still has to be delivered. Mrs. Murphy asked if they mine salt from Button Road? Mr. Marotta replied no we do not, so the Town is limiting us on what we haul, nothing but gravel and sand? Mrs. Murphy commented that it is not at all what the Board is saying. What the Board is saying is that if you are doing something that has nothing to do with your permitted mining on Button Road then this Town has jurisdiction over that thing whatever that thing is. Which is why we are having difficulty proceeding because every time we have a conversation we hear of another business being run out of that site. Mrs. Murphy had not heard about the salt before she read it in the minutes.

Mrs. Law-Smith commented that you take construction debris and move it around with the trucks from that site. Mr. Marotta commented that they have 2 construction debris trailers on occasion that are parked there on the hill because they needed fuel. If those trucks need to leave a 5am or 6am in the morning then we park them at our Clifton Park Mine because that is what the Town has asked us to do. No trucks leave the Button Road Mine before 6am. If the Town would just say what they want Valente to do they will do it. Mr. Marotta commented that the business is not going to close down the shop and move away we asked for the building, we built it, we did what we thought was right. The miscommunication with DEC is as much a loss for RJ Valente as it is for the Town. RJ Valente will remedy what ever the Town wants them to do. If the Town wants us to install 10' pine trees along the road or pave the parking lot RJ Valente will do it.

Mr. Rose wanted to clarify to Mr. Marotta that the Zoning Board is not here to tell you what your remedies are, this is the appeals board, this board is trying to determine if this situation belongs before us or not. Without the information we have asked you to provide we can't make that determination. The information that is provided to the Town by RJ Valente is what this Board will use to make a ruling, which may not be what Valente wants, without the facts this Board can't make any decisions. Mr. Rose commented that this Board is not here to impose penalties or sanctions or anything else just to get answers on what the request is or isn't. Mr. Marotta commented to Mrs. Murphy that there was several questions sent in by Mr. Chauvin and perhaps there were some questions that didn't have enough substance to them. Mr. Marotta asked Mrs. Murphy if that was the only thing the Town was waiting for, Mrs. Murphy replied yes.

Mrs. Murphy said the Town is waiting for a document stating everything RJ Valente is doing at the site on Button Road. Mr. Marotta commented that everything RJ Valente receives from DEC has the Town copied on it so everything DEC gets the Town gets. The Town talks to DEC on a regular basis regarding this site. Mr. Marotta commented that the fine with DEC was taken care of, now they have until May 28th to remedy a few small things then DEC will come out and inspect. After the winter all mines have a list of things to do in the spring.

Mrs. Jordan asked how many trucks does RJ Valente have in his entire fleet? Mr. Marotta commented that prior to moving they sold 50% of the fleet. The number of trucks sitting in Halfmoon last year could have been up to 60 trucks for a certain job and only lasted for 2 weeks. RJ Valente owns 20 dump trailers and about 22 tri-axle dump trucks. We sold 45 tractors and 100 trailers to Silver all Corp. in Rochester in January. Mrs. Jordan replied that RJ Valente has about 44-45 trucks. Mrs. Jordan counted 44 trucks on the site when the Board did a site visit. The fleet is all at Button Road. Mr. Marotta commented that its still wintertime and if Valente has a job in Schodack the trucks will be parked there for the length of the job in Schodack. Currently Valente is doing a job in Clifton Park and there is a truck parked there now until the job is done. Trucks will not be left at an abandoned pit.

Mr. Marotta explained that RJ Valente has an active office in Grafton where their quarry is located and trucks are parked there for a long duration. If a truck sits all winter and is not being used it will be parked in Halfmoon. Mr. Marotta acknowledged that out of use vehicles were not stored at the Button Road site prior to the construction of the new garage and office space.

Chairman Hansen asked if it was safe to say that there was no truck maintenance before the new building was built. Mr. Marotta commented that they do not do serious truck repair they only do maintenance on their trucks. There is no engine rebuilding at this site. Mr. Marotta commented that at their other site we were doing maintenance and we were actually doing truck maintenance outside and that was why we built the bigger building so that employees could be inside doing maintenance. At the first meeting it was told to the Town that the girls were doing administrative work at the new building. Chairman Hansen asked if maintenance was being done on trucks being used in Rensselaer County; were you bringing trucks in to do maintenance from other places. Chairman Hansen commented that the one bay shack was being used for maintenance of vehicles. Mr. Marotta agreed.

Chairman Hansen commented that all the truck maintenance is being done on Button Road. Mr. Marotta couldn't say that because it's not accurate. Chairman Hansen asked if there was 90% being maintained on Button Road. Mr. Marotta said no we have other quarries on Route 9P and Schodack. There are 2-bay garages at both locations per Mr. Marotta. Mr. Marotta said that a majority is being done on Button Road. Chairman Hansen asked if very little was done on Button Road in the way of truck maintenance. Mr. Marotta said he wasn't employed for RJ Valente long enough to know what percent of truck maintenance was being done on Button Road.

Chairman Hansen is trying to determine what is the extension of a non-conforming use. It looks like you were only basically doing what was required at that mine. Now, the whole office operation was moved to here. There was no office operation here before because there was no office; before the new building was built there was no office. Is that correct? Mr. Marotta replied yes.

Chairman Hansen commented that RJ Valente has created an office on Button Road that wasn't there before. Mr. Marotta commented that the Planning Board was aware of that. Chairman Hansen commented that he couldn't argue for the Planning Board, the Zoning Board has to determine what you are asking for as far as the non-conforming use is concerned. An existing non-conforming use, RJ Valente didn't have an existing office there so how can you expand it, you were not doing that type of work there before.

Mr. Rose commented that the Board is trying to determine the basis of what you (Valente) are trying to do. Mr. Marotta commented that RJ Valente was only doing what they were advised to do by the Planning Board.

Mrs. Murphy commented just for clarification, representations were made at the Planning Board that this is exactly what was happening there before and that there were no changes. Valente represented that they were just taking what was outside and putting it inside including the fact that there was basic office work done there before and that it wasn't a bigger operation at this point in time, which is why the Planning Board acted in the manner that they did initially. Then the Planning Board found out there was in fact a lot more going on there than they thought.

Chairman Hansen commented that the Board went to the site the other day and it was pretty obvious what was there. If the Planning Board can't figure that out when they approve something then they need to change the way they do business. The only thing down there was a one-bay pole barn that sits on top of the hill; Chairman Hansen asked if he was right or wrong? The reply was that he was right. Chairman Hansen commented that a new 8000 sq. ft. building was put up that is all new. Did anyone from the Planning Board ever go there to look at it?

Mrs. Murphy commented that she could not answer that question. Chairman Hansen commented that he could make a decision tonight, deny the application and refer it back to the Planning Board so they can figure out what they want to do with it. Mrs. Murphy commented that the applicant would want to wait until we have additional information prior to making that determination. Chairman Hansen commented that the Board has enough information already.

Mr. Rose asked the question again, "is the new building within jurisdiction of the Life of Mine Permit" and if the building is within that permit then the jurisdiction is not here with this Board it is with DEC.

Mr. Koval doesn't have that answer but he does have a copy of the Planning Board minutes that clearly state that they know the building is within the Town's jurisdiction. The Planning Board said it was within their jurisdiction at a public meeting. Mr. Rose commented that his question is more specific than that. Is the new building and the revised application for this building within the Life of Mine Permit, the answer I received was yes and based on that logical train of thought would not come to the Zoning Board for a ruling because it is within DEC's jurisdiction if its within the Life of Mine Permit. It is as simple as that and should not need further explanation.

Mr. Koval commented that it's not as simple as that. Very clearly everyone needs to understand how the Life of Mine Permit works. The Life of Mine Permit allows that the building be geographically within that mine. For instance Disney can put up a concession stand within their boundaries however the City of Orlando has 100% jurisdiction over if the zoning allows it in that park.

Mrs. Murphy commented that it is a little more complicated than that. Basically the rule is if all that is going on in that building is related to mining then it's within DEC's jurisdiction totally and completely because when the mining is done the building comes down and they don't want the Town to regulate mining or associated uses. That being said because they wear uniforms at the mine does not mean they could put a manufacturing company for uniforms there and what the Town is trying to determine is are we dealing with mining operations which are not within the Town's jurisdiction or are we dealing with corporate offices, truck repair, salt mining, debris hauling, all of which would not be within the Life of Mine Permit and would make that building subject to Town jurisdiction.

Mr. Koval commented that he understood that what you are saying doesn't conform to anything he has received from DEC. DEC says they don't have jurisdiction over that building. DEC's own letters stated that they have no jurisdiction over that building and that it is jurisdiction of the Town.

Mrs. Murphy commented that the letter sent to the Town from DEC doesn't say that. Mrs. Murphy commented that the Board could do whatever they choose to do; however, DEC does not say that the Town has jurisdiction over the building. Chairman Hansen commented that for this Board's purpose that RJ Valente applied for an extension of a non-conforming use under the theory that they are extending a use that was there before they built the building and the Chairman's point is that they are asking to expand uses that were not there before they built the building. They are asking for an office there, they didn't have an office there before. Mrs. Murphy commented that is what the question is. Chairman Hansen commented that there was no office there unless you had a file cabinet in the little building on the top of the hill where they changed the oil on the pay-loader. That is the bottom line.

Mr. Koval commented that there was no office there; there were also never 44 trucks there. On their Planning Board application they said there would be 25 trucks there, they have never seen that volume of trucks there before. RJ Valente also said that the old building on the hill would come down when the new building was built. The garage is still there and is still being used everyday.

Chairman Hansen commented that the debate of whether the building is in the mine permit or out of the mine permit is not relevant to the Zoning Board's decision. The Board has to decide if they are applying for an extension of a non-conforming use, what was the non-conforming use they are asking to extend. Mrs. Murphy commented that was the information the Town is waiting for. How many trucks were there before the new building and how many trucks are there now. How many people were there before the new building and how many people are there now. What were they doing before the new building and what are they doing there now.

Mr. Koval commented that there were never any garbage trucks there before and they are there now. Mrs. Murphy commented that is why we have these public meetings.

Mrs. Jordan asked Mr. Koval in a perfect world what would you like to see for the site as the end result. Mr. Koval replied that he would like to see that building gone however, that would not happen. The biggest fears Mr. Koval has is the dust and the noise and as soon as the board approves this, RJ Valente will go back to his old ways of doing business, working all night long, and leaving in the middle of the night. The reality of it is that the Town has no teeth with regard to this. Mr. Koval calls the Town Hall and is told we don't have the manpower, we don't have the budget to work at night to check on this and nothing gets enforced. They will probably wash the trucks over this summer. There isn't enough water in the ground for all the existing wells and there will be water loss issues. When RJ Valente first put their well in, the neighbors all had water disruptions. There is city water down the street and I would like to see us tied into the water to solve that problem. Mr. Koval would like to see a wind break, dust breaks put up. He would like to see the entire parking lot stoned because nothing not even 4 rows of 50' high evergreens will stop the dust. Mr. Koval believes that the middle of the night operation will most likely happen again and the neighbors will inherit that problem. RJ Valente starts mining at 6:00 am now and the employees come in earlier and there is one kid that works for them that has no muffler on his car but he makes it a point to rev it at 8000 rpm's up the hill, that is the new wake up call right now.

Mr. Koval would like RJ Valente's business to be a better neighbor than they have been and a little more responsive to the problems other than band-aid fixes. He doesn't want the trucks leaving in the middle of the night and there are less trucks there than what they have. It's just not a good area for the trucks to be there and it will be difficult to enforce the codes on them. Mr. Marotta commented tonight that he had some fines with DEC and one month ago at the town meeting he knew nothing about having any fines. When Mr. Koval calls the Town to complain about the trucks running in the middle of the night he hopes to get results. RJ Valente is not running 45 trucks out of there every day they are running about 20 something trucks there. They are working on all the tractors and there is a fueling station there now. There are tractor-trailers that leak oil and we are all on wells. Even the best new vehicles leak oil into the ground and the neighbors will eventually have to deal with ground water contamination. There are layers of problems that are never going away.

Mrs. Murphy asked if there was a fueling station there before? Mr. Koval said that there were small tanks there before. Mr. Marotta commented that before there were three 3,000-gallon tanks and now there is one 10,000-gallon tank. The tank is better looking but there will still be spills and it has to be dealt with. There was an oil spill in the back that Mr. Koval doesn't know if they ever got fined for out near the retention ponds and Mr. Koval brought it to ENCON's attention. The engineers have never looked into that or the contamination from the site and run off from hydraulic hoses that break, diesel spills, oil spills. No fill is to be brought back to the site after working as per the DEC permit and tonight Mr. Koval saw a huge pile of bricks that were dumped at the backside of the lot. They do what they want to do until the neighbors call either DEC or the Town and red flag them and it takes time to get problems resolved. Mr. Koval and his family live there and will be they're for the rest of his life and he will not put up with it.

Mrs. Stewart, Button Road lives across the street from Valente's pit on the turn and agrees with everything Mr. Koval says. They are all huge issues, however, as soon as the ground dries and the wind starts up they get blasted with sand and dirt. It was bad before when just the garage was there. Mrs. Stewart doesn't know what she will do even with the windows closed the sand comes in everywhere you breathe it, it's in everything. There is a process that the Town has to go through but as you go through this process the ground is getting dryer and dryer, the wind will pick up and what will she do?

Chairman Hansen didn't want to cut Mrs. Stewart short, however, this Board has no jurisdiction over this. It would be a DEC issue. Chairman Hansen knows the neighbors have concerns about it and he respects that but the Town's issues are much narrower than the DEC permit or the site plan approval for that building. The Zoning Board's issue is whether or not they have jurisdiction over this or not. Personally it should go back to the Planning Board and if it doesn't go back to them it goes to somebody else. The Board will not approve a building retroactively that should or should not have been built in the first place. Chairman Hansen doesn't feel that the Board has jurisdiction to do it.

Mrs. Stewart understands that and appreciates everything the Zoning Board is doing however the neighbors are carrying the burden. Chairman Hansen realizes that and unfortunately this is the only place that the neighbors have had to vent their feelings and the Board has to listen to it. Chairman commented that he would call for any motion any member wants to make.

Vice-Chairman Tedrow commented that he agrees with Chairman Hansen on what the issue is before the Board and also agrees with the assessment as to a possible decision the Board could make under the current understanding but in the light of the fact that the Town has asked formally for more detailed information it is really tied down as to what was there before and what is there now. The Board is expecting receipt of that. Vice Chairman Tedrow would move that the Board adjourn the hearing to the next meeting of the Zoning Board of Appeals.

Motion made by Vice Chairman Tedrow and Seconded by Mrs. Jordan that RJ Valente be adjourned to the next meeting while waiting for addition information regarding their application before the Zoning Board of Appeals.

Mr. Rose commented that it is still relevant that the Board understand what is in jurisdiction of the Life of Mine Permit. It was requested in the letter by our Attorney Mr. Robert Chauvin that before the Board comes into brawls with matters of the Planning and Zoning Board we need to understand what is under the jurisdiction of DEC. Mr. Rose agrees 100% on the motion but the Board still needs to know the roll of DEC in this situation regarding that building because the linkage between the building on the hill where there was considered to be office space, and the extension of that to new building for office space is far fetched.

Mr. Brennan asked Mrs. Murphy if counsel was trying to arrive at for the next meeting the answer to Mr. Rose's question on what is ENCON's and what is the Town's jurisdiction? Mrs. Murphy commented that legally she could tell the Board what is the Town and ENCON's jurisdiction. What she can't tell the Board is what is occurring so she can't tell the Board practically speaking what is the Town's and ENCON's jurisdiction. Every time the Town has these discussions additional information comes out that causes additional questions. It may be that this Board is not the correct place for this applicant but Mrs. Murphy cannot give the Board advice until the RJ Valente gives the information requested to the Town. Mr. Brennan asked if once all the information is obtained is that going to be the deciding bit of information pushing the Board to Town or ENCON's responsibility or will there be a further follow-up after that. Mrs. Murphy commented that as soon as the questions have been answered than we can determine whose jurisdiction it is and this Board will take action that they deem appropriate. Understanding what the Chairman's concerns are, Mrs. Murphy will look at that issue between now and then but the premise has been what was going on before and what is going on now so the Board can determine what the expansion was. The reason the Board is waiting for that in writing is because that is the binding information that the applicant is providing to us. Mrs. Murphy replied yes the Town wants in writing so it's on the record what they are doing.

Mr. Rose commented that it would be fair for the folks in the audience and the applicant so they know where to go to get action on their complaints and he feels that if we don't answer this question than we leave those folks turning, Mr. Koval and Mrs. Stewart. Who will make the situation correct to the complaints? Whose jurisdiction is it? Mrs. Murphy commented that it depends on the issues or what the violation is. Mrs. Murphy commented that what we heard thus far are mostly DEC issues. Mr. Rose commented that when we know who the agency is the Town should put forth a letter letting them know the issues of concern.

Mr. Stewart, Button Road, commented that he is mad at the Town and RJ Valente because he has been living with the dust for a long time. Who owns Button Road is it RJ Valente, is it DEC, is it the Town, who owns the road? Mrs. Murphy said the Town owns the road. If there is dust all over the road wouldn't it be RJ Valente's responsibility if they are messing the road to clean the road. Why isn't the Town enforcing RJ Valente to keep the road clean? Mrs. Murphy commented that DEC in its infinite wisdom has created a structure whereby they know that no one would want a mine near their house and won't allow Town's to do any action that would prevent them from operating a mine in our Town.

Mr. Stewart commented that it doesn't prevent anyone from doing anything by sweeping a road. It takes a sweeper to do the road, that is the idea and if its their responsibility to do it and they don't do it he would expect the Town to make sure it gets done and get RJ Valente to do it.

Mrs. Murphy commented that DEC has taken away the Town's jurisdiction. DEC has said that if it has to do with the mine and if it is caused by the mine then DEC has jurisdiction over enforcing those issues. The Town works with DEC on a regular basis and the Town's Highway Department responds and tells DEC their concerns when the Town is aware of them.

Mr. Stewart stated the meantime the road never gets cleaned and he lives with his windows closed in the summer time and the dust still comes in his house. My vehicles get sand blasted and they had animals and had to get rid of them because they would be sick all the time. When the wind blows it's a dust storm over there. The Town would never have built a nice town hall on the corner of Button Road, guaranteed, and if you did the dust wouldn't be there. Mr. Stewart has nothing against people making a living or doing what they have to do as long as they do things correctly and they clean up after themselves and they don't bother the guy living next door to them. There is more stuff going back here all the time. RJ Valente says he only has so many trucks, there use to be a one bay garage on the hill, there was no office there, there was no phone in there to call for a load of gravel or anything and Mr. Stewart doesn't understand why they are dancing around. They use to have 6-7 straight dump truck tri-axles there and 4-5 dump trailers and that was all that was in the yard all the time not 44 trucks and Mr. Stewart doesn't care if there is 144 trucks there his complaint as a neighbor is the dirt and the dust that no one has been able to control for the last 15 years. How do you control that?

Mr. Stewart says he is being charged tax every year to live in Halfmoon. Mrs. Murphy said there is no town tax. Mr. Stewart replied he is paying tax to someone and all he gets is a bowl of dirt. He expects the Town to say to RJ Valente if you are making a mess of this road everyday, then at the close of business use the proper equipment up and down the road and clean and maintain their mess. It's the cost of doing business. There are people who have slid off Button Road because of the sand on it. Mr. Stewart commented that before the lot next to him was filled in, cars would go off the road and Mr. Stewart would go out there and pull them out. Motorcycles slide out right from underneath them in all the sand on the road and RJ Valente is leaving himself wide open for a lawsuit when someone catches on. Mr. Stewart orders material from Valente all the time through his job and doesn't feel that the Town, DEC, or RJ Valente is giving the neighbors any support for the poor guy on the corner sucking up all the dirt.

Mr. Koval commented that as far as the dirt mitigation on the road he made a call to Stan Konag in DEC when the mud was dragged out on the road. Stan's exact words were we couldn't do anything about the mud or dirt out in the road once it hits the Town's property. DEC's responsibility ends and it becomes the Town's issue. DEC handles inside the mine and the Town handles outside the mine once they touch the road. Once you go on to the stone to the mine it is under the jurisdiction of DEC when you leave the entrance full of stone and touch the road it is the Town's responsibility. Mrs. Murphy commented that she would talk to the Highway Superintendent about this. Mr. Koval asked why should the Town of Halfmoon clean up RJ Valente's dirt? One way or another we are paying taxes. It may not be directly to the Town but we are paying Saratoga County taxes and NY State taxes. Every time we take a dollar away from the Town's Highway Department to clean up the road it is a dollar less they are spending on drainage or a culvert or another problem somewhere else. One way or another it is coming out of our pockets and the road is still the Town's responsibility.

Chairman Hansen commented that there was a motion before the Board. Vice Chairman Tedrow commented that the motion was to adjourn the hearing to the next meeting. Chairman Hansen asked if it should be conditioned on getting this information and Mrs. Murphy will advise RJ Valente's attorney in writing that if they don't have it by the next meeting the Board will take the appropriate action. Mr. Rose commented that the Motion should be amended to cover that.

Vice-Chairman Tedrow made a Motion to adjourn to the next meeting of the Zoning Board of Appeals pending the receipt of information the Town has been waiting for from RJ Valente's Attorney in writing. Mrs. Jordan seconded the motion. Motion was unanimously carried.

Vice-Chairman Tedrow made a motion to adjourn the meeting to Monday, May 5, 2008, seconded by Mr. Rose. Motion was carried unanimously.

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