



## TOWN OF POESTENKILL

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### Zoning Board of Appeals

### ZONING BOARD OF APPEALS September 8, 2020 Minutes Poestenkill Fire Hall

#### Attendees:

Paul Jamison, Chairman  
Kevin McGrath  
Tim Hoffay  
Susan Kalafut  
Nicole Heckelman

Chairman Jamison opened the meeting at 7:00 pm with the Pledge of Allegiance. Chairman Jamison advised the audience to sign in for contact tracing, to wear their masks and if speaking to the Board, please step away from others and speak with your mask off so that everyone can hear.

#### Public Hearings:

Louis Basle  
69 Abbott Drive

Code Interpretation  
125.-11-17.11 (14 Abbott Drive)

Chairman Jamison reads the Public Hearing Notice and recounts that the Kronau operation is located in a Residential zone, with some of the activities “grandfathered in”. Kronau attorney, Lawrence Howard, asked to address the Board. Mr. Howard thanked the Board for holding over the Hearing and he wished to set the tone for his comments. Mr. Howard stated that the Kronau business had been at its present location since before the Code was put in place – Kronau moved in 1982, the Code was adopted in 1986. He stated that everything was done by the book and in accordance with the list of building permits provided by the Code Enforcement Officer. He further stated that no one has ever complained, that the last two CEOs have confirmed that the business is “grandfathered in”, that the on-site operation has gotten smaller with only one use now and asked “How many times does Mr. Kronau have to go through this questioning?”. Chairman Jamison asked if what Kronau is doing the same. Mr. Howard said yes, that there is real estate business, excavation, maintenance, sale and service of industrial equipment. Chairman Jamison stated that there is a dispute to the sale and service portion of the business, that they cannot buy and sell other equipment that they did not previously own and use in their business. Chip Kronau stated he owns and uses all the equipment on his job sites, that there are not prospective buyers on-site looking at the equipment, that 90% of all equipment is in use. Chairman Jamison stated the Code does not allow for expansion of the non-conforming use. Mr. Howard stated that Chip sells the equipment on website. Further, he stated the business has been there for 38 years and this issue has come up several times with regards to the legal non-conforming use. He recounts how the previous Code Enforcement Officer reported to the town Board over a year ago the

business was legal and the time to have appealed that conclusion was within sixty (60) days of that report. Mr. Howard advised that should an Article 78 come up from this proceeding, he will be arguing that the appeal should have been made 60 days from the June 2019 report to the Town Board. Chairman Jamison stated that the Kronau issue should have come to the Zoning Board, not the Town Board.

Lou Basle of 69 Abbott Drive countered that Paul Barringer's report had nothing to do with the non-conforming use of the property but was a "Cease & Desist" order for the additional uses on-site. Mr. Basle refers to Code #150-76, (1), "...cannot enlarge.." and stated that at the time of Kronau purchase, the building did not exist and referenced there was two (2) separate building permits for the structure. Kevin Kronau stated one of the permits was for an addition. Mr. Basle said that you can't enlarge a structure that wasn't even there, so that was enlarging the operation. Kevin Kronau stated the structure replaced the existing building that was later converted to apartments. Chairman Jamison read the Code aloud and stated the structure could not be considered replacement, not allowed. Mr. Basle then addressed Code #150-76 (3) and presented a power point with the following: 1) Photo of site showing no building where structure was built by Kronau, 2) Screen shot of Chip Kronau website for the sales and service of industrial equipment, noting in the text on the site "...this company has 2 distinct divisions – site work/development and the sales and service of equipment, 3) Screen shot of website for Sagebrook Associates Inc., showing opportunity for truck driving jobs, 4) Quail Meadows – Kronau Group Realtors "...for everything from 90 acres to residential..". Mr. Basle stated that in accordance with Code #150-76 (3), the previous CEO issued the "Cease & Desist" order based on the additional activities, not, the non-conforming use. Mr. Howard objected to this information as inappropriate, that the issue has been discussed and decided on many times and the time limit for appealing those decisions was 60 days after decision. Resident Patrick Bradley remarked that he worked for the Kronaus 30 years ago and building was there, it is unfair to keep bringing this issue up and this is ridiculous! He feels that the Zoning Board, Planning Board and the Town Board need to get a grip, enough is enough this is people's livelihood, etc., etc. Corrine Bradley remarked that she worked for Dale Kronau from 1994-1999 and the building was there. Chairman Jamison stated it is not just about the building, there are a number of operations to be considered. Mr. Basle stated the Kronau "enlarged" the structure after constructing it, which is not allowed.

Chairman Jamison asks the audience if anyone else wishes to speak, no reply. He questions the other Board Members if they are comfortable with closing the Public Hearing and issue a ruling at next month's meeting, all Board Members agreed. Chairman Jamison closed the Public Hearing and to delay ruling to give both Mr. Basle and Mr. Kronau to submit any other documentation they would like the Board to consider. Motion to close the Public Hearing was made by Member Kalafut, was seconded by Member Hoffay and was approved by five (5) ayes, zero (0) nays and zero (0) abstentions.

*Resolution: Public Hearing closed.*

Joseph Hitchcock  
137.-1-23.12

Planning Board Interpretation Request  
160 Lynn Rd. – firewood/sawmill

Chairman Jamison read the Public Hearing Notice into the record and advised the audience the only issue before the Board is whether the business at 160 Lynn Road could be considered “retail” within the Town Code. He stated that the Planning Board is considering Mr. Hitchcock’s Special Use Permit, that the Planning Board does not agree with Mr. Hitchcock’s statement that it is a “retail” business and had asked the Zoning Board of Appeals to give an Interpretation of “retail” with regards to the application. Chairman Jamison advised that the Board will listen to Public Comments but reiterates comments can only address the issue of whether the business should be considered “retail” and not whether the business should be there, etc. Further, he explained the Board will decide if the business qualifies as retail, then its interpretation will be sent back to the Planning Board for their consideration of the Special Use Permit. Should the Planning Board not issue a Special Use Permit, then Mr. Hitchcock can make an application to the Zoning Board for a Use Variance.

Applicant’s attorney, Linda Mandel-Clemente stated that she has not received documents pursuant to her FOIL request, so her client has not had an opportunity to review and comment on them. Town Attorney, Jack Casey, handed the requested FOIL documents to Ms. Mandel-Clemente. Further, she disputed Chairman Jamison’s assertion that the Planning Board did not think that it was retail, but rather that they asked for the Zoning Board’s opinion. She also argued that the interpretation written by Planning Board attorney, Bob Ryan, should be considered his own personal opinion as he was not directed during the Planning Board open meeting to do so and that the meeting minutes reflect this. She further objects to the continued use of the phrase “wood processing” instead of the appropriate term “retail sales”, in that firewood is cut into the size requested by customers. Chairman Jamison requests that Ms. Mandel-Clemente please give the Board only new information and not recount previous comments as a time saving effort. Mr. Mandel-Clemente counters that given there are many new residents present, she feels it’s important they understand the situation. She continued with her analogies between the cutting of firewood and the cutting of salami or fudge, that the cutting/ processing in retail packaging and disbursement is the same and emphasizes the Code definition on retail says “...not otherwise mentioned...”. While looking through the FOIL packet, Ms. Mandel-Clemente noted that in letter dated July 13<sup>th</sup> letter (unknown author/recipient), it is specifically noted to catch all – like sale of firewood. She states the Code is broad and the Town Board has the ability to address the fine points of the Code.

Attorney for the Complainant, Graig Zappia of O’Connell and Aronowitz Law Associates, addressed the Board, stating that his client has endured noise and disturbance of the operation for an extended time and the operation and its issues has continued to grow. He stated that he was certain that any one of the issues, taken alone, would not be bothersome by those in attendance but that with the totality of issues, 360 degrees, he is certain that the people here would understand the problems his client has had to endure. The constant stream of heavy trucks and the sounds of heavy equipment operating have been very difficult. Resident Bradley persistently asked who the client is. Patrick Wing identified himself as the complainant. There are negative comments from audience. Mr. Zappia continued the Board is tasked with determining if the business is retail but that has to include all that happens, all activities on site and that the analogies of slicing lunch meat or fudge cannot be considered

the same as the wood processing taking place at Mr. Hitchcock's operation. Complainant Patrick Wing read a statement describing in detail the detriment because of the wood operation. He gave an example of going outside on beautiful day with peace and quiet, only to have to retreat back inside, close all windows and still be disturbed by the noise and activity. Resident C. Bradley argued that there is only one outside light. Resident Steve R. Valente stated that the site is run as retail.

Neighbor Greg Panzanaro of #8 Hosler Road spoke of living there since 1996. His wife's family owned his home for a long time prior to him moving in. He stated that a couple of years ago, the Hitchcock operation began to increase, especially the sound levels, and that he wouldn't normally mind but it's now affecting the quality of life for his family. Mr. Panzanaro further stated that the Board's definition of whether it is retail sales or large processing will make a difference, that there are individuals who are impacted on a daily basis, have to go back into their house to get away from the noise. Further, he disagreed with the comment that the noise from the operation was similar to a leaf blower – that it is noisier than leaf blower, all day, day after day. Mr. Hitchcock disputed the comments in that he is not there day after day, maybe there 9 am to 1 or 2 pm on Saturday and for a few hours after his work (logging elsewhere) 3:30 to 5:30 pm. Ms. Mandel-Clemente stated that the operation is retail, not wholesale and that Mr. Hitchcock's primary business is on other property, then bringing the logs to the site to be firewood. She said that WalMart uses large trucks and heavy equipment to move items off the truck and in this scenario, no one would suggest that this is not retail. She stated that the logs are cut to customer's size, then loaded on trucks for delivery. Also, the deli store in Town gets their shipments by trucks. Mr. Zappia countered Ms. Mandel-Clemente's argument by indicating that there is substantial difference between Wal Mart versus Mr. Hitchcock, that Wal Mart is located in a commercial zone and Mr. Hitchcock is located in Residential zone (RR1). He stated that the processing is included in Mr. Hitchcock's operation, that it is not solely retail. Ms. Mandel-Clemente said that the definition of retail is an issue for the Planning Board when they are considering the Special Use Permit for Mr. Hitchcock. Robin Shelby, who previously identified herself as a former girlfriend of Mr. Hitchcock said that Mr. Hitchcock sells only firewood, that it's only retail, that the operation never starts before 8 or 9 am and that the firewood sales is a seasonal operation. Resident Steven R. Valente said this matter should be move to the Town Board and that Chairman Jamison should recuse himself as he knows Mr. Wing. Ms. Mandel-Clemente agrees that Chairman Jamison should recuse himself as it is apparent from looking through the FOIL documents that there has been much conversation about this issue prior to Mr. Hitchcock applying for Special Use Permit and it has been entirely inappropriately handled.

Chairman Jamison stated that the correspondence in the FOIL packet did not for the most part include him, that he had heard about this complaint, that he has heard multiple complaints regarding the Mr. Hitchcock's operation over the years. He stated that he is friends with the Wings. He stated that their relationship happens primarily at their children's sporting events, and that there is no financial relationship between them. Common practice among the Boards in town has been not to recuse based on this sort of relationship, only for financial relationships, and therefore does not see the need to recuse himself. Ms. Mandel-Clemente continues to question his effectiveness, his impartiality. Resident Steven R. Valente also calls on Chairman Jamison to recuse himself, that he had already made up his mind to which Chairman Jamison said that maybe he had made up his mind, but that he has

continued to listen to all the comments being made, and the other members of the board may not have made up their minds. Resident Betty Teal stated that she had not heard or seen trucks on her road before, that the speed limit is 45 mph and that it is the kids walking on road, they won't move over for the trucks, is the problem. Ms. Mandel-Clemente continues her objection to Chairman Jamison not recuing himself, that she was just given the FOIL documents, said documents not served in accordance with the statute. Town Attorney, Jack Casey, argues that the FOIL documents were given within the time limits according to FOIL, he outlines the date time line for Ms. Mandel-Clemente. Mr. Casey stated that "we're done here", that this Board's task is to give an interpretation of if Mr. Hitchcock's operation qualifies for retail. He said that is the only issue and that all of the other comments do not contribute to that task. Ms. Mandel-Clemente continues to argue with Mr. Casey. There are many negative and disparaging comments from audience. Mr. Casey stated that Bob Ryan's report was to clarify what the Planning Board was thinking regarding Mr. Hitchcock's "retail" use and that the Law is absolutely clear. If Mr. Hitchcock is not happy with the Zoning Board's decision, he can argue that with the Planning Board and if he's not happy with their decision, he can file an Article 78 – there are options available for Mr. Hitchcock.

Chairman Jamison questions the Board if they are ready to close the Public Hearing and issue their decision at next meeting. Motion made by Member Kalafut to close Public Hearing. Motion was seconded by Member Heckelman and is approved by a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

*Resolution: Public Hearing closed.*

Chairman Jamison stated that the Board will review Ms. Mandel-Clemente's response to the FOIL packet prior to voting and that he would discuss with the other Board Members if they think he should recuse himself. Board Members indicate they do not believe that Chairman Jamison should recuse himself, the matter is closed, Town Lawyer Jack Casey affirms that the Code requires recusal only in the case of pecuniary relationship. Member Hoffay said when addressing wood processing, the Code is glaring in not addressing this issue and strongly feels that the Town Board should address this situation. Additionally, he feels that the lack of Code to address light processing, harvesting, firewood and many other activities is detrimental to the community and that the Town Board should address Mr. Hitchcock's situation directly. Member McGrath stated the Town Code was the generic code handed out by the NYS Department of State and that local laws are needed to change it. Further, the Commercial Light Industrial (CLI) zone was never intended to include firewood. He has heard the sounds of logging for many years and the Town Board should look at this situation as an opportunity to change, that maybe put in the Code the hours of operations – so that it is clear to everyone. Member Kalafut agreed that the Town Board should review as this is not the only operation of this kind in the Town and that the Code is not to be used in this fashion. She doesn't want to see a negative impact on how people make a living and hope Supervisor Hammond realizes there is a big gap in the Code that needs to be addressed by the Town Board. Chairman Jamison said that back when the Code was put into effect, the Town Board wanted a limited amount of commercial property, and the Code reflects that fact. He said that Mr. Hitchcock's processing is not bad, that Kronau operation is not bad, but that zoning exists to separate residential from commercial uses. Further, if there are not enough commercial property zones, then the Town Board should address that. Ultimately, everyone must be in compliance with the Code and there needs to be peace among neighbors. Member

Kalafut asked for a moment to comment that the treatment of Chairman Jamison during the meeting was appalling and showed a total lack of decorum. Chairman Jamison thanked her and the other Board Members for their support.

**Meeting Minutes:**

The Board reviewed the July 14, 2020 meeting minutes. Motion to accept the minutes as presented made by Member Heckelman, seconded by Chairman Jamison and was approved with a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

The Board reviewed the July 21, 2020 meeting minutes. Member Kalafut adds “the” before Board in first line of second paragraph. Motion to accept the minutes as corrected made by Member Kalafut, seconded by Chairman Jamison and was approved with a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

**Organizational:**

Chairman Jamison questioned Town Board Member, June Butler, if the proposed Alternate to the Board had been appointed. Answer was not yet. Secretary Kane asked to follow up with Michelle Asquith to put this item on next week’s Town Board agenda.

Town Board Member, June Butler, distributed her proposal to the Town Board with regard to wood processing. She stated she had reviewed same memo with the Planning Board last week and had a change to make – change “home owner” to “property owner” as there are numerous woodlots on the tax roll without a residence being present. She asked that Board Member contact her with any thoughts or suggestions.

Chairman Jamison reminded the other Board Members of the 4 hours of continuing education per year and stated there is on-line training available. A couple Board Members indicated they have certificates to hand into Secretary Kane.

Chairman Jamison asked the Board Members if they would be in favor of changing the start time of the meetings to 7 pm. Positive consensus from the other Members. Member Kalafut made the motion to change the ZBA meeting start time to 7 pm, seconded by Member Heckelman and was approved with a vote of five (5) ayes, zero (0) nays and zero (0) abstentions. Secretary Kane directed to request Michelle changed the website accordingly.

There being no further business, a motion to adjourn the meeting was made by Member Kalafut, seconded by Member McGrath and approved by five (5) ayes, zero (0) nays and zero (0) abstentions. The meeting was adjourned at 9:15 pm.

Respectfully submitted,

Lynn E. Kane, Secretary