TOWN OF BEDFORD

www.bedfordny.gov

AGENDA

BEDFORD ZONING BOARD OF APPEALS

425 Cherry Street, 2nd Floor Conference Room

Bedford Hills, New York 10507

THURSDAY, April 3, 2014

6:30 P.M. - EXECUTIVE SESSION - Pending Litigation

7:00 P.M.

APPLICATIONS:

1. Stefano and Suzanne Galli, 341 Succabone Road, Bedford Corners, NY 10549. Section 83.11 Block 2 Lot 3, R-4 Acre Zoning District. The applicants request a variance of the Town of Bedford Zoning Ordinance to permit the location of a manure storage dumpster 22.7 feet from the rear property line where the Town Code requires manure storage areas to be located at least 50 feet from each property line. Article III Section 125-25 (3) (b).

2. Michael Richman and Ruth Toporoff (Appellants) 12 Alice Road, Bedford Corners, NY 10549 for property owned by: Stefano and Suzanne Galli, 341 Succabone Road, Bedford Corners, NY 10549. Section 83.11 Block 2 Lot 3, R-4 Acre Zoning District. The appellants hereby seek an interpretation or appeal from the Town of Bedford Building Inspector's determination that an accessory structure (shed) is 98 square feet as built, in accordance with Zoning Code Article V Section 125-50 and Article V Section 125-27 C. Said appeal is filed with the Zoning Board of Appeals pursuant to Section 125-129C (1) of the Code of the Town of Bedford. The appellants ask the Zoning Board to reverse said determination of the Building Inspector for property owned by Stefano and Suzanne Galli.

3. Michael Richman and Ruth Toporoff (Appellants) 12 Alice Road, Bedford Corners, NY 10549 for property owned by: Stefano and Suzanne Galli, 341 Succabone Road, Bedford Corners, NY 10549. Section 83.11 Block 2 Lot 3, R-4 Acre Zoning District. The appellants hereby seek an interpretation or appeal as requested by a letter dated March 5, 2014 from Katherine Zalantis, Esq. representing Michael Richman and Ruth Toporoff, from the Town of Bedford Building Inspector's determination rendered sometime after February 6, 2014 that all requisite permits and approvals are in place for the horse barn/stable and direct that the Building Inspector revoke any certificate of occupancy for the horse barn/stable based upon the illegal construction. Said appeal is filed with the Zoning Board of Appeals pursuant to Section 125-129 (C) (1) (b) of the Code of the Town of Bedford. The appellants ask the Zoning Board to reverse said determination of the Building Inspector for property owned by Stefano and Suzanne Galli.

Supporting documentation for all items on this agenda is available at the Town of Bedford website www.bedfordny.gov. (Enter – Town Meetings – Meeting Agenda Zoning Board of Appeals). Larger documents and plans are available at the office of the Zoning Board of Appeals

Manure storage HR

Costello, Alex

From: Nancy Tagliafierro [ntag@hoganandrossi.com]
Sent: Tuesday, March 25, 2014 2:57 PM
To: Costello, Alex; Osterman, Jeff; Inspector, Building; Fraietta, Steven
Subject: Galli Submission

Hi Alex,

The MDRA report has a typographical error at figure 3, where it states that the dumpster will be 27.7 feet -- it should say 22.7 feet (27 feet would put it squarely over the septic trench!)

We will revise that page as soon as possible and re-submit.

Sorry for any confusion.

Nancy

--
Nancy Tagliafierro, Esq.
Hogan & Rossi
3 Starr Ridge Road, Suite 200
Brewster, New York 10509

ntag@hoganandrossi.com
Tel. (845) 279-2986
Fax (845) 278-6135

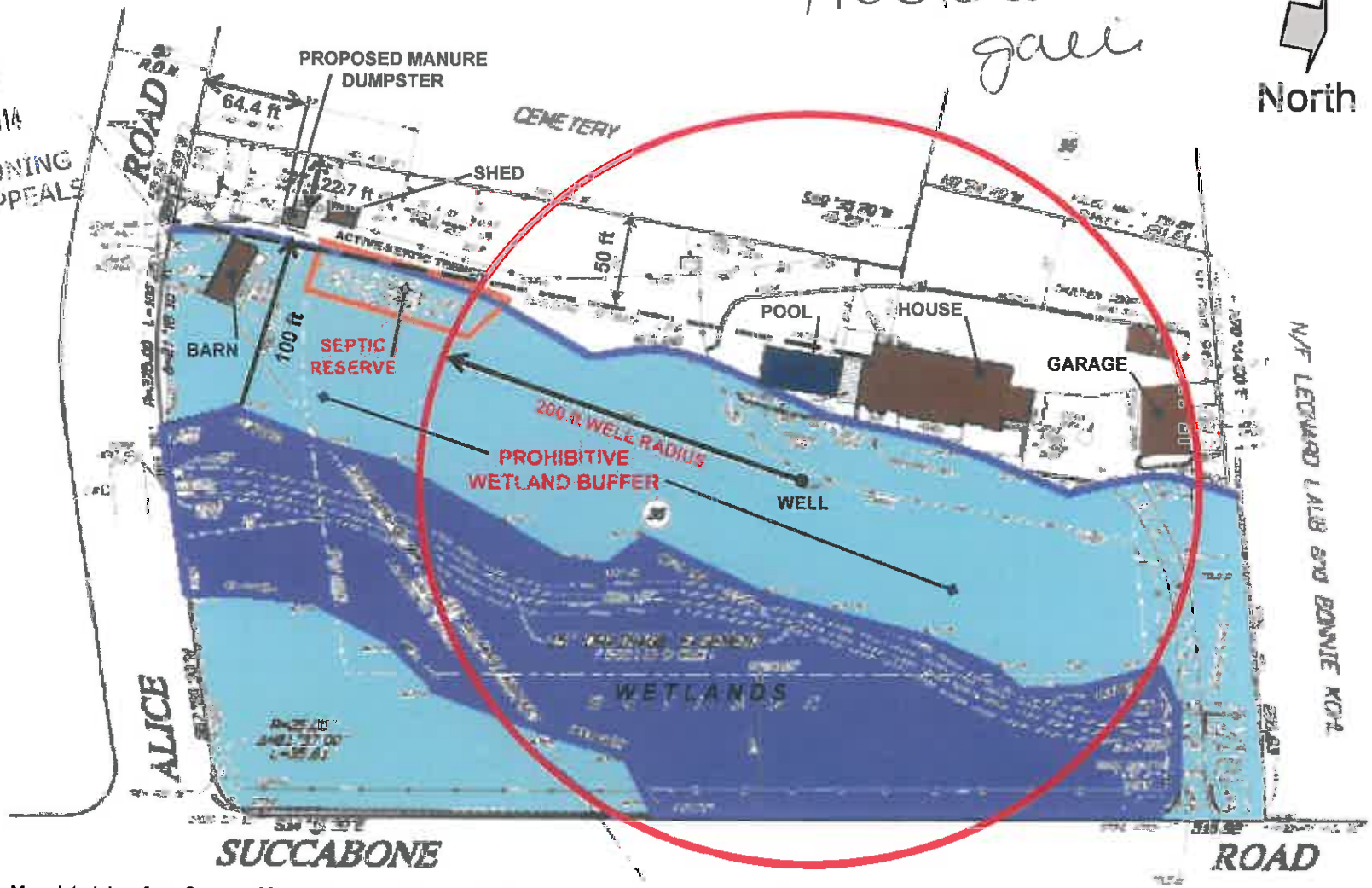
IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

This email is for the use of the intended recipient(s) only. If you have received this email in error, please notify the sender immediately and then delete it. If you are not the intended recipient, you must not keep, use, disclose, copy or distribute this email without the author's prior permission. We have taken precautions to minimize the risk of transmitting software viruses, but we advise you to carry out your own virus checks on any attachment to this message. We cannot accept liability for any loss or damage caused by software viruses. The information contained in this communication may be confidential and may be subject to the attorney-client privilege. If you are the intended recipient and you do not wish to receive similar electronic messages from us in future then please respond to the sender to this effect.

RECEIVED
MAR 27 2014
BEDFORD ZONING
BOARD OF APPEALS

Revised gall

MR



Base Survey Map data taken from Survey of Property prepared by H. Stanley Johnson and Company Land Surveyor, P.C., dated November 6. 2013.
Wetland Boundary by Mary Jaehnig, Certified Soil Scientist, September 9, 2003, reconfirmed 2013.

MATTHEW D. RUDIKOFF ASSOCIATES, INC.
Offices in New York and Connecticut
William Agresta, AICP, Director of Planning
845-831-1182 ext 103 ▪ willaga@rudikoff.com

GALLI RESIDENCE
341 SUCCABONE ROAD
BEDFORD CORNERS, NEW YORK

ZBA APPLICATION / GS14500 / MARCH 21, 2014

FIGURE 3

HOGAN & ROSSI
Attorneys At Law
3 Starr Ridge Road - Suite 200
Brewster, New York 10509

Telephone: (845) 279-2986
Facsimile: (845) 279-6425
(845) 278-6135

John J. Hogan
Donald M. Rossi
David Simon
Michael T. Liguori*

*Also Admitted in CT
**Also Admitted in Maryland, Virginia & Washington D.C.

Of Counsel
Charles J. Acker
Nancy Tagliafierro*
Emily Gooding Naughton**
Mary Jane MacCrae

March 24, 2014

Via Hand Delivery
Hon. Peter Michaelis, Chairman
Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, New York 10507

Re: Petition for Area Variance;
Premises: 341 Succabone Road, Bedford Corners, New York;
Owners: Suzanne and Stefano Galli;
Tax Map Designation: Section 83.11, Block 2, Lot 3;
Zoning District: R-4A Residence Four Acre District

Dear Chairman Michaelis and Members of the Board:

As you know, we represent Suzanne and Stefano Galli of 341 Succabone Road (the "Premises.") This letter will briefly address the matters to be heard by this Board at the April 3, 2014 special meeting which has been scheduled to hear the Gallis' variance application and the various appeals of Ruth Toporoff and Michael Richman of 12 Alice Road (Toporoff/Richman.")

I. The Galli Variance Application for a Manure Storage Dumpster

This application seeks a variance of the setback requirements for a 10 yard covered manure storage dumpster on the Premises from 50 feet to 22.7 feet (the "Manure Storage Variance") from the adjoining westerly property line. Significantly, the proposed storage area does not require a variance from the setbacks relating to Alice Road, but rather, is proposed to be located 64.4 feet from Alice Road. This location would place the proposed manure storage dumpster 114.4 feet from the Toporoff/Richman property line and approximately 210 feet from their residence. As set forth in the photographs included in our March 4, 2014 submission, extensive natural screening from Alice Road makes the proposed manure storage area virtually invisible from 12 Alice Road. Moreover, the Gallis plan to install additional fencing as screening as depicted in Exhibit "A" to

further reduce any possible visual impacts. Therefore, the proposed manure storage location will not have any negative impacts upon Toporoff/Richman, whether visual, environmental or otherwise.

As we have previously advised this Board, this particular area was carefully chosen by the Gallis for manure storage because the proposed location is situated as far from Alice Road as possible in an area which (i) complies with prohibition on storage of manure within the designated wetlands or wetlands controlled area; (ii) complies with the Department of Health separation distances from the Galli's well; (iii) complies with standard engineering practices regarding 10' separation distances between driveways and septic areas/septic trenches; and (iv) facilitates emptying of the dumpster on a periodic basis via an already existing driveway. In support of the foregoing, attached hereto for the Board's consideration as Exhibit "B" is a Wetland and Environmental Impact Assessment Report prepared by Matthew D. Rudikoff Associates, Inc (the "MDRA Report"). The MDRA Report was prepared to confirm the unique combination of conditions and regulatory constraints affecting the Premises which severely limit the possible areas for manure storage. The MDRA Report was also sought to obtain an opinion as to the suitability of locating a manure storage area within the wetlands or wetland buffer area. As the MDRA Report demonstrates, due to the existing constraints on the Galli property, an area of less than five (5%) percent of the entire Premises is available for appropriate, compliant manure storage. This report conclusively establishes that the proposed manure storage area is the most logical and environmentally suitable area on the Galli property for manure storage for the following reasons:

1. The proposed site is not constrained by the regulated environmental features which constrain most of the Premises, i.e. wetlands, wetland buffer area, required wellhead separation distances and the existing septic expansion area;

2. The proposed area is near the barn and accessible from the already existing driveway off of Alice Road;

3. No trees will have to be removed and only minimal grading would be necessary,

4. Further site disturbance to wetland buffer area will be avoided, and no new impervious surface are will be necessary because no new driveway for vehicular access is necessary;

5. The area is sufficiently screened from Alice Road by existing trees and shrubs and the dumpster will be graded to reduce visual impacts; and

6. The adjoining property is an abandoned cemetery which has reverted into a hardwood forest.

When we were last before the Board in March, the objections from Toporoff/Richman generally relied upon the unsupported assertion that the requested variance is not the "minimum variance necessary" because innumerable other feasible alternatives exist for manure storage within the wetland and wetland buffer. These assertions, like most of the so-called "evidence" submitted by Toporoff/Richman, are incorrect and should be disregarded by this Board in light of (i) the MDRA Report; and (ii) the determination of the Building Inspector (after consultation with the Town's Environmental Consultant) dated March 19, 2014, that location of a manure storage dumpster within the wetland or wetland buffer is prohibited pursuant to Town Code §122-8(A). (That determination is annexed hereto as Exhibit "C" for the Board's ready reference.)

Thus, all of the locations suggested as "zoning compliant" in Exhibits I and J to the Toporoff/Richman February 7th submission are, in fact, not compliant with either Town Code or New York State regulations because they (i) are located within the regulated separation distance from the Galli well; or; (ii) are located in the prohibitive wetlands or wetland buffer area.

Obviously, the Gallis are permitted to keep horses on their property pursuant to Bedford Town Code §125-25(3)(B), and they therefore are entitled to a means to manage the manure. The Gallis seek to store manure in a manner that is aesthetically pleasing and has no adverse impacts upon the surrounding properties. It is respectfully submitted that no one would be impacted by the location of a covered, efficiently managed, manure storage dumpster located 22.7 feet from the property line of an abandoned cemetery which is now essentially a wooded forest. Moreover, as a measure to ensure that there will be no adverse impacts upon any of the surrounding properties or the neighborhood as a whole, the Gallis are willing to accept the requested variance subject to the following conditions:

- The dumpster will be a covered dumpster;
- Fencing and a gate will be installed as depicted in Exhibit "A;"
- The pad for the dumpster will be set at grade level with the existing driveway; and
- Spreading of manure will be limited to twice a year (spring/fall) in each field.

If deemed necessary, the Gallis will also consider additional, reasonable screening, but given the extent of existing screening and the limited visibility of the driveway/barn area and the screening of the dumpster location from Alice Road and the Toporoff/Richman residence, it appears none should be required.

We have made prior submissions in support of this variance application, which will not be repeated, but those submissions are incorporated herein by reference. However, we urge the Board to revisit the table included in our February 4th submission outlining the many inaccurate statements

submitted by Toporoff/Richman in this matter, all of which have been flatly refuted. That table, the MDRA Report and the obvious appropriateness of the proposed dumpster location clearly indicate that the reasons proffered by Toporoff/Richman in opposition to the variance request are illogical and are based on outright misstatements made regarding other "feasible locations". This abuse of the zoning process and any other processes available to them (including threats of litigation against the Town) are unjustified and legally unsupportable attempts to prevent the Gallis good faith efforts to properly use their private horse farm property. The personal motivations of an objecting neighbor are not a sufficient reason for this Board to deny the requested variance absent clear evidence of potential detriment to that neighbor's property. No such evidence exists in this case.

II. The Toporoff/Richman March 4, 2014 Appeal regarding the Galli Barn

A. An Undated, Handwritten, Unsigned Notation Does Not Constitute an Appealable Determination

An undated, handwritten and unsigned notation in an existing document in a file does not constitute a valid "order, requirement, decision or determination." Moreover, the appeal assumes, but cannot state with any certainty, that the notation was made by the Building Inspector. Town Law §267-a limits the jurisdiction of an appeal to the Zoning Board of Appeals as

> ".....appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article."

Moreover, Town Law §267-a mandates that an appeal be taken within sixty days of the date of filing of such determination. Because the notation does not constitute an appealable determination, this Board does not have jurisdiction to consider this matter and the appeal must dismiss this appeal. Moreover, Toporoff/Richman cannot demonstrate that the "appeal" is timely, since the note is undated

B. The Appeal Must Be Dismissed

Should the Board decide to consider the appeal, it must be dismissed on its merits because (i) the appeal is based upon an erroneous application of the Town Code; and (ii) there has been no illegal expansion of the barn.

Toporoff/Richman asserts that the 1997 Certificate of Occupancy No. 7998A issued relating to the barn was erroneously issued because the barn "use" lapsed when no horses lived in the barn for a period of time before the Gallis purchased the Premises. This argument, while creative, is completely erroneous. The barn is not a pre-existing nonconforming use (such as a pre-existing gasoline station in a neighborhood that has since been zoned as a residential zone) but it is a pre-existing, nonconforming structure which does not conform to current setback regulations. The Bedford Town Code defines a nonconforming use as:

> A use of a building or of land that does not conform to the regulations **as to use in the district** in which it is situated, which use was lawful at the time this chapter or amendments thereto became effective. (Emphasis supplied) Bedford Town Code, §250-3.

A barn is an accessory structure, which is defined under the Code as a "building subordinate to the principal building on the lot and used for purposes customarily incidental to that of said principal building." Bedford Town Code, §250-3. In fact, barns are specifically permitted accessory structures in the R-4 zoning district. (*See* Town Code §125, Attachment 3, Schedule of Use Regulations-Accessory Uses, which specifically enumerates barns as accessory structures).

The barn was erected 23.7± feet from the Alice Road property line, before the enactment of the fifty foot building setbacks now required pursuant to Town Code. Town Code 125-11(5)(d) defines nonconforming structures as:

> Dimensional nonconformity. A building or structure that is conforming in use, but does not conform to the lot area, effective square, yard dimension, height, setback, coverage, off-street parking, loading or similar dimensional requirements of this chapter, shall be deemed to be dimensionally nonconforming. No permit shall be issued that will result in the increase of any dimensional nonconformity, but any building or structure or any portion thereof may be altered to decrease its dimensional nonconformity. An increase in the height of a dimensionally nonconforming structure shall constitute an increase in dimensional nonconformity and, consequently, no permit shall be issued authorizing such an increase in height.

The barn is conforming in use, but does not conform to the setback requirements, therefore, is a permitted preexisting structure (not a nonconforming use) which is dimensionally nonconforming. The application of §125-11C(4) is erroneous, as that section applies to a

discontinuance of a nonconforming uses, and does not apply to dimensionally nonconforming structures.

C. <u>There has Been No Expansion of the Nonconformity of the Barn</u>

Toporoff/Richman contend that the barn has been illegally expanded because there is a new "bump out" and because the block pavers were not there when the Gallis purchased the Premises. The argument is incorrect because, even if it were true, which it is not, the bump out and the "block pavers"(the block pavers are actually a pre-existing fenced grooming area). do not increase the dimensional nonconformity of the barn.

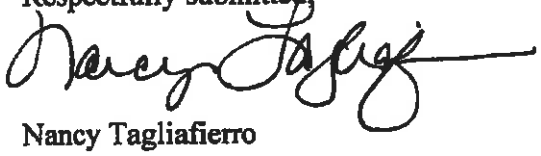
The Barn lies within 23.7 feet of the lot line of the Premises adjoining Alice Road, rather than the fifty feet currently required under the Town Code. The Town Code prohibits the expansion of the nonconformity of a structure, but not the alteration of such a structure. Pursuant to Town Code Sec. 125-11(5)(d) "[n]o permit shall be issued that will result in the increase of any dimensional nonconformity..." The only way to increase the nonconformity of the barn, therefore, would be to increase its size so that it further reduces the setback from the existing 23.7 feet from Alice Road. Thus, if the Gallis expanded the grooming area with block pavers or added the bump out, <u>such would not increase the dimensional nonconformity of the barn.</u> Moreover, the patio was present, as depicted on the 1992 survey, (Exhibit "D") as an enclosed grooming area when the Gallis purchased the premises and the Gallis reduced the size of the grooming area. Furthermore, even though the enclosure of an already existing overhang supported by columns (a/k/a the "bump out") is permitted, it will have been removed well before the special meeting on April 3, 2014.

III. Other Toporoff/Richman Appeals regarding Galli Property

With regard to the request for an interpretation or appeal from the August 6, 2013 determination (which was revised on November 15, 2013 based on a survey dated November 6, 2013 and submitted on November 12, 2013) of the Building Inspector, Town of Bedford, regarding the inclusion of wetland areas in calculating building and impervious surface coverage in accordance with Zoning Code Article III Section 125-14 and Section 125-50, the Gallis agree with the determination of the Building Inspector dated November 4, 2013 and request that the Board deny this appeal. With regard to the appeal from the Town of Bedford Building Inspector's determination that an accessory structure (shed) is 98 square feet as built, in accordance with Zoning Code Article V Section 125-50 and Article V Section 125-27 C, the Gallis also request that this appeal be denied,.and the Building Inspector's calculation, as confirmed by the November 6, 2013 survey of the Premises, be confirmed and approved. Finally, with regard to the suggestion that the presence of a second driveway is inconsistent with the character of the neighborhood, three of the four residences on Alice Drive, including Toporoff/Richman, have two driveways.

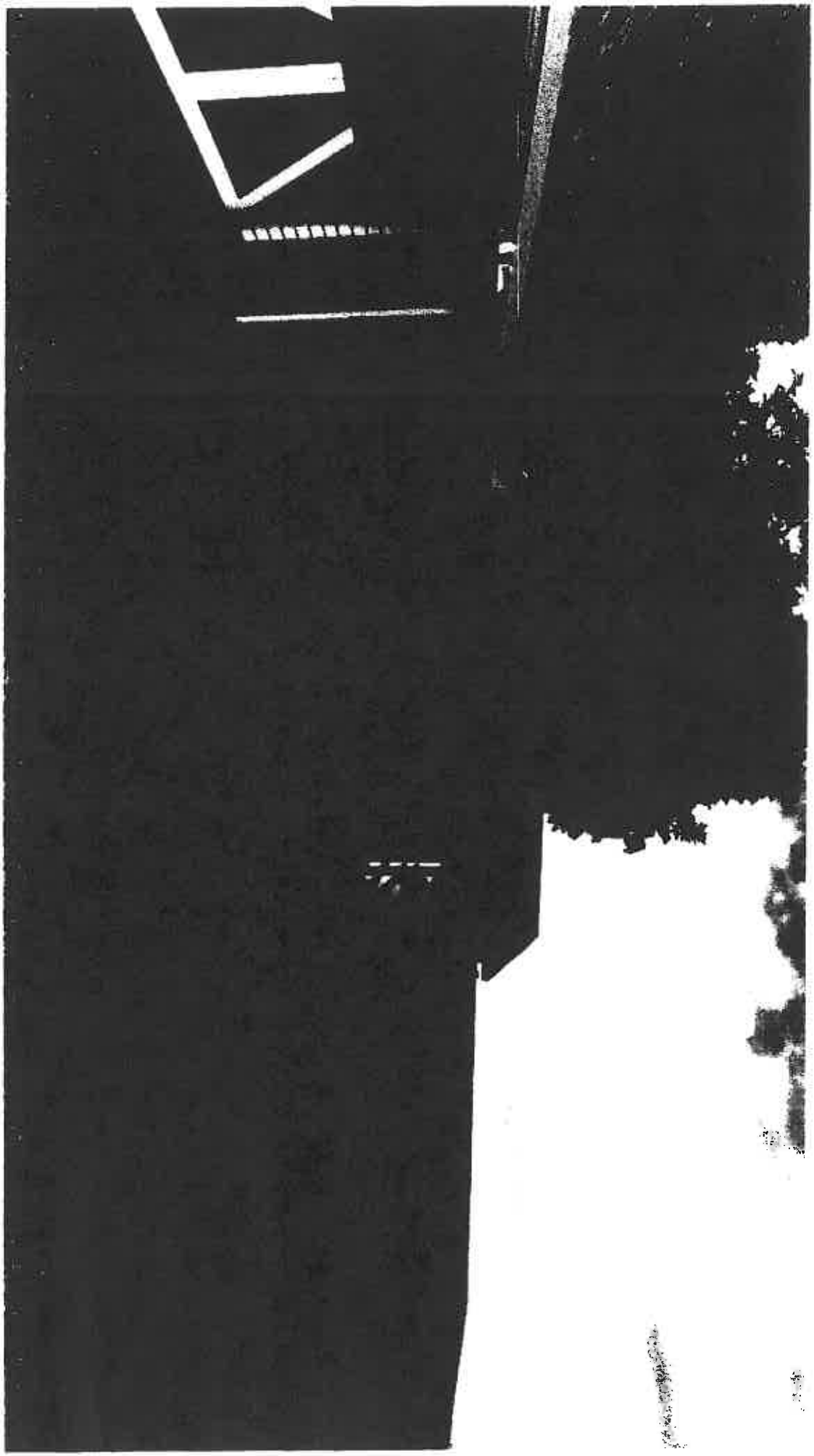
We look forward to discussing these issues with you at the April 3, 2014 meeting.

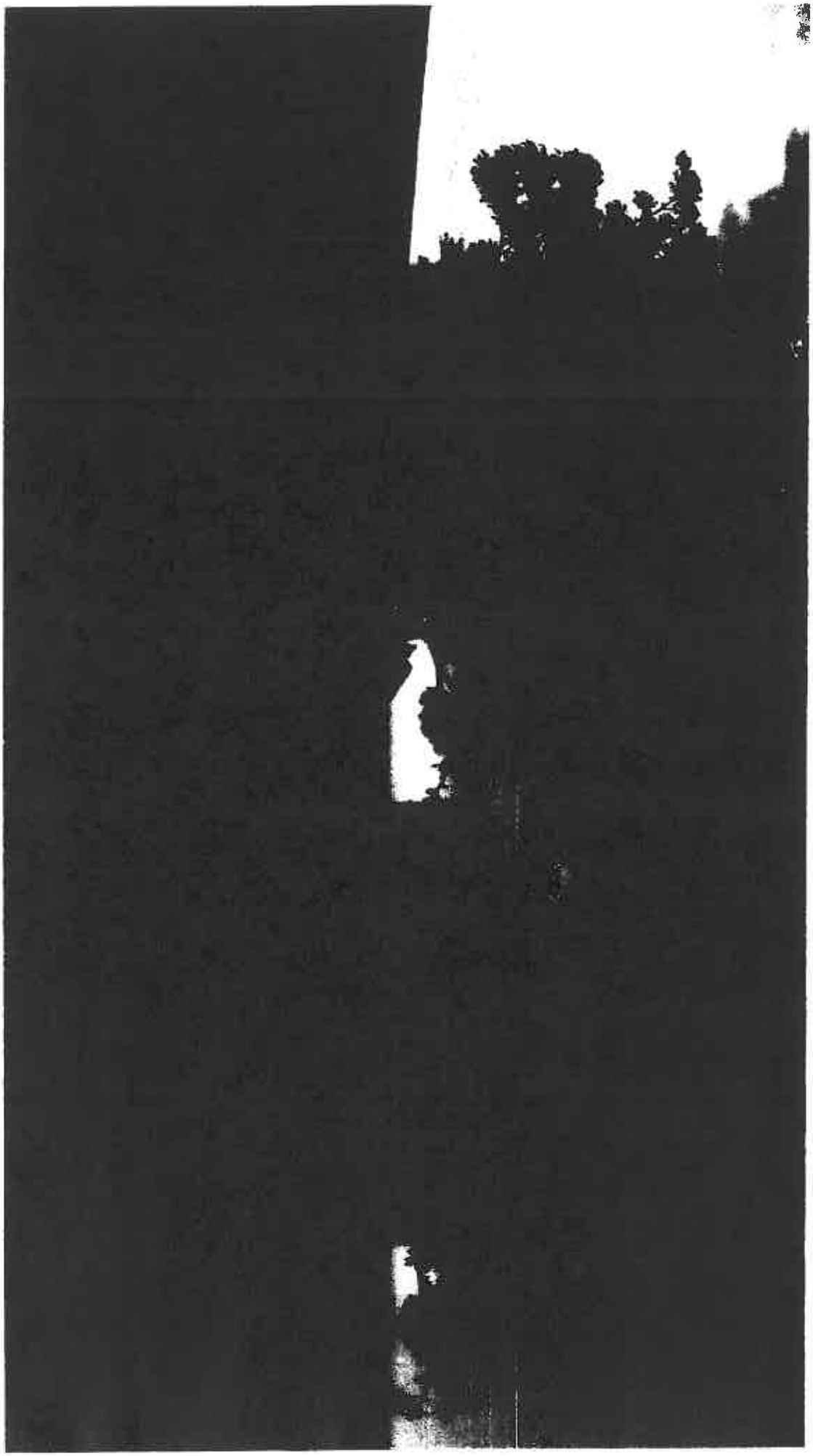
Respectfully submitted,

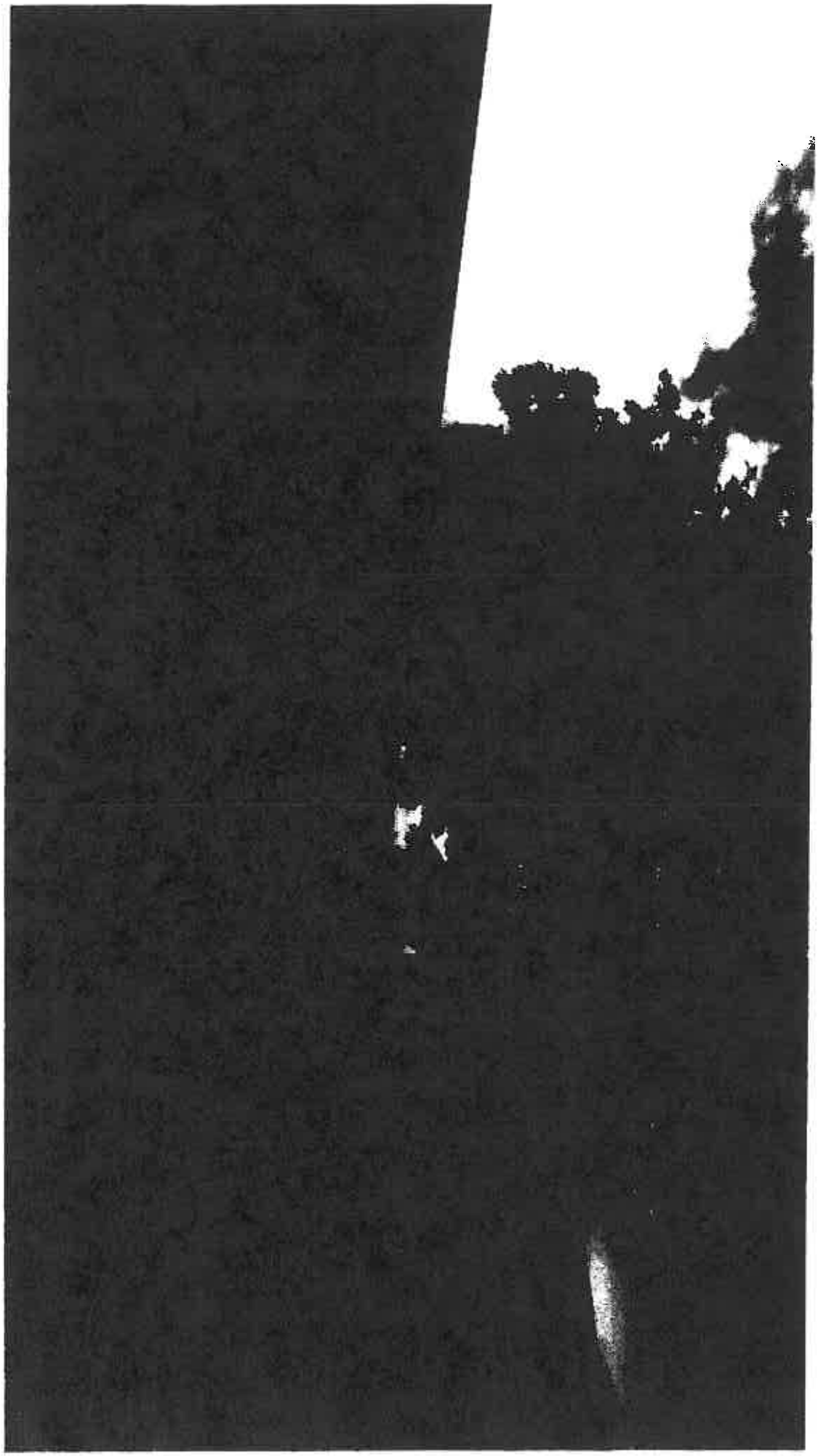


Nancy Tagliafierro

EXHIBIT 'A'







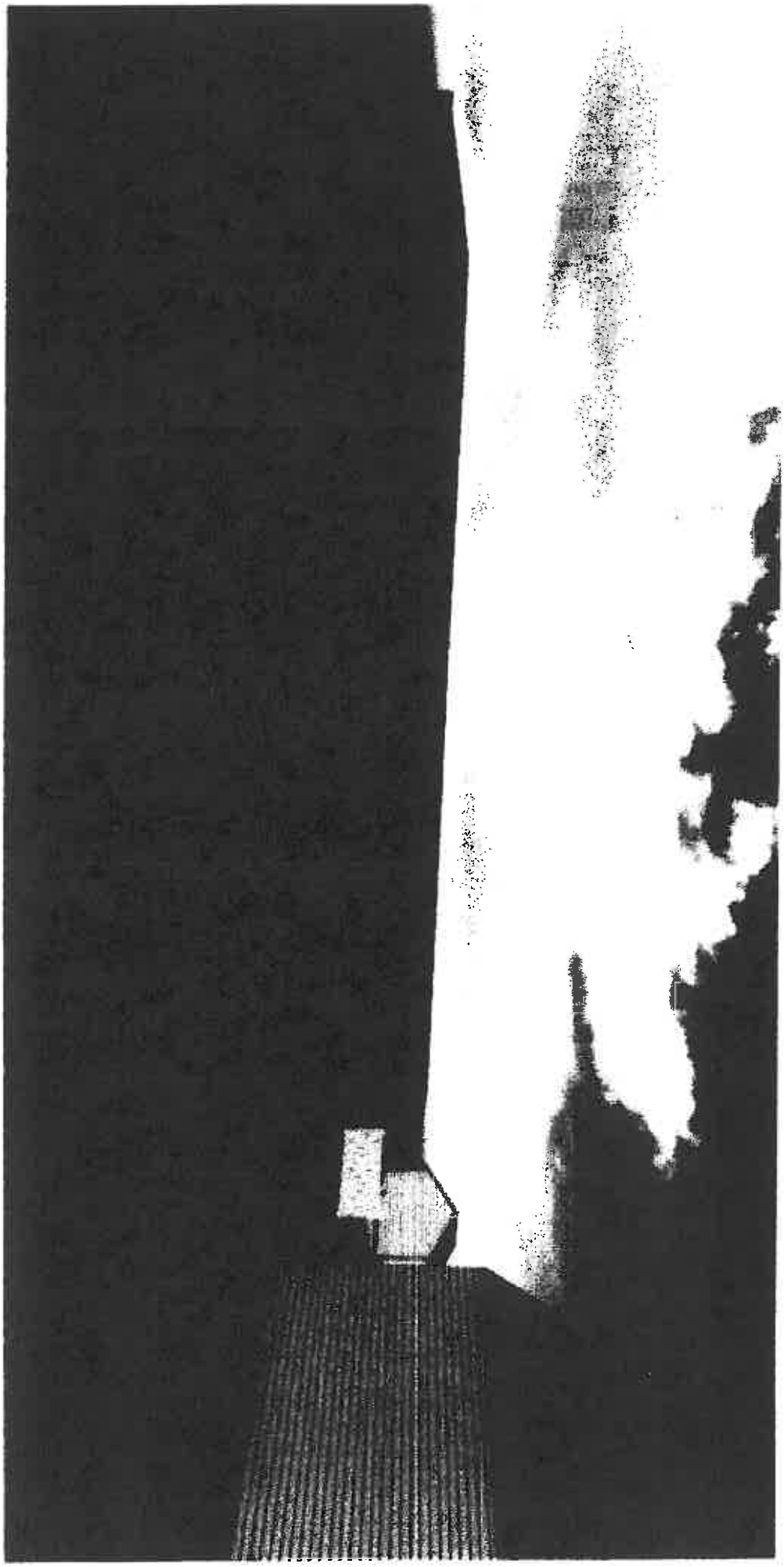


EXHIBIT 'B'

MDRA

MATTHEW D. RUDIKOFF ASSOCIATES, INC.
Offices in New York and Connecticut
Tel: 845.831.1182 • Fax: 845.831.2696 • willaga@rudikoff.com
www.rudikoff.com
Planning • Environment • Development

March 21, 2014

Suzanne Galli
341 Succabone Road
Bedford Corners, NY 10549

RE: **Wetland and Environmental Impact Assessment**

Dear Ms. Galli:

Matthew D. Rudikoff Associates, Inc. (***MDRA***), as requested, has completed a Wetland and Environmental Impact Assessment of your proposed plans to install a **"manure storage area"** within the 50-foot side yard setback area in the southwest end of your 341 Succabone Road property located in the Town of Bedford, New York. The property is depicted on the survey titled: Survey of Property Situate at 341 Succabone Road, Situate in the Town of Bedford, Westchester County, New York, as prepared by Robert S. Johnson, P.L.S., November 6, 2013.

Given the location of the proposed manure storage area situated within an applicable 50-foot setback area along the westerly side of the property pursuant to Zoning §125-25(B)(3)(b) (relating to the location of horse manure storage area), due to the unique combination and substantial regulatory constraints over a majority of the property, an area variance is being sought from the Bedford Zoning Board of Appeals. The location of the proposed horse manure storage area has also been selected due to its close proximity to the existing barn with existing driveway access via Alice Road.

MDRA has reviewed the above noted existing conditions property survey, the proposed development plan for the manure storage area, various regulatory standards pertinent to the site location and development of the property, aerial photography of the property, published maps and other related information. ***MDRA's*** Senior Biologist, Joseph T. Bridges, PhD also visited the property on March 13, 2014 with you to personally review and assess the site, the existing field conditions, and surrounding neighborhood area.

Attached please find ***MDRA's*** Wetland and Environmental Impact Assessment of the project and site.

Very Truly Yours,

MATTHEW D. RUDIKOFF ASSOCIATES, INC.

William Agresta, AICP, Director of Planning

Joseph T. Bridges, Phd, Senior Biologist

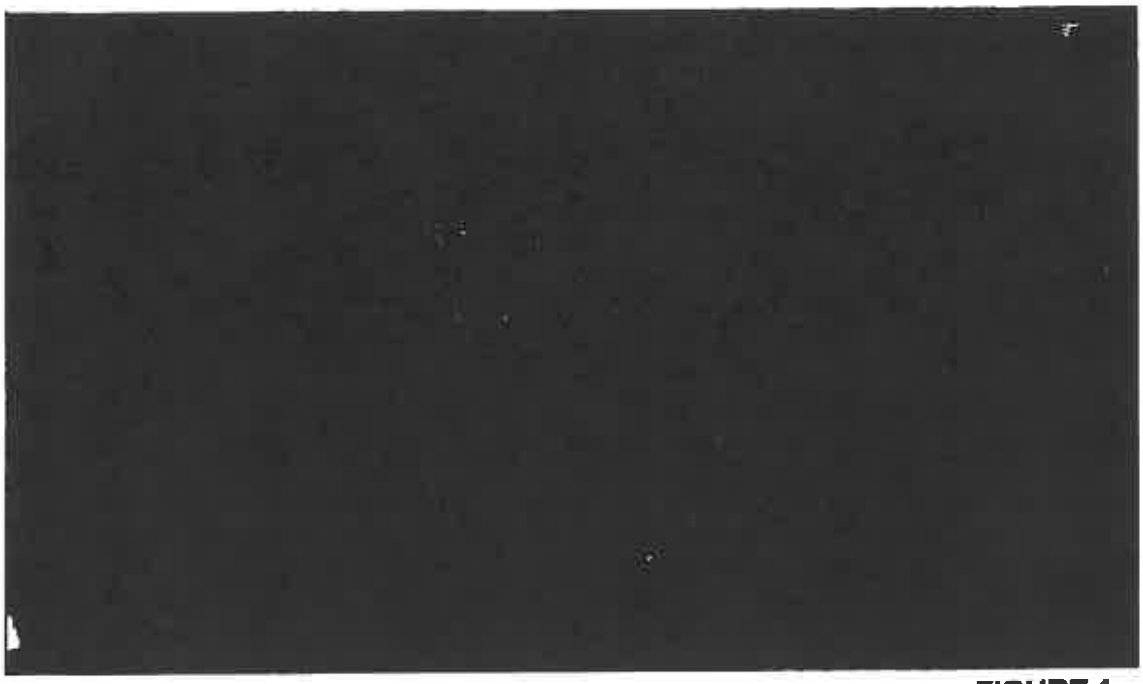
cc: Nancy Tagliafierro, Esq., Hogan & Rossi

Wetland and Environmental Impact Assessment

Galli Property – 341 Succabone Road
Town of Bedford, Westchester County, New York

1. Proposed Manure Storage Location Within Required 50-Foot Setback

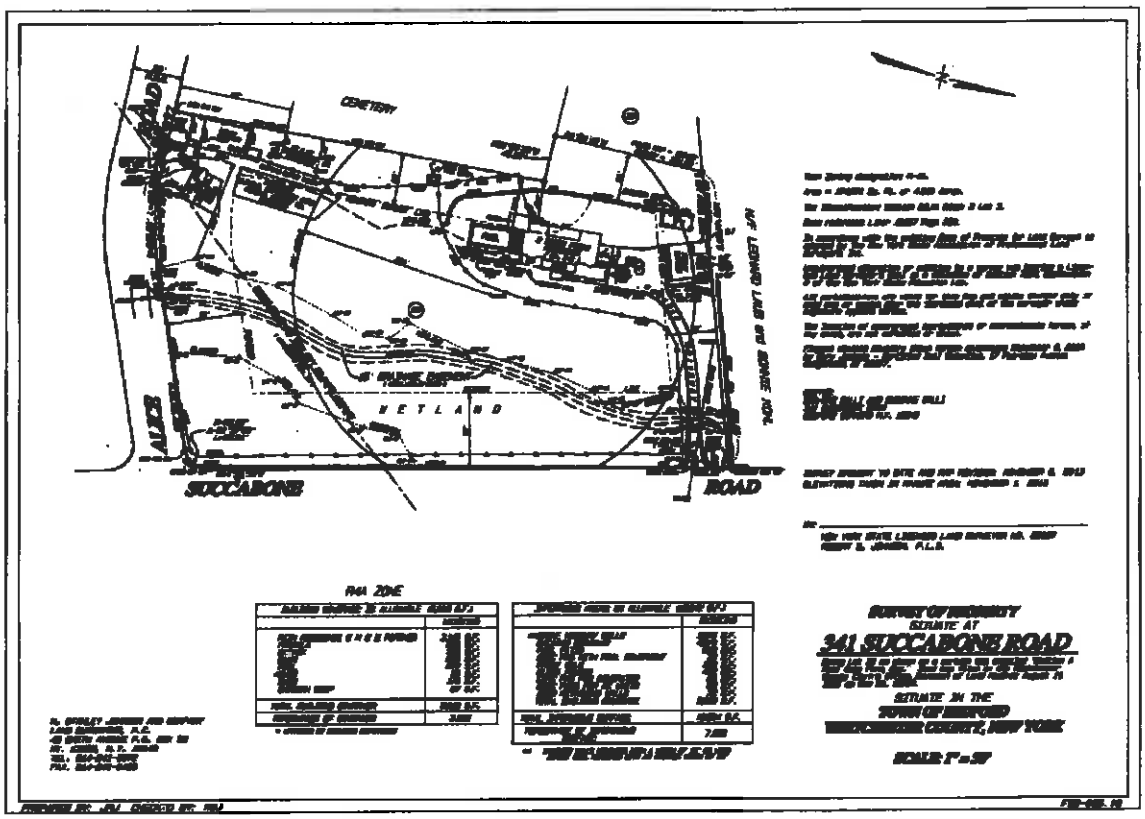
Stefano and Suzanne Galli, owners of property at 341 Succabone Road, in the Town of Bedford (***refer to Figure 1 for an aerial view of the subject property***), are seeking an area variance from the Town of Bedford Zoning Board of Appeals in order to install a "**manure storage area**" within an applicable 50-foot setback area as required pursuant to Zoning §125-25(B)(3)(b) (relating to the location of a horse manure storage area). The location is in the southwest end of the property near Alice Road along the side yard. The requested area variance is necessitated due to the unique combination and substantial regulatory constraints over a majority of the property. The location has also been selected due to its close proximity to the existing barn with existing driveway access via Alice Road.



Westchester County GIS

FIGURE 1

The property is depicted on the survey titled: Survey of Property Situate at 341 Succabone Road, Situate in the Town of Bedford, Westchester County, New York, as prepared by Robert S. Johnson, P.L.S., November 6, 2013. ***Refer to Figure 2.*** The location for the proposed manure storage facility has been selected (necessitating the need for the area variance) due to the unique combination of substantial regulatory constraints affecting a majority of the property. The location has also been selected due to its close proximity to the existing barn with existing driveway access via abutting Alice Road.



Survey of Property – H. Stanley Johnson and Company

FIGURE 2

MDRA has reviewed the above noted existing conditions property survey, the proposed development plan for the manure storage facility, various regulatory standards pertinent to the site location and development of the property, aerial photography of the property, published maps and other related information. In addition, ***MDRA's*** Senior Biologist, Joseph T. Bridges, PhD also visited the property on March 13, 2014 with the property owners to personally review and assess the site, the existing field conditions, and surrounding neighborhood area.

The above noted regulatory site constraints of the property affecting the placement of the proposed manure storage facility include the following (***as shown on Figure 3***):

- Minimum 50-foot zoning setback for a "**manure storage area**" per §125-25(B)(3)(b);
- An approved active septic trench and subsurface septic system (reserve) expansion area (Westchester County Department of Health Permit #B2006-07) located near the outer wetland buffer boundary at the southwesterly end of the property;
- A wellhead located near the center of the subject property, which further constrains the placement of a manure storage facility because the New York State Health Department regulations pertaining to the protection of wellheads, states that the minimum separation distance from a wellhead for the storage of manure shall be 200 feet; and
- Town regulated wetlands, watercourses and associated 100-foot wetland/watercourse buffers, where manure storage facilities are "**prohibited**" according to the Town of Bedford Wetlands and Watercourses Law, §122-8(A).

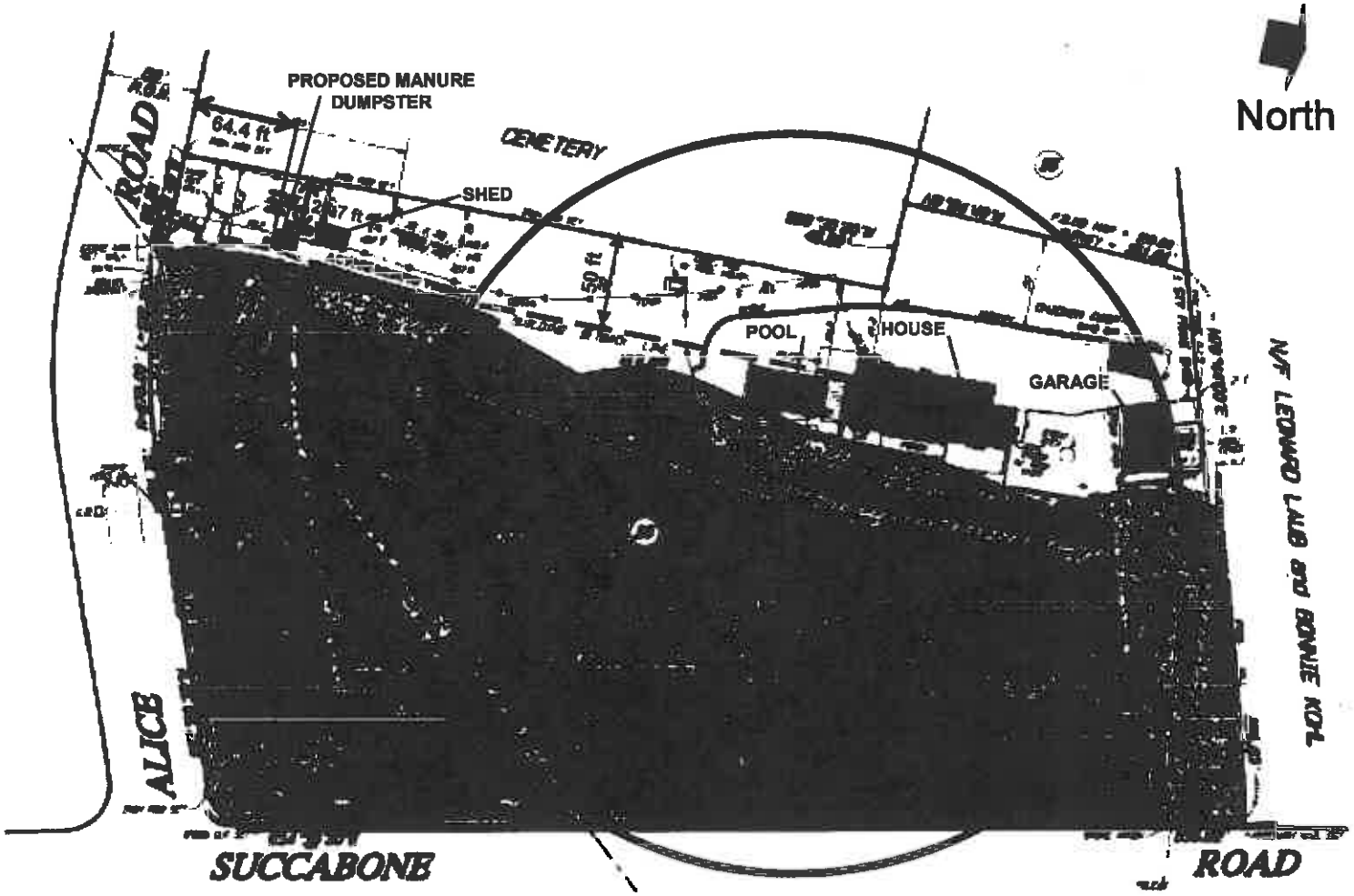
Collectively, the above limit the siting of a manure storage area to an area of less than approximately 5 percent of the overall property, most of which is within the westerly setback.

Minimum 50-foot Zoning Setback (manure storage area) - §125-25(B)(3)(b)

Bedford's Zoning Law requires a minimum 50-foot setback for a "**manure storage area**" relating to horses. ***Refer to Figure 3***. However, due to the substantial coverage of most of the subject property by areas of regulated wetland, watercourse and 100-foot wetland/watercourse buffer, as well as other regulatory constraints, few areas are available, certainly none in reasonable proximity to the existing barn or which would not otherwise require a greater extent of permanent site disturbance and alteration of regulated wetland buffer for access and placement of a structure without encroaching into the setback area. Notwithstanding, the proposed setback encroachment will have minimal, if any, environmental impact on the immediate abutting property along the side yard, as it consists of an abandoned cemetery which has converted to hardwood forest, nor will it have any environmental impact on any other premises situated south of Alice Road. Visibility of the proposed manure storage facility will also be minimally visible from all points surrounding it.

Septic System Expansion Area

An approved subsurface septic disposal expansion area (Westchester County Department of Health Permit #B2006-07) is located near the outer boundary of the wetland buffer at the southwesterly end of the property, and near the location of the proposed manure storage facility. ***Refer to Figure 3***. There also is an active septic trench on the western most edge of the expansion area. Although the location of the expansion area would satisfy the minimum setbacks from both the front yard along Alice Road and the side yard along the woods of the abandoned cemetery, the area is entirely within a prohibitive wetland buffer, and as an approved septic expansion area, no structures can be placed upon or located within a minimum distance thereof (hence why the manure storage facility is proposed to be located in the side yard setback). Further, the driving of vehicles over or upon the expansion area is also not advisable to ensure that the underlying soils remain viable and non-compacted for reliable septic treatment.



Base Survey Map data taken from Survey of Property prepared by H. Stanley Johnson and Company Land Surveyor, P.C., dated November 6. 2013.
Wetland Boundary by Mary Jaehnig, Certified Soil Scientist, September 9, 2003, reconfirmed 2013.

[redacted]

Well Location and Wellhead Protection Requirements

According to the standards listed in Table 1 (Separation Distances to Protect Water Wells from Contamination) of the New York State Department of Health, Part 5, Subpart 5-1, Standards for Water Wells, Appendix B Section 5-B.2, Water Well Location and Protection, the minimum horizontal separation distances from potential sources of contamination shall be maintained. The separation standard for "storage for manure piles" is 200 feet (100 feet for managed manure piles that are controlled pursuant to regulation (which otherwise involve significant and costly improvements and controls). ***Refer to Figure 3***. In addition to sound environmental policy and recommended public heath and conservation best management practices as discussed herein, common sense would dictate not locating a manure storage facility in proximity to a water supply well, much less within the regulatory 200-foot separation distance. Regardless, much of the area within 200 feet of the existing well separation distance (and all of the area within 100 feet) is within the prohibitive wetland buffer area of the subject property as discussed below.

Town Wetland, Watercourse and 100-foot Wetland/Watercourse Buffer Areas

A regulated watercourse flows northward within a dedicated easement along the length of the property. ***Refer to Figure 3***. Adjacent wetlands have been delineated on both sides and along nearly the entire length of the watercourse drainage easement. The drainage easement, bordering wetlands and associated 100-foot wetland buffer comprise at least approximately 80% of the property.

The site wetlands consist of a wet meadow reported to be dominated by soft rush, sensitive fern and other wetland herbs. Wetland boundaries were initially delineated in 2003 by Certified Soil Scientist, Mary Jaehnig, which delineation was reconfirmed by Ms. Jaehnig in 2013 (based on the wetland delineation reports prepared by Ms. Jaehnig).

According to the Soil Survey of Putnam and Westchester Counties, New York (Seifried 1994), wetlands on the property are underlain by Leicester loam, 0 – 3 percent slopes, stony (Map symbol LcA). This soil is described, in part, as nearly level, very deep and somewhat poorly drained and poorly drained. The water table is within a depth of 1.5 feet from November through May. Permeability is moderate or moderately rapid. Soil wetness and permeability preclude its suitability for storage of organic materials that could readily leach to shallow groundwater.

Site wetlands and their associated regulated buffers provide a number of important ecological services, namely:

- Flood storage and gradual metering of storm discharges to downstream areas;
- Protection of surface and subsurface water resources and groundwater recharge;
- Support of microbial populations (wetland bacteria and fungi) that facilitate decomposition of organic wastes and improve water quality;
- Trapping and binding of sediments; and
- Support for a diversity of wetland plants that take-up excess nutrients and detoxify pollutants.

Because of these and other important services provided by wetlands, which protect the public health, safety and welfare, the Town of Bedford (like other municipalities) has determined the need to protect wetland and watercourse resources through regulation of land altering activities. ***Refer to Section 5 for further details regarding "Applicable Town of Bedford Wetland and Watercourse Law Provisions."*** Most activities require a Wetland Permit, while some activities, such as the reasonable use of water resources by farmers and other land owners for grazing and watering livestock, and fishing (as listed in §122.8(C)(4) of the Town's Freshwater Wetlands and Watercourses Law), are permitted as of right. However, certain activities, such as the location and placement of manure stockpiles or similar animal storage areas (§122-8(A)) within a wetland, watercourse or 100-foot wetland/watercourse buffer area are specifically "**prohibited**" due to their inherent impacts on these resources, particularly on water quality. ***For further details on the "Potential Environmental Impacts of Manure" refer to Section 2, and on the "Potential Water Quality Impacts upon Water Supply Resources" refer to Section 3.***

As for other activities in a Town-regulated wetland, watercourse, or wetland/watercourse buffer area that might be permitted (e.g., proposed grading/alteration of existing contours or an increase in impervious surface as for a new driveway to access a manure storage area location elsewhere on the property), it would fall to the property owner as a prospective wetland applicant to demonstrate why the activity could not be located outside the regulated wetland/watercourse buffer area. Emphatically, the property owner would have the burden of proof of demonstrating that any proposed activity requiring a Wetland Permit would not adversely affect: "... *the general health, safety or economic and general welfare of the residents of Bedford or its neighboring communities.*" Additionally, the evaluation of feasible alternatives avoiding wetlands would also be required as part of a typical Wetland Permit application review. Such alternative evaluation, particularly for properties as constrained as the Galli property, would typically include the seeking of an area variance in order to avoid wetlands and other site environmental constraints of the parcel.

The area selected for the manure storage area consequently requires an area variance. However, in consideration of the full extent of environmental constraints imposed by wetlands and wetland buffer, the wellhead protection zone, and the active septic trench and reserve expansion area, the proposed location for manure storage appears to be the least environmentally constrained area on the property ***as detailed below in Section 4,*** **"Environmentally Suitability of the Proposed Manure Storage Location."**

2. Potential Environmental Impacts of Manure

Improperly managed horse and other livestock manure can pollute water and soil. Nutrients in manure, particularly nitrogen and phosphorus containing compounds, can leach into soils and be carried by runoff into wetlands streams and waterbodies. In uncontrolled amounts, nitrogen and phosphorus rich compounds can lead to groundwater and surface water pollution. Nutrient enrichment or eutrophication of aquatic resources can trigger algal blooms and excessive weed growth, foster excessive growth of undesirable bacteria and fungi, induce high BOD (biological oxygen demand) levels, reduce/deplete surface waters of vital oxygen, lead to fish kills, reduced native biodiversity and result in the formation of noxious harmful gasses such as hydrogen sulfide and methane, in sediments. High levels of nitrates in drinking water (in excess of the federal potable water limit of 10 milligrams/Liter) can be deleterious to human health.

Improperly managed manure can also provide a breeding environment for potential intestinal pathogens (e.g., *Escherichia coli*, *Salmonella spp*, *Cryptosporidium parvum*, *Giardia lamblia*), which can contaminate groundwater and surface water supplies. Unmanaged manure can also become a breeding ground for parasites and insects, including biting fly larvae, and attract vermin.

Because of the potential for excessive nutrients and pathogens in manure to infiltrate to groundwater or be transported to surface waters in runoff, many watershed management agencies (e.g., Cooperative Extension Agencies, the Watershed Agricultural Council, USDA Natural Resource Conservation Service, New York City Department of Environmental Protection) advise that livestock manure, including that of horses, be properly managed and stored in well-contained facilities located in well drained locations well away (100 feet or more) from wells, streams, wetlands, ponds and other aquatic resources.

3. Potential Water Quality Impacts upon Water Supply Resources

The subject property is located in the protected Croton Watershed (New York City Watershed - East of Hudson). The Watershed Agricultural Council (WAC) is a nonprofit agency that works with farm and forest landowners in the New York City Watershed region to protect water quality by assisting in the planning and implementation of conservation projects (such as manure storage facilities) on local farms. According to WAC one of its main goals is "to keep hundreds of thousands of pounds of manure from doing what it does naturally: Flowing downhill, and straight into New York City's unfiltered drinking water system." The WAC is funded by The New York City Department of Environmental Protection, the U.S. Department of Agriculture, the U.S. Forest Service, and other federal and foundation sources. These government agencies and other entities are spending millions of dollars keeping horse, cow and other farm animal manure out of water resources through assistance to private landowners in the design and implementation of protective measures and conservation Best Management Practices (BMPs).

The objective of manure management BMPs is to reduce environmental risks (e.g., ground/surface water contamination, nutrient loss and odor) associated with manure storage. Exposed or uncontrolled manure can result in adverse environmental impacts through the transport of nitrogen and phosphorous. Excreted nitrogen that cannot be absorbed by plants can migrate to groundwater or enter surface waters in runoff, while excess phosphorous will not leach through soil like nitrogen, but rather will run off into surface water sources. Additionally, of significant concern is the potential presence of intestinal pathogens, as noted above. As such, manure is a very serious pollutant when it is not managed correctly. For these reasons, the above noted watershed management agencies, recommend that manure storage areas should not be situated near water sources (streams, wetlands, wells, ponds), and the handling and containment of manure appropriately, either before it is transported, spread, or as it undergoes a composting process, is crucial to maintaining environmental and sanitary conditions. In fact, many local municipalities, including the Town of Bedford, legislatively require significant separation distances (i.e., 100 feet) from wetlands, watercourses and waterbodies; and prohibit animal manure storage facilities in regulated upland buffers adjacent to wetlands and watercourses.

If not properly dealt with, accumulated manure can cause health, odor, and water quality problems. The bacteria, phosphorous, nitrogen, and organic matter in manure poses risks to aquatic organisms and humans. A single horse can produce 50 pounds of manure per day which translates to 11 cubic yards and 9 tons annually. The manure and bedding produced by this horse in a year can exceed 25 cubic yards. This would require a storage area of about 12 feet by 12 feet with an accumulated depth of 3 to 5 feet for one year of storage, depending upon how much decomposition and compaction of the manure takes place. (*Storing Manure on Small Farms, Animal Manure Management, August 19, 2013*).

Options for addressing disposal of manure include the collection of the waste daily and loading it into a spreader for distribution on cropland, hayland or pasture. However, this option is very time consuming, has minimal application on a small horse farm such as the Galli's, and must also be done regardless of the soil moisture, weather or time of year. Additionally, spreading on saturated soils compacts and compromises soil quality, while spreading on frozen soils can lead to offsite runoff of manure.

An alternative to daily spreading is to stockpile and store the manure for a period of time, at which point it may be spread or hauled away and utilized beneficially elsewhere, as is proposed in the instant application.

Further consideration in the selection of an environmentally suitable storage location includes the following:

- The location should be very convenient to the animal housing;
- The storage must be located well outside of any stream floodplain, wetland and water supply; and
- It is important to prevent manure from being washed down-gradient to aquatic resources (lakes, ponds, rivers, streams, wetlands, etc).

In summary, Exposed animal waste left in paddock fields or in uncontrolled stockpiles, poses serious threats to public health (i.e., environmental pollution to air and soil, and contamination of ground or surface water sources by nutrient overloading). Keeping water clean with simple, applicable, small farm-specific BMPs, including manure collection and storage stockpiling containment (such as in a dumpster as proposed by the Galli's), can greatly and effectively avoid, minimize and reduce such adverse impacts to water quality. This and other simple BMPs are applied to improve water quality and mitigate potential water pollution problems, thereby reducing waterborne pathogens, nutrients and sediments leaching into groundwater or polluting streams and wetlands, and thus keeping pollutants and bacteria out of local and regional water supplies. Much success in the protection of water quality in the New York City Watershed has been a result of the voluntary participation by private landowners such as the Galli's in the implementation of lot and farm appropriate conservation BMPs on their lands.

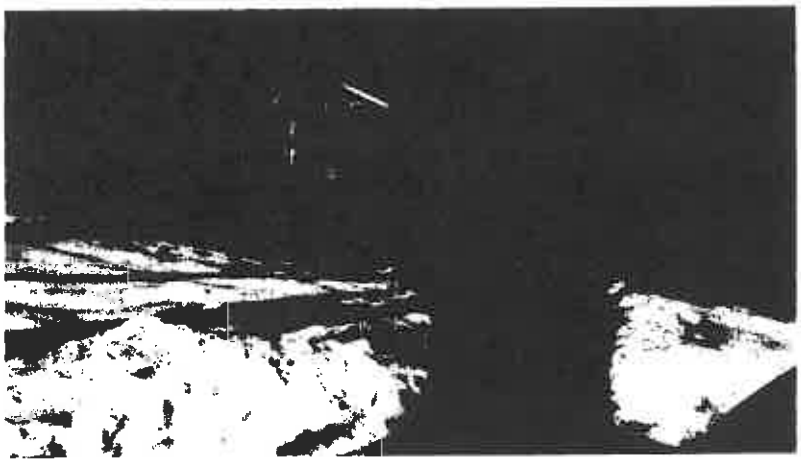
4. Environmentally Suitability of the Proposed Manure Storage Location

For the following reasons, the proposed manure storage facility has been sited in an environmentally suitable location on the highly regulated subject property:

- The proposed site location is unconstrained by regulated environmental features otherwise covering most of the site: wetlands, watercourse, wetland/watercourse buffer, wellhead protection separation, and reserve septic expansion area. ***Refer to Figure 3***.
- The proposed manure storage location is readily accessible by the existing driveway at the southwest end of the property near the existing barn (a recommended BMP).
- Only minimal site re-grading of previously disturbed soils would be required.
- No additional impervious surfaces would be required to be established or constructed to provide vehicle access to the proposed location of the manure storage facility, thereby avoiding further site disturbance and impact to wetland buffer areas.
- The proposed location is sparsely vegetated and no trees will need to be removed.
- The location for the proposed storage area is gently sloping and the facility could be set into the slope to further reduce its visibility, while maximizing its functionality with the least impact (***refer to Figure 4***).

FIGURE 4

View looking northwest taken from the interior of the site on the existing driveway access. The location of the proposed manure storage facility is to the immediate left of the shed.



- The facility is proposed in the most logical setting, as far away from the limits of the prohibitive wetland buffer as reasonably possible, in close proximity to the existing horse barn, corral entrance and storage shed.
- The manure storage area is proposed within a Zoning 50-foot setback located along the westerly side of site which abuts an abandoned cemetery with no public access, and which after many years has reverted to hardwood forest.
- The location is well screened from the southerly driveway off Alice Road by the existing barn and a row of conifers and hardwood trees.

5. Applicable Town of Bedford Wetland and Watercourse Law Provisions

Like many surrounding municipalities in Westchester County and beyond, the Town of Bedford regulates the use of, activities upon, and disturbances occurring within, adjacent to, and affecting wetlands and watercourses. The stated legislative purpose of the **Freshwater Wetlands Law of the Town of Bedford** (Chapter 122 of the Code of the Town of Bedford) is as follows:

> *"...to promote the health and welfare of the citizens of Bedford by **preserving and protecting the wetlands** of the Town through careful regulation and control **so that they may continue in their natural functions** and to protect property from damages caused by flooding and other losses due to wetland destruction."*
>
> § 122-1, Title; Purpose

The Legislative Findings including in §122-2(C) further states:

> *C. Wetlands protection is a matter of concern to the entire Town and the establishment of regulatory and conservation practices in this critical area **serves to protect the public health, safety and welfare** by ensuring review and regulation **of any activity on wetlands which might adversely affect that health, safety and welfare**.*
>
> § 122-2(C), Legislative Findings

The declared Intent of the regulation standards included in the Bedford Freshwater Wetlands and Watercourses Law is stated as follows:

> *A. It is declared to be the intent of the Town of Bedford to control, protect, preserve, conserve and regulate the use of wetlands (as defined below) within the Town of Bedford **to ensure that the benefits found to be provided by wetlands** as set forth in § 122-2 hereof **will not be lost** and to protect the important physical, ecological, recreational and economic assets of the present and future residents of the Town, and so as to protect the broader public interest.*
>
> § 122-3(A), Intent

Most land use and construction related activities impacting wetlands, watercourses and wetland/watercourse buffers, as defined by the Town of Bedford of Freshwater Wetlands and Watercourses Law requires a Wetland Permit. Only a limited number of activities are "permitted by right" and exempt from obtaining a Wetland Permit. However, a number of activities, including the instant proposal for a manure storage facility, are simply outright "prohibited" (§122-8(A), Prohibited Acts of the Town's Freshwater Wetlands and Watercourses Law), as follows:

> A. *Prohibited acts. It shall be unlawful to place or deposit materials or chemical wastes or to introduce influents of sufficiently high thermal or chemical content as to cause deleterious ecological effect in any wetland or the wetland/watercourse buffer, including without limitation, the installation of a septic tank or fields, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland, watercourse or wetland/watercourse buffer.* ***It shall also be unlawful to locate*** *animal feedlots or pens,* ***manure stockpiles or similar animal storage areas within a wetland, watercourse or wetland/watercourse buffer****.*
>
> § 122-8(A), Prohibited Acts

As such, even should the Town want to allow the installation of a manure storage facility in proximity to a wetland or watercourse (i.e., within a regulated 100-foot wetland/watercourse buffer area), ignoring local and regional recommendations for application of best management practices establishing sufficient separation, the Town would be unable to grant such a permit as its own regulations legislatively "prohibit" manure storage facilities within "a wetland, watercourse or wetland/watercourse buffer."

MDRA

RESUMES OF KEY PERSONNEL

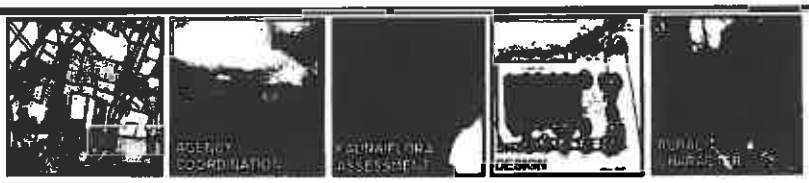
Matthew D. Rudikoff Associates, Inc.

www.rudikoff.com

Tel: 845.831.1182
Fax: 845.831.2696

Planning • Environment • Development

MDRA



CORPORATE PROFILE

INTRODUCTION

Matthew D. Rudikoff Associates, Inc. (***MDRA***) assists public, non-profit, institutional and private clients in a wide range of services encompassing environmental resource analyses, planning and zoning, real estate development, social and cultural facilities planning, and economic development. ***MDRA*** provides extensive and comprehensive community planning services, including landscape planning, open space resource management, park planning, unit management plans, subdivision / site plan design and review, comprehensive / master planning, ordinance writing, infrastructure planning, preparation of NEPA and SEQR environmental documents and related studies (e.g., fauna and flora identification, water quality impact assessment, traffic studies, wetlands identification and delineation studies, natural resource assessment, development feasibility studies, historic and cultural assessments, etc), waterfront development analysis, economic and community development activities, solid waste planning, and water and sewer utility planning and administration.

MDRA also has extensive experience in administering all procedural aspects of environmental reviews, including preparation of notices, decision documents, maintenance of environmental review records, as well as effective public participation and visioning strategies.

CORPORATE PHILOSOPHY

MDRA provides consulting services which adhere to the highest standards for professional quality and integrity. Projects are approached and managed with respect for the regulatory and procedural context within which the work will be performed and with equal sensitivity to the client's objectives and constraints. Effective communication with the client is maintained throughout the assignment to enhance strategic decision-making, bringing the job to its most successful conclusion.

ASSIGNMENT POLICY

MDRA undertakes its client assignments as socially responsible consultants. Toward that end we will not accept engagements whose objectives contradict these values. During the course of consultant engagements we will not advocate, represent, or recommend positions or actions or make statements which contradict these values; we will not accept work schedules or deadlines which would necessitate or cause a compromise in the quality or breadth of the work appropriate to the task.

MDRA

PLANNING & CONSULTING SERVICES

MUNICIPAL, NON-PROFIT AND PRIVATE PLANNING SERVICES

- Comprehensive Planning & Zoning
- Waterfront Planning & Permitting
- Municipal Consulting & Project Reviews
- Ordinance Writing & Amendments
- Community / Economic Development
- Grant Writing & Administration
- Solid Waste & Recycling Services
- Sustainable Planning Strategies
- Affordable Housing
- Public Incentives for Economic Development Services
- Project Master Planning
- Subdivision & Site Plan Services
- Sustainable Development Solutions
- Litigation Support
- Expert Testimony
- Development Feasibility Studies
- Real Estate Due Diligence
- Permit Reconnaissance & Management
- Land Conservation Strategies
- Presentations & Training Seminars

ENVIRONMENTAL CONSULTING

- NEPA & SEQRA Compliance
- Environmental Impact Statements
- Natural Resource Inventories
- Wetlands Delineations & Permits
- Endangered Species Assessments
- Cultural & Historic Resource Assessment
- Development Feasibility Studies
- Unit Management Plans
- Energy Efficiency & Planning Solutions
- Environmental Monitoring & Inspection
- Subdivision & Site Plan Services
- Wetland Mitigation Planning
- Local, State & Federal Agency Permit Applications & Coordination
- Municipal Regulation Review, Interpretation & Application
- Landscape Consulting Services

GEOGRAPHIC INFORMATION SYSTEM (GIS)

- Environmental Site Analysis
- Conservation Subdivision Planning
- Zoning Mapping & Analysis
- Critical Environmental Area Mapping
- Recreational Resources
- Municipal Infrastructure

PLANNING • ENVIRONMENT • DEVELOPMENT

Matthew D. Rudikoff Associates, Inc.
www.rudikoff.com

KEY PERSONNEL

William Agresta, AICP
Director of Planning

William Agresta has extensive experience in planning, zoning and land use development matters with a keen focus on regulatory processes, site planning, environmental design and project management.

CREDENTIALS/REGISTRATIONS

- Master of Landscape Architecture, concentrating in GIS, University of Massachusetts, Amherst, MA, 1987
- B.A., Environmental Science, Planning Minor, SUNY Plattsburgh,1984

PROFESSIONAL AFFILIATIONS

- American Planning Association
- American Institute of Certified Planners

FIELDS OF SPECIALIZATION

- Land Use and Environmental Planning
- Landscape Architectural Design
- Zoning and Land Development Regulations
- Resource/Growth Management
- Geographic Information Systems (GIS)
- Site Plan/Subdivision Design and Review
- Ordinance Writing and Interpretation

EXPERIENCE SUMMARY

Mr. Agresta has extensive experience as a consulting planner to local municipalities and private clients, with a focus on land use control, zoning compliance, site plan and subdivision review and design, development permitting, and guidance through the New York State Environmental Quality Review Act (SEQRA).

Mr. Agresta provides a strong combination of landscape architectural skills, site planning and zoning experience, matched with a thorough understanding of the requirements associated with multi-discipline projects.

As ***MDRA***'s Director of Planning, Mr. Agresta is involved in the management and supervision of the firm's planning work for all private and municipal clients, particularly through all phases of application review/approvals and SEQR process, including preparation or review of environmental assessments, environmental impact statements, permit applications, and zoning, planning, natural resource and other environmental impact analyses relating thereto.

Mr. Agresta has supervised, prepared and reviewed hundreds of SEQRA environmental assessments and studies, as well as prepared required SEQRA documents, notices and related Resolutions for both the firm's private and public clients. Director responsibilities include corporate management and supervision and coordination of all firm planners, scientists, environmental and administrative staff.

KEY PROJECTS

- Prepared a comprehensive EIS pertaining to the revitalization of a significant City of Beacon waterfront parcel owned by Scenic Hudson. The project will transform this historic waterfront hub and former industrial site with the development of significant public amenities, including substantial increased Hudson River access, and a state-of-art green technology hotel and conference center being designed by the international architect John Patkau. The development is proposed in partnership with Foss Group Beacon, LLC.
- Principal Planner in the preparation of an extensive EIS for Carvel Property Development, a 2,200 acre environmentally sensitive golf and recreation oriented second home community planned in northern Dutchess County, New York.
- Preparation of a comprehensive Open Space Map utilizing GIS for the Town of Lewisboro in Westchester County.
- Prepared a comprehensive Sign Ordinance adopted by the Town of Lewisboro.
- Chief author and manager for the preparation of a detailed EIS supporting the development of the "Palmer Center", a major commercial shopping center anchored by a major supermarket in the City of New Rochelle.
- Principal Planner in the preparation of the 2004 Comprehensive Plan for the Town of Montgomery, Orange County, New York.

- Principal author of municipal Zoning Amendments, Steep Slopes Law, Telecommunications Law, Lighting Ordinance, and Wetlands and Watercourses Law.
- Principal Planner in the preparation of a NEPA Environmental Assessment document for the National Park Service pertaining to the development of new visitors Interpretive Center to be located at the confluence of the Delaware and Mongaup Rivers.
- Completed a detailed EIS pertaining to an expansion by 114 units to a modular home park located in the Town of Pleasant Valley, Dutchess County, New York.
- As a member of the Route 9A/Route 119 Work Group, assisted County Planning, NYSDOT and the New York Metropolitan Transportation Council regarding the ongoing study and improvement plans for these corridors, including issues associated with a potential bypass route and zoning and land use implications.
- Prepared a SEQR Full EAF, Federal Consistency Assessment Form and NYSDEC Joint Application for Permit (Protection of Waters) relating to the renovation and reuse of the Ice House at Waryas Park in the City of Poughkeepsie.
- Completed an EIS and required SEQR Resolutions and Notices supporting the consolidation of three existing water districts in the Town of Mount Pleasant, including detailed impact analyses pertaining to controversial issues associated with needed land condemnation and erection of twin 2-million gallon water storage towers. Other improvements included installation of new water mains, construction of a new pump station and evaluation of plans for a future potential filtration plant.
- Prepared an Expanded EAF and supporting application materials for special permit, site plan and multiple variances pertaining to the development of a new 60,000 SF Church and School facility in the Town of Fishkill.
- Prepared an Expanded EAF supporting the expansion of the Tri-Municipal Sewer Commission Wastewater Treatment Plant for the Town of Wappinger Phase 3A Sewer Improvement, including the environmental impact review of the construction of expanded wastewater treatment facilities, modifications and/or expansion of the existing Village of Wappingers Falls Pump Station adjacent to Wappinger Creek, and modification or new construction of wastewater transmission facilities between the pump station, through Bowdoin Park and connecting to the treatment plant.
- Developed a mixed use master plan for Waryas Park, a significant waterfront park area and completed a rehabilitation plan for College Hill Park, both in the City of Poughkeepsie.
- Prepared an Expanded EAF to support expansion of the Millbrook School in Millbrook, New York to provide increased dormitory space and a new recreational complex.
- Prepared several grant applications relating to a riverfront pedestrian and bicycle promenade at Waryas Park in the City of Poughkeepsie pursuant to the Jobs Bond Act and the New York State Department of Transportation ISTEA Transportation Enhancement Program.
- Completed required documentation for local and State permits for an innovative waste tire recycling and manufacturing facility in Columbia County.
- Principal environmental planning consultant pertaining to the alteration of a residential drug treatment facility in Dutchess County, New York. Project involved community opposition, zoning compliance issues, and matters of site sensitivity. Prepared an extensive Full Environmental Assessment Form. The environmental review was completed with the issuance of a negative declaration and a Special Use Permit.
- Specialize in the comprehensive plan and regulatory review of applications for new and expanded telecommunication towers. Successful in new tower avoidance and obtaining stealth alternative designs.
- Conducted a comprehensive review of Draft Watershed Regulations and Generic EIS proposed by the New York City Department of Environmental Protection.
- Prepared several comprehensive Local Laws and zoning code amendments addressing siting and development impacts associated with cellular and other communication towers and related facilities.

KEY PERSONNEL

Joseph T. Bridges, Ph.D.
Senior Biologist

Dr. Bridges combines respect for and scientific understanding of environmental resources and regulations with a fair and pragmatic perspective on environmentally sound land use practices and client objectives.

CREDENTIALS/REGISTRATIONS

- Ph.D., Biological Sciences, Columbia University, 1974
- M.Ed., Secondary Education, Springfield College, 1964
- B.A., Biology, Boston University, 1962
- Certificate: Federal Jurisdictional Wetlands: Delineation Methodology, Rutgers University/Cook College, 1990
- Certificate: Wetland Construction: Techniques, Rutgers University, 1993
- NAUI Underwater Instructor (No. 6323), 1985
- NAUI Underwater Research Instructor, 1985

PROFESSIONAL AFFILIATIONS

- Society of Wetland Scientists
- Hudsonia, Ltd., Research Associate
- Mohonk Preserve, Member Board of Directors, Research Assistant, Scientific Research Committee
- Hudson River Environmental Society, Member Board of Directors
- John Burroughs Naturalist Society, Member Board of Directors
- Sigma XI Scientific Society
- Torrey Botanical Society

FIELDS OF SPECIALIZATION

- Natural Resources: Inventory and Mapping; Impacts and Mitigation Analysis
- Stormwater Management Analysis
- Terrestrial, Wetlands and Aquatic Ecology
- Rare Species and Habitats Assessments / Wetlands Delineation / Mitigation Plans
- Bryophyte Ecology
- Aerial Photo-Interpretation

EXPERIENCE SUMMARY

Dr. Bridges is responsible for all aspects of natural resources research and report writing for the firm and coordinates numerous environmental analyses. He conducts and reviews wetland delineations for federal, state, and local municipal agencies and private clients; works closely with clients and regulatory agencies on permitting issues related to wetlands, rare plants and animals, and significant habitats; and writes/reviews the Natural Resources sections of Environmental Impact Statements. He conducts potential site development impact analyses for many different types of projects and makes recommendations for appropriate mitigation. Dr. Bridges interacts routinely with clients, engineers, Town Planning Boards, attorneys, regulatory agencies, environmentalists and other scientists in connection with land use development reviews and a broad spectrum of natural resource issues. He also has taught Botany at the Institute for Ecosystem Studies and leads workshops on various aspects of wetland identification invasive species and other topics dealing with the natural environment.

Dr. Bridges has served as the Coordinator of Environmental Education for the New York Botanical Garden, Bronx, NY; as Director of the Weis Ecology Center, Ringwood, NJ; and as Director of the National Park Service - New York Botanical Garden Cooperative Research Unit for the northeast coastal region. He has been a consulting ecologist to numerous planning commissions, engineering firms and research institutes in New York, New Jersey and Florida.

For more than 20 years Dr. Bridges has taught a broad spectrum of biology courses at several colleges and universities and holds the rank of Associate Professor of Biology. He has documented the first record of black vulture breeding in New York State, as well as the location of several rare plants, amphibians and reptiles in Albany, Green, Dutchess, Putnam, Westchester, Orange and Ulster Counties, New York. He has provided data on reptiles and amphibians to the NYSDEC Endangered Species Unit for the Amphibians and Reptiles Atlas of New York State.

With regards to Mapping and Aerial Photo-interpretation experience, Dr. Bridges work assignments routinely require review and analysis

of several types of maps and diverse forms of horizontal and oblique aerial imagery rendered by different types of photographic film for the purpose of interpreting historical land use patterns and activities, geomorphological features, plant community types, diagnostic habitat features of rare plant and animal species, and potentially adverse human impacts; e.g., filling of wetlands, dumping and burying of wastes and ground disturbance-induced erosion and sedimentation.

KEY PROJECTS

- Wetlands Inspector for the Towns of North Salem and Greenburgh. Services include wetland boundary verification, wetland permit application reviews, and project impact assessment and resource protection recommendations.
- 1993 - Present: Mohonk Preserve, New Paltz, NY. Research activities involving characterization of northern raven, black vulture, turkey vulture and peregrine falcon nest sites, nesting observations and banding of northern ravens and peregrine falcon.
- Carvel Property Development: A 2,200 acre planned golf and second home community development located in Northern Dutchess County, NY
  - Field studies and biological survey coordinator and participant.
  - Writer/editor of Environmental Setting, Impacts and Mitigation Chapters of the Environmental Impact Statement (EIS) and related biological survey reports.
  - Coordinator of Permit Application preparation for State and Federal Wetlands Permits.
- Long Dock Beacon, Beacon, NY. Field investigator, wetland delineator and principal writer of natural resources sections of the Environmental Impact Statement for a proposed mixed-use waterfront hotel / conference center with significant public access to the Hudson River. Project activities also included preparation of a Surface Water Shading Impact Analysis and an Essential Fish Habitat Analysis.
- CHG&E New Baltimore to Westerlo Electric Transmission Line, Albany & Green Counties, NY. Field survey and preparation of a report regarding potential occurrence of State-listed threatened and endangered species within a 15-mile long proposed utility line right-of-way.
- Mongaup Interpretive Center, Town of Deer Park, Orange County, NY. Threatened and Endangered Species Report for bald eagle, timber rattlesnake and other State-listed rare species on or in the vicinity of the project site.
- River Valley Estates, Town of Dover, Dutchess County, NY. Field survey and preparation of a report regarding State-listed threatened and endangered species and a rare ecological community on or in the vicinity of the project site.
- Field investigator and principal writer of the Environmental Setting section of the environmental impact statement for a water supply expansion project in the Town of Fishkill, NY. Duties included field reviews to determine the extent of environmental constraints to the installation of a Town-wide proposed expansion of a centralized water supply system; review of findings with engineers and planners; and correspondence with various regulatory agencies regarding rare species and wetlands.
- Field investigator, permit applications coordinator, and principal writer of the Environmental Setting section of Environmental Impact Statements for a major inter-municipal wastewater treatment plant and service area expansion in Dutchess County, NY. Duties included identifying natural communities of federal and state regulatory concern, assessments for rare habitats and rare species, wetland delineations, assisting engineers with the preparation of wetland and stream disturbance permit applications and conducting field reviews of wetlands and streams with the Army Corps of Engineers and the NYSDEC.
- Team leader for a federal wetland delineation project on a proposed 300-acre subdivision. Duties included location, identification and flagging of wetlands; obtaining and analyzing soil core samples for hydric soils indications; identification and characterization of areas of wetland hydrology; analysis of upland and wetland plant communities; and identification of plant and animal species.

- Project coordinator, principal writer and editor for a recycling study guide and an audiovisual presentation on recycling for the Dutchess County Resource Recovery Agency. Duties included coordination of graphic and writing activities with local media agencies, the County Recycling Coordinator, the Waste Management Division of the NYSDEC, citizen review committees and personnel of the Dutchess County Environmental Management Council; and correspondence with local schools regarding recycling activities in Dutchess County.
- Field investigator and principal writer/reviewer of Environmental Impact Statement for a proposed County Road in Dutchess County. Duties included participation in public presentations, permit application meetings with the ACOE, field visits with the NYSDEC to evaluate rare species habitats, confirmation of wetland delineations; and preparation of supplemental reports for environmental review documents.
- Director of a multi-project environmental education program at the New York Botanical Garden. Major accomplishments included development, coordination and active instruction in a high school environmental studies program with several local high schools engaged in an ecological study of the Bronx River; a hemlock forest study with students from several regional colleges; a joint environmental studies program with Purchase College (SUNY), and an environmental awareness program at Roberto Clemente State Park on the Harlem River.
- Team leader for the design, planting and establishment of coastal mangrove - saltwater cordgrass plant community associations along the Florida coastline and within a constructed lagoon. This project required the planting and monitoring of thousands of woody and herbaceous plants covering nearly one mile of initially unvegetated shoreline. The project was considered highly successful by the Florida Department of Natural Resources and ACOE.
- Director and principal ecologist for a survey and assessment of the vegetation, flora, plant health conditions and soils types of the National Park Service Gateway National Recreational Area in Brooklyn, NY. Completion of this project provided the first comprehensive natural resources inventory of a National Wildlife Refuge encompassing more than 18,000 acres of coastal wetlands and wildlife habitat.
- Director and principal ecologist for the preparation of a natural resource inventory of upland and wetland plant communities and flora of Hutchinson Island, Martin County, Florida. The results and recommendations for management contained within this inventory were incorporated into the Coastal Zone Management Study conducted by the Martin County Community Development Department for Hutchinson Island.

SELECTED REPORTS/PRESENTATIONS

- Bridges, J.T. 2004. Blanding's Turtle Protection Plan, Crofton Mews Apartments, Hyde Park, Dutchess County, NY.
- Bridges, J.T. 2003. Field Survey for the Presence of NYS Listed Threatened and Endangered Plant and Animal Species and a Rare Ecological Community, River Valley Estates, Town of Dover, Dutchess County, NY.
- Bridges, J.T. 2002. I. Threatened and Endangered Species Survey Report, II. Site Natural Resources Report (Plant Communities Flora And Fauna), III. Federal Wetland Delineation Report, IV. Bald Eagle Survey Report. National Park Service, Upper Delaware Scenic & Recreational River, Mongaup Interpretive Center, Deerpark, Orange County, NY.
- Bridges, J.T. 2002. Blanding's Turtle Habitat Assessment, Proposed Emergency Access Road for the Proposed Crofton Mews Subdivision, Hyde Park, NY.
- Bridges, J.T. 2001. Field Survey for the Presence of New York State Listed Threatened and Endangered Species, Central Hudson Gas & Electric Corporation, New Baltimore to Westerlo Electric Transmission Line, Albany & Greene Counties, NY.
- Bridges, J.T. 1998. Black Vulture in New York State - Confirmed Nesting and Observations of Early Development. The Kingbird. Vol. 48(4): 289-300.

- Bridges, J.T. 1998. Stormwater Management Regulations for New York State: A Review of the New York State Department of Environmental Conservation's General Permit Requirements for Construction-Related Stormwater Discharges. Presented to the Town of Mount Pleasant Planning Board. Mount Pleasant, NY.
- Bridges, J.T. 1996. A Habitats Assessment and Wetlands Delineation Report of the Former James Cagney Estate on Bangall-Amenia Road, Town of Stanford, Dutchess County, NY. Prepared for Andropogon Associates, Philadelphia, NY.
- Bridges, J.T., S. Conrad and J. Conrad. 1995. Analysis of the Suitability of Cement District Soils within the Proposed Central Hudson Gas & Electric Corporation Electric Utility P-Line Reroute Right-of-Way to Prevent Contamination of Groundwater by Periodic Herbicide Usage. Prepared for Central Hudson Gas & Electric Corporation, Poughkeepsie, NY.
- Bridges, J.T. 1994. Field Survey for the Presence of Threatened Tall Tick-Clover (*Desmodium glabellum* [Mich] DC.) Within a Section of Central Hudson Gas & Electric Right-of-Way in the Town of Wawarsing, Ulster County, NY. Prepared for Ensearch Environmental Corporation, Boston, MA, on behalf of Central Hudson Gas & Electric Corporation, Poughkeepsie, NY.
- Bridges, J.T. 1993. Habitat Survey and Assessment Report for the Threatened Blanding's Turtle (*Emydoidea blandingii*) at the Victory Lake Nursing Center, Town of Hyde Park, Dutchess County, NY. Prepared for Hayward and Pakan Associates, Poughkeepsie, NY.
- Bridges, J.T. 1993. An Assessment of the Impacts of a Reported Manure Discharge on the Natural Resources of the Roeliff Jansen Kill, Town of Copake, Columbia County, NY. Prepared for Odyssey Farms South, Copake, NY, to address regulatory concerns regarding an alleged fish kill in a public trout fishing stream.
- Bridges, J.T. 1992. Oscawana Lake Quadrangle Project Site, Assessment to Determine the Presence of Suitable Bog Turtle Habitat on the Northwest Shore of Oscawana Lake and Bell Hollow Road, Town of Putnam Valley, Putnam County, NY.
- Bridges, J.T. 1992. Freshwater Wetlands: A Comparison of State, Federal and Local Regulations. Presented at the Annual Meeting of the New York State Association of Towns. New York, NY. February 1992.
- Bridges, J.T. 1991. Wetland Regulations: New Players, New Approaches. Presented at the Annual Meeting of the New York State Association of Towns. New York, NY. February 1991.
- Bridges, J.T. and E. Kiviat. 1988. Significant Habitats of the Stewart International Airport Properties, Orange County, NY. Hudsonia, Ltd. Bard College Field Station. Annandale, NY.
- Bridges, J.T. 1982. Hutchinson Island Resource Inventory: Plant Communities and Wetlands (text and map) In Coastal Zone Management Study of Hutchinson Island, Martin County, Florida. Florida Oceanographic Society in association with Martin County Community Development Department. Stuart, FL.
- Bridges, J.T. 1980. Guide to the Eleanor Yarrow Memorial Nature Trail. New York Botanical Garden Pub. Bronx, NY.
- Bridges, J.T. 1978. The Ecology Center: An Alternative Institute for Environmental Education. Presented at the Annual Meeting of the National Science Teacher's Association. Washington, D.C. April 1978.
- Bridges, J.T. 1977. An Assessment of the Ecological Impact of Virginia Creeper (Parthenocissus quinquefolia) on Other Plants in the West Pond Area of the Jamaica Bay Wildlife Refuge, Brooklyn, NY. New York Botanical Garden - National Park Service Cooperative Research Unit Report. Bronx, NY.
- Bridges, J.T. 1976. Vegetation Survey, Soils Map and Estimate of Plant Health Conditions at the Jamaica Bay Wildlife Refuge, Brooklyn, NY. New York Botanical Garden-National Park Service Cooperative Research Unit Report. Bronx, NY.

EXHIBIT 'C'

Town of Bedford

Building Department

425 Cherry Street • Bedford Hills, New York 10507
Tel: (914) 666-4585 • Fax: (914) 666-2026
E-Mail: buildinginsp@bedfordny.gov
www.bedfordny.gov

Steven Fraietta, Building Inspector
James Genovese, Assistant Building Inspector
William O'Keefe, Code Enforcement Officer
Michael Repp, Jr., Deputy Fire Inspector

Alexandra J. Costello,
Sr. Office Assistant (Office Manager)

Donna M. Berkowitz, Sr. Office Assistant

March 19, 2014

Peter Michaelis, Chairman
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

Re: Galli – 341 Succabone Road, Bedford Corners
Manure Dumpster in Controlled Area

Dear Mr. Michaelis and Members of the Board:

With reference to the above and in response to the Board's request, I have reviewed Chapter 122 of the Town Code (Wetlands) and have spoken with the Town's Environmental Consultant. In Section 122-8A, it is specifically stated that among the "Prohibited Acts" are the following: "It shall also be unlawful to locate animal feedlots or pens, manure stockpiles or similar animal storage areas within a wetland, watercourse or wetland/watercourse buffer."

I believe that a dumpster containing manure should be considered a manure stockpile given that the intent of the law is to prevent the depositing of certain materials into controlled areas.

In the case of the dumpster, there is always the possibility of leachate going into the wetland. Moreover, the depositing of manure in the dumpster would require some type of vehicle to transport the manure from the barn or horse corral to the dumpster. Moreover, for the dumpster to be unloaded would require a motorized vehicle to enter the controlled area. None of these activities are in accordance with the intent of Chapter 122 which is to prohibit certain activities in controlled areas, which activities would clearly have a deleterious impact on the controlled area.

Very truly ours,

Steven Fraietta
Building Inspector

Town of Bedford

Building Department

425 Cherry Street • Bedford Hills, New York 10507
Tel: (914) 666-4585 • Fax: (914) 666-2026
E-Mail: buildinginsp@bedfordny.gov
www.bedfordny.gov

Steven Fraietta, Building Inspector
James Genovese, Assistant Building Inspector
William O'Keefe, Code Enforcement Officer
Michael Repp, Jr., Deputy Fire Inspector

Alexandra J. Costello,
Sr. Office Assistant (Office Manager)

Donna M. Berkowitz, Sr. Office Assistant

March 19, 2014

Peter Michaelis, Chairman
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

Re: Galli – 341 Succabone Road, Bedford Corners
Manure Dumpster in Controlled Area

Dear Mr. Michaelis and Members of the Board:

With reference to the above and in response to the Board's request, I have reviewed Chapter 122 of the Town Code (Wetlands) and have spoken with the Town's Environmental Consultant. In Section 122-8A, it is specifically stated that among the "Prohibited Acts" are the following: "It shall also be unlawful to locate animal feedlots or pens, manure stockpiles or similar animal storage areas within a wetland, watercourse or wetland/watercourse buffer."

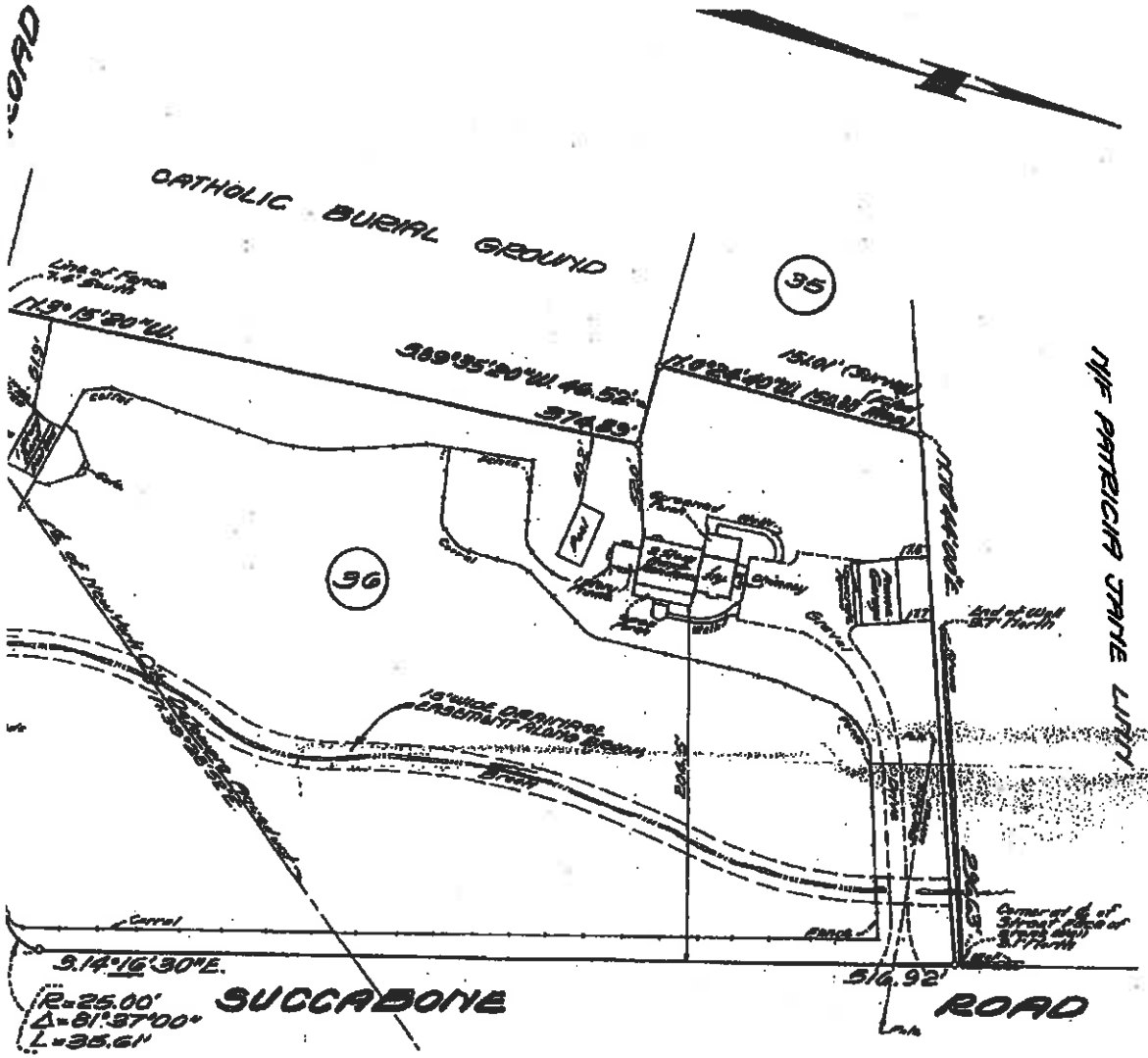
I believe that a dumpster containing manure should be considered a manure stockpile given that the intent of the law is to prevent the depositing of certain materials into controlled areas.

In the case of the dumpster, there is always the possibility of leachate going into the wetland. Moreover, the depositing of manure in the dumpster would require some type of vehicle to transport the manure from the barn or horse corral to the dumpster. Moreover, for the dumpster to be unloaded would require a motorized vehicle to enter the controlled area. None of these activities are in accordance with the intent of Chapter 122 which is to prohibit certain activities in controlled areas, which activities would clearly have a deleterious impact on the controlled area.

Very truly ours,

Steven Fraietta
Building Inspector

EXHIBIT 'D'



SURVEY OF PROPERTY

PREPARED FOR

JOHN C. REYNOLDS

Being Lot 36 as shown on a certain map entitled "Subdivision of Sarah Farm, Etc." Situate in the TOWN OF RYE WESTCHESTER COUNTY, N.Y.

Said map filed in the Westchester County Clerk's Office, Division of Land Records August 11, 1955 as Map No. 10093

Scale: 1"=60' Possession only where indicated

Surveyed: April 29, 1992 and map prepared: May 4,

by [signature]

New York State Licensed Surveyor No. 50804

Guaranteed to:

In accordance with the existing Code of Practice for Land Surveys as adopted by The New York State Association of Professional Land Surveyors, Inc.

Identification and alteration or addition to a survey map bearing a Licensed Land Surveyor's Seal is a violation of Section 7209, Subdivision 2 of the New York State Education Law.

All certifications are valid for this map and copies thereof only if said map or copies bear the impressed seal of the surveyor whose signature appears hereon.

The location of underground improvements or encroachments hereon, if any exist, are not certified.

H. STANLEY JOHNSON AND COM

Manure storage S/2

SZ SILVERBERG ZALANTIS LLP

Law Offices
220 White Plains Road, 5th Floor
Tarrytown, New York 10591
Tel. (914) 682-0707
Fax. (914) 682-0708
www.szlawfirm.net

March 24, 2014

VIA EMAIL AND HAND DELIVERY

Chairman Michaelis and Members of the Town of Bedford Zoning Board of Appeals
Town of Bedford Zoning Board of Appeals
307 Bedford Road
Bedford Hills, New York 10507

Re: ZBA's April 3, 2013 Special Meeting Agenda
Stefano and Suzanne Galli ("Gallis"), 341 Succabone Road, Bedford Corners, NY
Application for variance for manure storage area

Dear Chairman and Members of the Zoning Board of Appeals:

We represent Michael Richman and Ruth Toporoff, who live at 12 Alice Road, Bedford Corners, New York and write to further oppose the Gallis' most-recent variance application.

I. This Board is Barred from Granting the Requested Variance

Based upon the Building Inspector's determinations we now have on some of the issues raised at the last ZBA meeting (on issues of wetlands and steep slopes), this Board is precluded from granting the requested variance.

a. Wetlands Code

Based solely upon the Building Inspector's March 19, 2014 determination (see Exhibit "A") concerning the wetlands "controlled area," this Board cannot grant the requested variance that specifically contemplates a motorized vehicle entering into the controlled area. We do not agree with Building Inspector's determinations, including that a manure dumpster is the equivalent of "manure stockpiles" and intend to appeal this determination. But this Board cannot grant a variance for a proposed use that the Building Inspector determined is prohibited under the Wetlands Code as this Board has no authority to vary the wetlands code, but only the Zoning Code (see Zoning Code § 125-129(c)).

To the point, while the Building Inspector has now determined that for a dumpster to be sited in the wetlands buffer would require "a motorized vehicle to enter the controlled area" and "[n]one of these activities are in accordance with the intent of Chapter 122 which is to prohibit certain activities in controlled areas, which activities would clearly have a deleterious impact on

the controlled area," the Gallis propose to construct a gravel driveway in the wetlands "controlled area" for use by the motorized truck that will empty the manure dumpster (*see* Exhibit "B" and compare to their most recent survey that delineates the wetland buffer area).

Based upon the Building Inspector's latest interpretation, it appears that a feasible area to site a manure dumpster is off of the main driveway so there would be no issue with creating a new driveway or access area through the controlled area. This area would be: (1) zoning compliant; (2) outside of the wetlands buffer area; (3) not in the steep slope area; and (4) more than 100-feet from the existing well (see Exhibit "C", which is plan prepared by Chazen with: (i) pink-cross hatching added per January 10, 2014 letter from Westchester Department of Health ("WDOH") providing that there is no minimum separation distance requirement for a dumpster and a septic system expansion area; and (ii) proposed dumpster location in green-highlighting off of the main driveway).

As previously discussed, the Town's records established that there is no approved driveway in the area that the Gallis, through their variance request, now propose to erect a "gravel driveway" for use by a truck to empty the manure dumpster. This is a further intensification and expansion of a nonconforming use that the Building Inspector determined is prohibited under the wetlands code.

Given the Building Inspector's March 19, 2014 determination, this Board cannot grant the requested variance that contemplates construction prohibited under the Wetlands Code and cannot grant a variance for a proposed use that according to the Building Inspector is prohibited by the Wetlands Code as this Board has no authority to vary (or waive) this prohibition.

b. <u>Steep Slope</u>

The Building Inspector has also determined that "it was unclear whether the proposed manure storage dumpster would require a steep slope permit" and required that the Gallis submit a plan prepared by her engineers (see March 19, 2014 letter attached as Exhibit "D"). As you may recall, our engineer has already opined that this area is a steep slope area.

Even if this Board could consider granting the proposed variance request (which it cannot given the wetlands determination), this Board cannot grant a variance without knowledge of the full impacts, which include the impacts of placing a dumpster in a steep slope area. The steep slope regulations (Chapter 102) provide that wherever possible "new construction shall avoid disturbing" steep slope areas (Code § 102-1) and in granting any steep slope permit, the Planning Board must consider the various impacts including the relation of the proposed area to neighboring properties and to wetlands (see Code § 102-4). Here, the Gallis propose to place the dumpster in a steep slope area without any detail on how they intend to grade into the slope (i.e. retaining walls) or manage stormwater runoff away from my clients' property and the wetlands and their proposal lacks any detail on potential impacts on the WCDH permit for the septic system expansion area located directly under the proposed construction area. This Board cannot even consider granting a variance without an understanding of all the impacts.

II. There Are Even More Reasons to Deny the Application

Although the Building Inspector's new determinations conclusively establish that this Board cannot grant a variance for a proposal that contemplates the introduction of a driveway in a controlled area (and construction in a steep slope area), even without these determinations the variance request should be denied.

a. Incorrect Statements by ZBA Members

As an initial matter, some incorrect statements were made at the last ZBA meeting. The Gallis have offered absolutely no evidence to support that moving the dumpster several feet farther in from Alice Road **but even higher up on the sloped section of their property in a steep slope area** and closer to the cemetery property line and closer to my clients' property, will eliminate the odors that have impaired my clients' ability to enjoy their property (and resulted in the Court having to issue a preliminary injunction). Yet, one ZBA member stated that the Board should simply give the Gallis "a chance." But what would be the recourse for my clients if the Gallis are given "a chance" and it turns out that the odors remain overwhelming? This "wait and see" attitude is not how a variance works as variances run with the land. And once granted there is no way to redress any odor and other issues such as insects and rodents. That is why the balancing test mandates a finding that there will be no impact on neighboring properties.

Further, there is especially no reason to give the Gallis "a chance" as there was evidence adduced during the Supreme Court hearing that in addition to using the manure dumpster in an unlawful location, the Gallis were also storing manure in piles in the steep slope section of their property near the cemetery property line and my clients experienced unpleasant odors emanating from the hilly section of the Galli property as a result. As we know definitively that storing manure approximately 113 feet from Alice and 20 feet from the cemetery produced flies, rodents and overwhelming odors, we can be assured that there will be the same result from a storage area only 64 feet from Alice Road and 22 feet from the cemetery in a steep slope area.

Further, there were off-hand comments as to an alleged distinction between Alice Road and the cemetery property lines even though after a four-day hearing the Supreme Court mandated that manure not be spread or stored within 50-feet of any property line and thereby confirming the existence of nuisance from both property lines. The impacts from having manure stored within 50 feet of the cemetery property line is just as great (and perhaps greater when the elevation is considered) as within 50-feet of Alice Road. The entire corner is what is relevant and the Supreme Court in issuing the preliminary injunction understood that adherence to the 50-foot setback from both property lines was necessary to protect my clients. The Court will not allow a use that increases a nonconforming use, increases the negative and adverse impacts and is less protective of my clients, especially when there are numerous conforming locations to locate a manure dumpster (*see* infra).

Further, the Chairman made incorrect comments about my clients' dumpster being in the identical position as the Gallis even though the main difference, of course, is that my clients' dumpster is zoning compliant (and what the Gallis are proposing is not) and is not creating impacts on neighboring properties (and what the Gallis have done and what they propose will create impacts). As determined by the Supreme Court, my clients' dumpster is "located

approximately 200 feet from Alice Road, 65 feet from their property line with their closest neighbor and at least 200 feet from their closest neighbor's residence." (*See* February 25, 2014 Decision and Order previously provided to this Board). In contrast, the Gallis are seeking a variance for a location that is not zoning compliant and that is still closer to my clients' home than their own home. As the Supreme Court stated, "[i]t is difficult to place a greater burden on the plaintiffs to accept the odor caused by the defendants' storage of manure on their property than the defendants themselves are willing to accept."

There were also vague comments about how at a recent site-visit, the Gallis' property did not smell. Of course, these comments ignore that my clients have spent thousands of dollars in attorneys' fees and there has been a temporary restraining order in place since May 2013, which was replaced by a preliminary injunction issued in February 2014 barring the Gallis from storing manure in violation of the Code. Had the site visit occurred when the Gallis were storing manure on the hill in violation of the Zoning Code or in the unlawful dumpster before my clients obtained relief from the Court, the Board members would have had a much different reaction.

b. Undesirable Change in the Character of the Neighborhood

In addition, at the last ZBA meeting we extensively discussed how the Gallis introduction of a new driveway (and gravel access area) off of Alice Road will create an undesirable change on the character of the neighborhood and a detriment to neighboring properties (and now have learned from the Building Inspector that such development would "clearly have a deleterious impact on the controlled area"). The Board raised the fact that my clients have an access area off of Alice Road. First, this is an access area and not a driveway. Second, this access area is not in the wetlands. Third, it is not the access off of Alice Road that is *per se* problematic, but the fact that the Gallis propose an access off Alice Road that is directly on top of the entrance to my clients' property. There are no other properties in the R-4 zones where driveways are on top of each other as the Gallis propose. It is horrible planning to have driveways directly on top of each other and will only lead to future issues.

c. A Variance Grant Should Not Create or Exacerbate Existing Impacts and Unlawful Uses

Further, even though the Building Inspector has now unequivocally interpreted the Code to prohibit motorized vehicles on the controlled area, the Gallis routinely park oversized vehicles and trailers in the wetlands and park horse equipment and tractors behind the barn in the wetlands (see pictures attached as Exhibit "E"). The Town should now be acting to prevent these continued wetlands violations instead of contemplating a new variance that violates the Wetlands Code.

Although the Gallis claim that they are not before this Board for fences that violate the Zoning Code or equipment unlawfully stored in the wetlands in violation of the Wetlands Code, the fence's unlawful location and the Gallis' current improper use of the controlled area, is directly related to the impacts of the proposal that this Board must consider in analyzing the Gallis' variance plans that depicts fences that violate the Code. This Board should not consider granting a variance for construction to allow a new driveway in the wetlands with surrounding fences that were improperly relocated and are not sited 20 feet back from the property line as required by the code

The Gallis' unlawful location of fences near the barn (and in the wetlands) only exacerbates the issue. The Gallis' gate that allowed access near the barn used to be on the other side of the barn – substantially farther away from the entrance to my clients' home. And the 2003 Survey shows the paddock fences a substantial distance in from Alice Road and cemetery property lines, the Gallis relocated these fences and now the horses are free to go into the corner of the property nearest to my clients' property. On the Gallis' property (which has front lot line setbacks (for building and fences) along both Alice Road and Succabone – note, the Gallis' own survey depicting the front yard setbacks from Succabone and Alice), fences need to be set back 20 feet from the Alice Road property line (Zoning Code § 125-15(A)(1)[1]) and paddock fences specifically must be set back five feet from the property line (Zoning Code § 125-25(B)(3)(b)[2]). The Gallis have also added fencing in the wetlands without a permit in violation of the Wetlands Code (Wetlands Code § 122-8(D)(6)[3]). And the Gallis' fences closest to my clients' entrance to their home encroaches on the Town road in violation of the Zoning Code (Town Code § 104-16[4]; Zoning Code § 125-15(A)(1)[5]). And the Gallis have relocated fences and created a riding ring with rubber in the wetlands that further intensifies the use in the southwest corner of their property (closest to my clients' home).

As mentioned at the last ZBA meeting, the Gallis current use of this area as an access area has resulted in numerous incidents, including police interventions. This "access area" does not allow for the proper turning radius for oversized vehicles and the Gallis cannot manuveur their horse trailer into this area without driving on my clients' property. Obviously a "gravel driveway" that relies upon a neighbors' property for a turning radius is not a good design. The Gallis are also unlawfully using this area whenever they feel like it as a parking lot. In addition, there is the issue of my clients' ability to have guest park vehicles in front of their home on Alice Road (as the Gallis' guests can do in the front of the Gallis' home on Succabone Road). My clients have a limited driveway area as compared to the Gallis' over 300-400 linear feet of driveway so use of the front of their home is even more imperative. Yet, when my clients' guests park in the front of their home, the Gallis claim they cannot access their barn area and have called the police to require that vehicles be moved. My clients' access has also been greatly

---

[1] "A. No fence or gate shall be erected except as provided herein: (1) A fence or gate may be erected in a residential district wholly within the lot lines of the subject property, provided that the fence: (a) is located 20 feet or more from the front lot line and does not exceed six feet in height. (b) Is located less than 20 feet from the front lot line and does not exceed four feet in height; provided that a permit for same has been issued by the Building Inspector. . . ." The Gallis' fences are approximately five feet high.

[2] "B. Regulations for specific animals. (3) Horses. On conforming lots in the R-2A and R-4A Districts, the maintenance of horses is permitted as an accessory use, subject to the conditions listed below: (b) . . . Fences and all exercise yards or pasture lands shall be located at least five feet from each property line. . . ."

[3] "D. Administrative Permits. The following improvements and activities related to them are permitted for preexisting single-family residences, upon the issuance of an administrative wetland permit issued by the Wetlands Permit Official . . . (6) Split-rail fences without mesh, . . ."

[4] "The . . . erection of any wall, fence, building structure . . . in any street, highway, sidewalk, sidewalk area, or public place, or the encumbering thereof by any encroachment of buildings, structures, landscaping structures and excavation or otherwise, or any act which is any manner damages or injures a Town highway or interferes with or obstructs in any manner the sight distance, snow removal access, drainage or access to drainage and utility and other uses of the highway for municipal purposes and for use by the public and traffic thereon are prohibited."

[5] "A. No fence or gate shall be erected except as provided herein: (1) A fence or gate may be erected in a residential district wholly within the lot lines of the subject property, . . ."

impeded on nearly a daily basis. My client has been forced to cancel appointments as she could not leave her home for 1-2 hours at a time. If any Board members think that this is acceptable, then perhaps they should experience not being able to get where they may need to go as a result of a neighbors' actions. Thus, as previously documented, the situation with the Gallis' unlawful access area (located in the wetlands) has already created impacts on my clients and impeded the access to their home and legalizing the area through a variance grant will create further and significantly greater impacts.

Any variance grant should address current violations and impacts, and not create further impacts. If the Gallis actually moved back their illegally relocated fences as required, this would greatly reduce the impacts and would prevent the Gallis from unlawfully parking motorized vehicles in the controlled area, which is prohibited. But the Gallis, of course, instead of offering to alleviate their unlawful construction, seek to intensify the use.

Further, as detailed in our separate appeal, this Board should not consider granting a variance for manure storage when the underlying barn use is unlawful.

d. Conforming Locations

There is no reason to grant the requested variance when there are numerous conforming locations to place the manure dumpster. What the Gallis are currently proposing – a dumpster only 22 feet from the property line in a steep slope area (without any stormwater management or drainage proposed) with a driveway in the wetlands controlled area – is far more impactful than a location of the dumpster in a conforming location (with proper setbacks) out of the steep slope area. The Code's intent is to site these undesirable horse uses a certain distance (50 feet minimum) away from the property lines. But on the Gallis property, all the horse traffic and uses occur in the setback area and they are proposing to "double down" on this by loading and unloading a dumpster all in the setback and steep slope area. The Gallis testified before the Supreme Court that since they do not use shavings, the manure in the dumpster is more pure and does not have to be emptied as regularly (see Exhibit "F"). Of course, this more pure manure has a much greater odor. Now, this manure will be in a hilly location with trucks entering the area across from my clients' property and the trucks will routinely be in the setback and wetlands area.

Given the impacts, the dumpster should be in a conforming location. We previously showed there are zoning-compliant locations that are outside of the wetlands buffer area located near the barn. And the area that is closest to the barn <u>is more than 100 feet</u> from the existing well even though according to the WCDH – the agency charged in enforcing and interpreting the State regulations[6] there is no minimum separation requirement for a manure dumpster and only a 100 foot separation requirement for a manure pile (see letters from WCDH attached as Exhibit "G").

We contend that there are numerous means of accessing these conforming locations both inside and outside of the wetlands controlled area. The Gallis have previously had an access area

[6] Part 5, Subpart 5-1 Standard for Water Wells, Appendix 5B, Section 5-B.7, Table 1

through the wetlands controlled area to exactly the area we are proposing would meet all the Zoning and Wetland Code requirements for a dumpster (see Exhibit "H").

e. Other Feasible Methods

As it is now the Building Inspector's determination that access to the dumpster cannot be through the controlled area, the Gallis could also consider an alternate means of manure storage other than a dumpster. It is our understanding that the Gallis are currently storing manure in a container located on the concrete pad/paver area near the barn and then once a week, their groom moves this container to an area where it is picked-up weekly by a garbage-type truck. Provided that the manure container is placed in an area that conforms with the Code, this method avoids the use of a manure dumpster. And given the Gallis' more "pure" manure method, the Gallis' horses do not produce the amount of manure that would fill a dumpster and require it be emptied every 6-8 weeks. Also, there are zoning compliant locations that do not require any new driveways that a manure dumpster could be located (see Exhibit "C"). These are all feasible alternatives to the granting of a variance.

f. Not the Minimum Variance

Finally, the requested variance is certainly not the minimum variance that could be granted. The Gallis previously proposed a manure storage area that would be in a location 113-151 feet from Alice Road (see Exhibit "B"). This same distance from Alice Road could be a location for the manure dumpster (and even farther from Alice Road) and 37-42 feet from the cemetery property line (see Exhibit "I") . This area is outside of the wetland buffer area and not in the steep slope area (see Exhibit "C" and other previously provided documents that depict steep slope area). Also, this area is not in the SSDS area and as stated by the WCDH, there is no required minimum separation for a dumpster and septic system expansion area (see Exhibit "J"). Further, this area is more than 200-feet from the existing well (see Exhibit "I").

As detailed in the color coded picture (blue indicates the wetlands buffer line, yellow indicates the 50-foot setback and red indicates the existing septic trench), the existing septic trench (provided it exists) sits above the 50 foot setback line at its closest point and below the 50 foot setback line at its farthest point. Accordingly, at approximately 125' from Alice Road the dumpster could sit 37' from the cemetery (and 32' if there was a 5' separation) and at approximately 150' from Alice Road could sit 42' from the cemetery (and 37' with a 5 foot separation). This area would be much less impactful than siting the dumpster in a steep area only 22 feet from the cemetery property line. Thus, as what the Gallis are requesting is not the minimum variance that could granted, for this reason also, there is no basis to grant the requested variance.

In sum, the Building Inspector's March 19, 2014 determination precludes this Board from granting a variance for a proposal that contemplates motorized vehicles entering into the "controlled area" as this Board has no authority to vary the wetlands Code, but even without that determination there would be no basis to grant the requested variance.

Very truly yours,

SILVERBERG ZALANTIS LLP

Katherine Zalantis

KZ:hs
Enclosures
cc: (Via Email and FedEx)
Building Inspector Steven Fraietta
Joel Sachs, Esq., Town Attorney

Exhibit A

Town of Bedford
Building Department
425 Cherry Street • Bedford Hills, New York 10507
Tel: (914) 666-4585 • Fax: (914) 666-2026
E-Mail: buildinginsp@bedfordny.gov
www.bedfordny.gov

Steven Fraietta, Building Inspector
James Genovese, Assistant Building Inspector
William O'Keefe, Code Enforcement Officer
Michael Repp, Jr., Deputy Fire Inspector

Alexandra J. Costello,
Sr. Office Assistant (Office Manager)

Donna M. Berkowitz, Sr. Office Assistant

March 19, 2014

Peter Michaelis, Chairman
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

Re: Galli – 341 Succabone Road, Bedford Corners
Manure Dumpster in Controlled Area

Dear Mr. Michaelis and Members of the Board:

With reference to the above and in response to the Board's request, I have reviewed Chapter 122 of the Town Code (Wetlands) and have spoken with the Town's Environmental Consultant. In Section 122-8A, it is specifically stated that among the "Prohibited Acts" are the following: "It shall also be unlawful to locate animal feedlots or pens, manure stockpiles or similar animal storage areas within a wetland, watercourse or wetland/watercourse buffer."

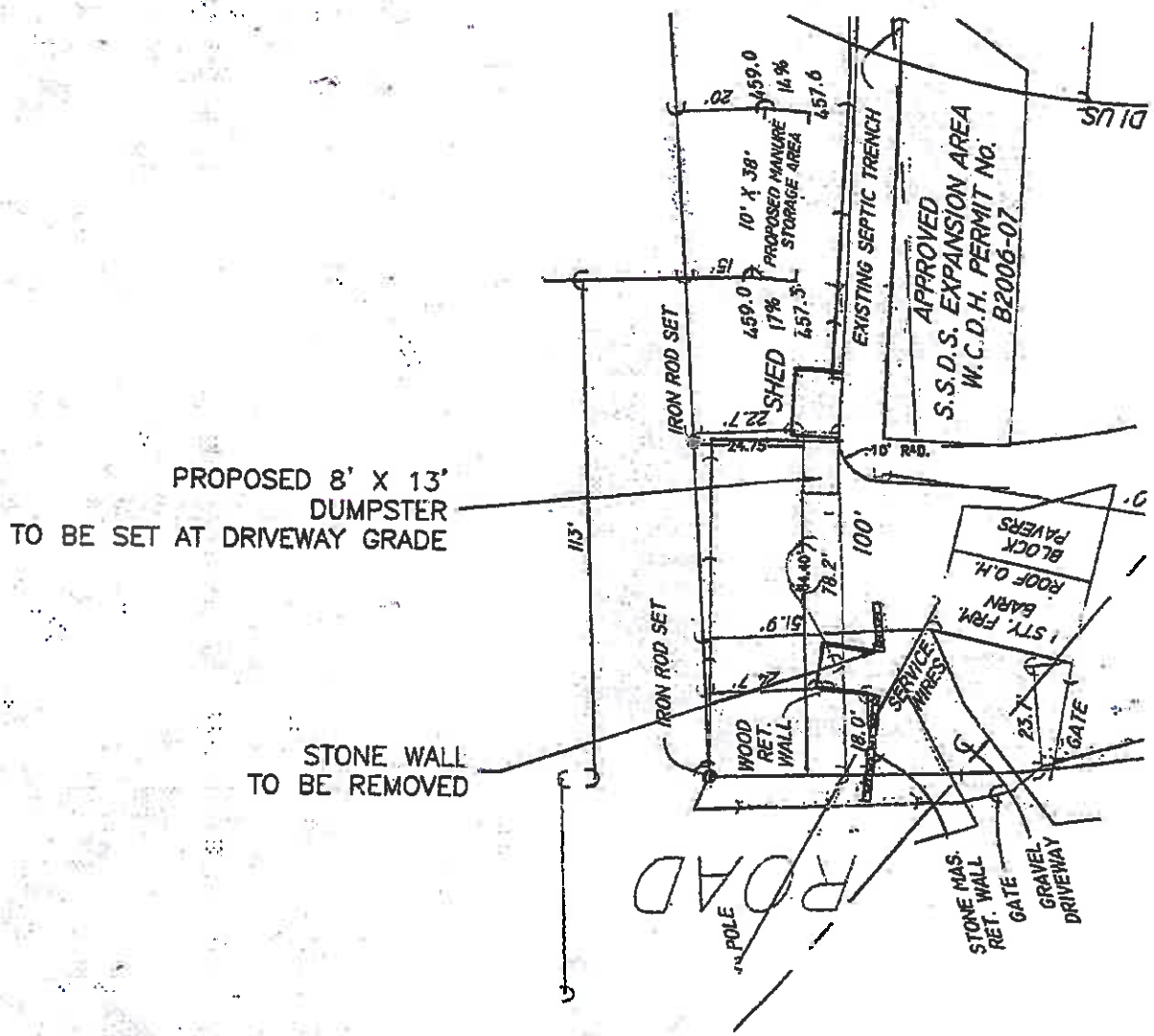
I believe that a dumpster containing manure should be considered a manure stockpile given that the intent of the law is to prevent the depositing of certain materials into controlled areas.

In the case of the dumpster, there is always the possibility of leachate going into the wetland. Moreover, the depositing of manure in the dumpster would require some type of vehicle to transport the manure from the barn or horse corral to the dumpster. Moreover, for the dumpster to be unloaded would require a motorized vehicle to enter the controlled area. None of these activities are in accordance with the intent of Chapter 122 which is to prohibit certain activities in controlled areas, which activities would clearly have a deleterious impact on the controlled area.

Very truly ours,

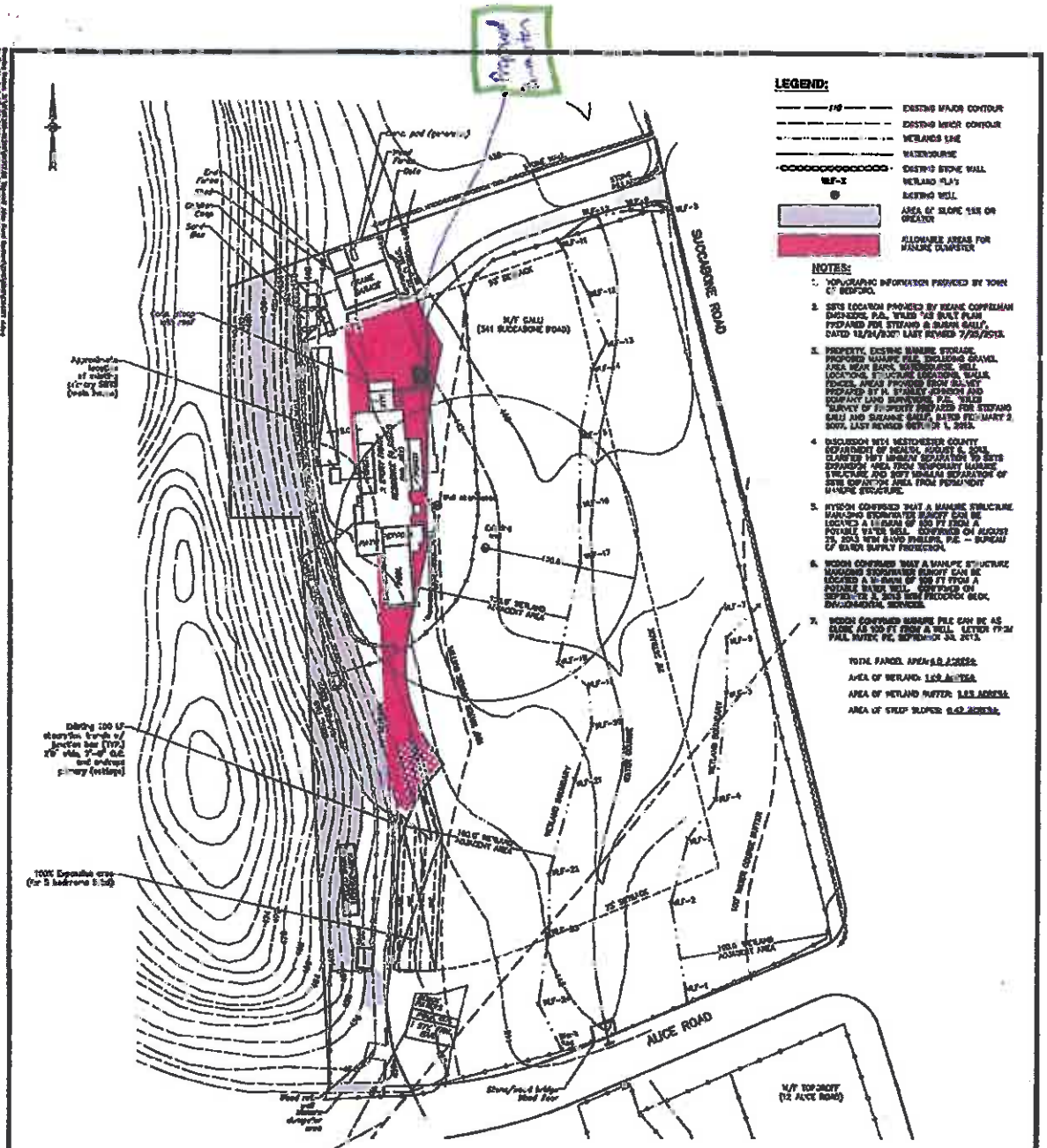
Steven Fraietta
Building Inspector

Exhibit B



RECEIVED
DEC 27 2014
BEDFORD ZONING
BOARD OF APPEALS

Exhibit C



341 Succabone Road

ALLOWABLE AREAS OF MANURE DUMPSTER

Town of Bedford, Westchester, New York

CHAZEN ENGINEERING, LAND SURVEYING & LANDSCAPE ARCHITECTURE CO., D.P.C.

EXHIBIT J

Exhibit D

Town of Bedford
Building Department
425 Cherry Street • Bedford Hills, New York 10507
Tel: (914) 666-4585 • Fax: (914) 666-2026
E-Mail: buildinginsp@bedfordny.gov
www.bedfordny.gov

Steven Fraietta, Building Inspector
James Genovese, Assistant Building Inspector
William O'Keefe, Code Enforcement Officer
Michael Repp, Jr., Deputy Fire Inspector

Alexandra J. Costello,
Sr. Office Assistant (Office Manager)

Donna M. Berkowitz, Sr. Office Assistant

March 19, 2014

Peter Michaelis, Chairman
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

Re: Galli – 341 Succabone Road, Bedford Corners
Manure Dumpster in Steep Slope Area

Dear Mr. Michaelis and Members of the Board:

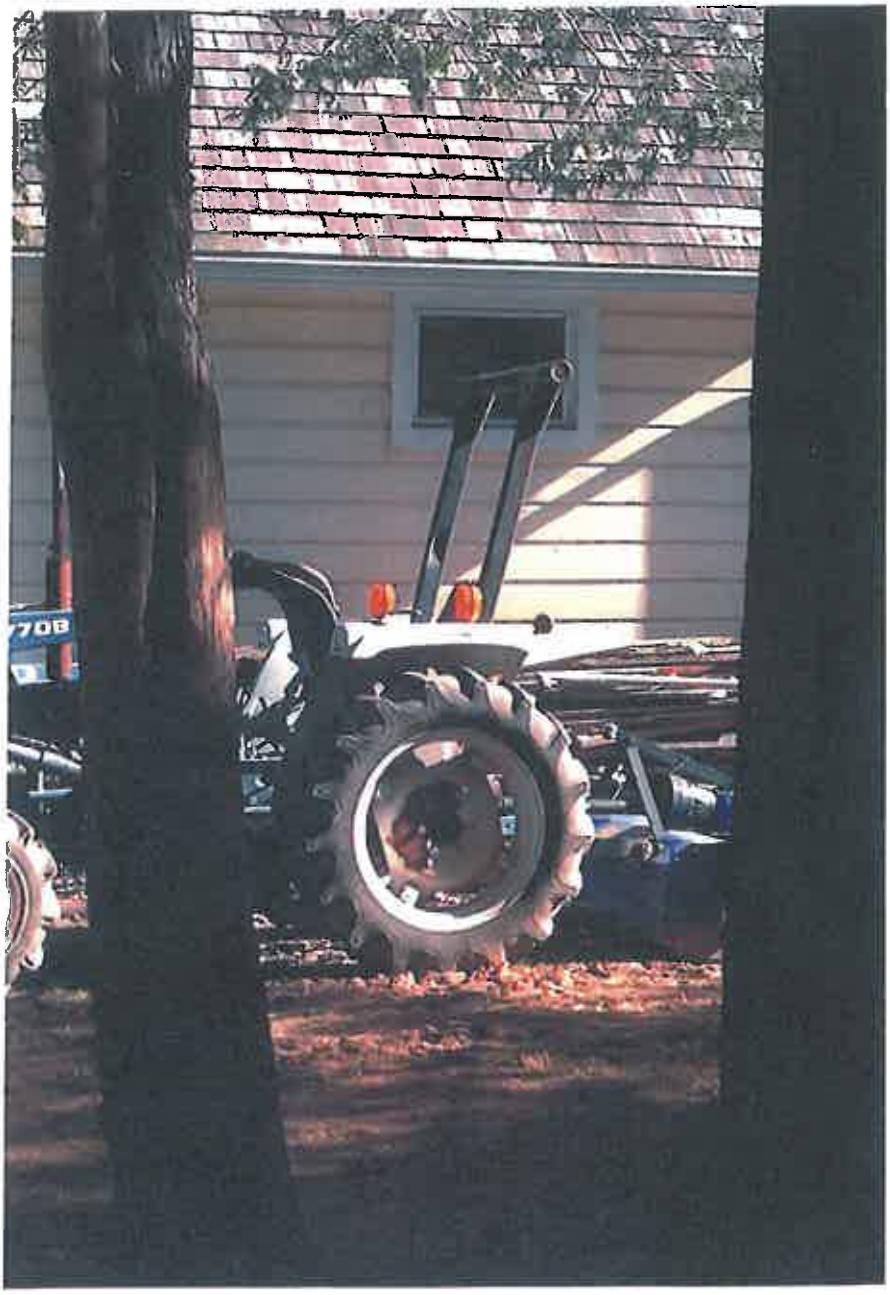
With reference to the above and in response to the Board's request, Jeffrey Osterman, Director of Planning, and I visited the subject property and examined the area of the proposed manure storage dumpster with respect to Chapter 102 of the Town Code (Steep Slopes and Ridgelines.)

After taking measurements it was unclear whether the proposed manure storage dumpster would require a steep slopes permit. I requested that Mrs. Galli submit a plan to this department prepared by her engineer and surveyor showing the proposed manure storage dumpster in relation to setbacks and steep slopes.

Very truly ours,

Steven Fraietta
Building Inspector

Exhibit E


770B

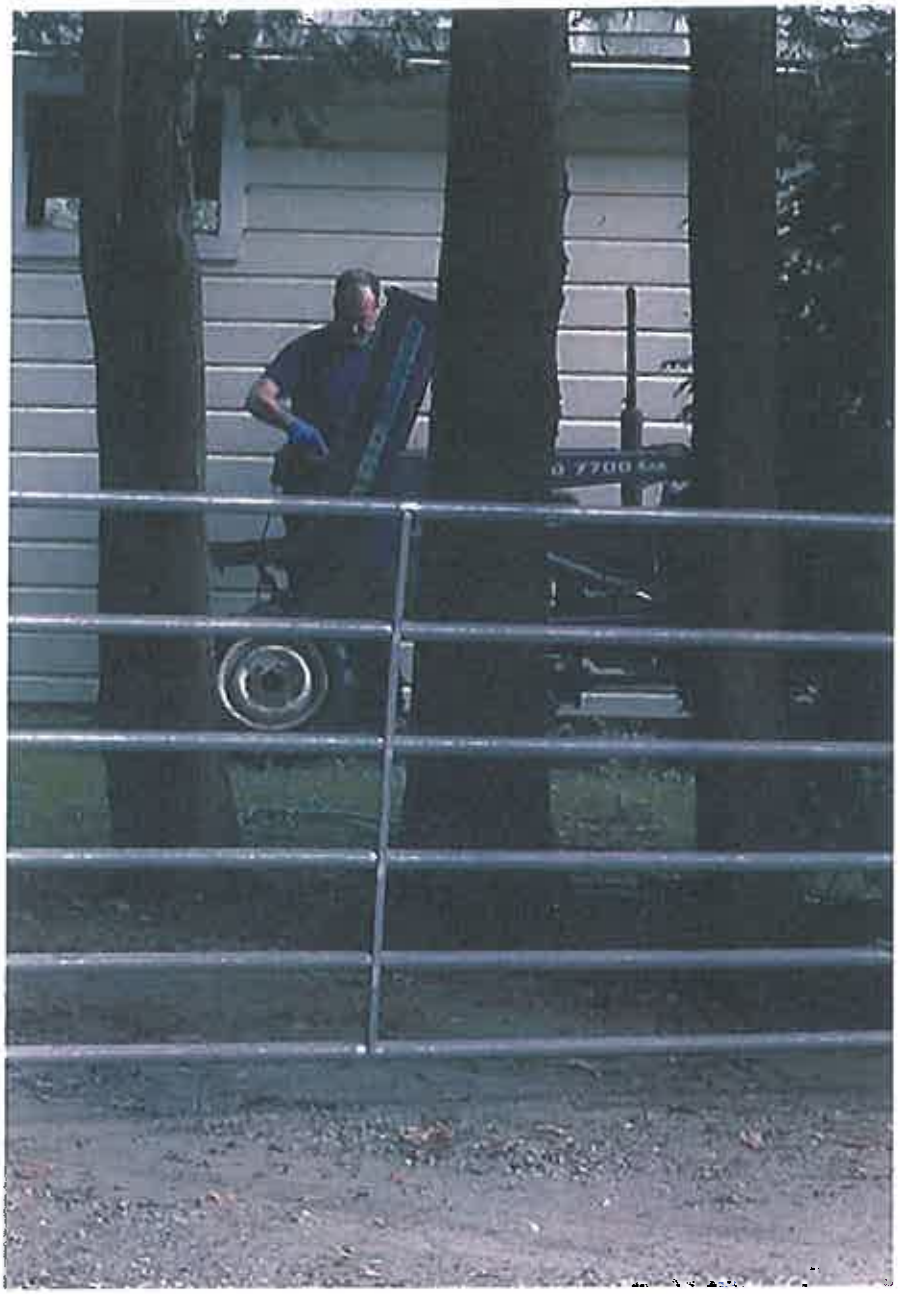


Exhibit F

1 A I learned --
2 THE COURT: No, that is the same.
3 Q Did you change your practices at some point and time
4 after meeting with the Watershed Aggricultural Council?
5 A Yes, we did.
6 MS. ZALANTIS: Objection.
7 THE COURT: That is fine.
8 A We changed our practice to accommodate a new type of
9 bedding which is a pelletized sawdust, and the pelletized
10 sawdust is designed to decrease waste, and decrease bedding
11 consumption. And basically it decreased our waste production
12 by 70 percent on the farm. And it is also designed to enhance
13 compostability because it has been shown that it has a six
14 months biodegradable versus a classic shaving a 2, 2 year
15 biodegradable window.
16 Q And did that change the frequency in which the
17 dumpster would be emptied?
18 A Yes. Going from six weeks to in the first cycle of
19 using the -- that bedding, it took three months to fill a new
20 dumpster.
21 Q And do you know why it took the additional time to
22 fill the dumpster?
23 A Essentially when you pick the stall, using
24 traditional shavings, you would take out substantial quantities
25 of shavings with the manure, so each stall everyday would take

1 out approximately one wheelbarrel full of manure and shavings
2 mixed, and it would be substantially high put quality, without
3 put would be about one wheelbarrel shavings of, versus new
4 pelletized sawdust, we take one wheelbarrel full per day out of
5 three stalls; so it is mostly just manure versus the wood
6 product.
7 Q And do you have any records indicating the removal of
8 manure from your property?
9 A I have requested my manure removal company to submit
10 my records with him, which I believe we have them from 2004.
11 And I also have my bedding receipt indicating the
12 conversion of bedding from sawdust to pellet in December of
13 this year.
14 Q May I show you what has been marked as Defendant's
15 Exhibit U.
16 A Looking.
17 Q And I will you ask you to take a moment and look at
18 the various invoices listed there.
19 A And I recognize this as my record.
20 Q And are these records of the manure removal at your
21 property?
22 A Yes, they are.
23 Q And if you look at the various invoices, are those
24 invoices that you received?
25 A I believe they represent the billings.

Exhibit G

Westchester gov.com

Robert P. Astorino
County Executive

Sherlita Amler, M.D.
Commissioner of Health

September 30, 2013

Ruth Toporoff
12 Alice Road
Bedford Corners, NY 10549

Dear Ms. Toporoff:

This letter serves to summarize our meeting on 9/27/13 regarding required minimum separation distances between a drinking water well and land surface spreading of solid manure, storage areas for manure piles, and horse paddock areas.

The Westchester County Department of Health regulates construction of drinking water wells and protection of drinking water wells from pollution under Article VII of the Westchester County Sanitary Code (WCSC), and is guided by the New York State Department of Health (NYSDOH), Part 5, Subpart 5-1 Standards for Water Wells – Appendix 5B.

NYSDOH Part 5, Subpart 5-1 Standards for Water Wells – Appendix 5B sets forth the minimum standard for construction, renovation, development and abandonment of new or replacement water wells. Table 1 of Appendix 5B "Required Minimum Separation Distances to Protect Water Wells from Contamination" regards siting of water wells to be constructed. Please note that although water well construction should routinely meet these standards, a water well, particularly a replacement well, may be approved in an alternate location when separation distances cannot reasonably be met. Required minimum separation distances included in Table 1 of Appendix 5B do not technically apply to existing water wells, nor do they apply to required protection of water wells from actual or potential pollution after a water well is constructed. However, Article VII, Section 873.701(1) of the Westchester County Sanitary Code which regulates water supplies, does apply to existing drinking water wells being protected from actual or potential pollution, i.e. "No person shall provide or make available or accessible a supply of water for domestic use, unless such water supply is potable and unless the source, treatment and distribution of such water shall be so protected from actual or potential pollution and so maintained as to deliver at all times a potable water."

The following responds to specific questions and issues raised at our meeting regarding required minimum separation distances between a drinking water well and land surface spreading of solid manure, storage areas for manure piles, and horse paddock areas:

- For approval of new wells this Department is guided by NYSDOH Part 5, Subpart 5-1 Standards for Water Wells – Appendix 5B including Table 1 of Appendix 5B "Required Minimum Separation Distances to Protect Water Wells From Contamination". Locations of replacement wells are approved by this Department on a case by case basis and may not meet the separation distances in Table 1 in whole or in part.

- This Department cannot require that storage areas for manure piles be located a minimum of 200 feet from an existing drinking water well unless such storage less than 200 feet from the existing well, in the opinion of the Department, has or could result in actual or potential pollution of the existing well. Storage areas for manure piles that are adequately controlled to preclude

Department of Health
25 Moore Avenue, 1st Floor
Mount Kisco, NY 10549 Telephone: (914) 864-7388 Fax: (914) 813-4691

REDUCE REUSE RECYCLE

contamination of surface or groundwater may be located as close as 100 feet from an existing drinking water well.

- Land surface spreading of solid manure may take place as close as 100 feet from an existing drinking water well.

- According to the NYSDOH there basically is no difference between a pen or a paddock (or corral). These terms are used interchangeably to mean small areas to confine animals for a variety of purposes, e.g. feeding, getting ready for market, etc. Grazing areas and pastures are not considered pens.

I trust that this information is satisfactory for your needs.

Respectfully,

Paul Kulzy, P.E.
Assistant Commissioner
Bureau of Environmental Quality

PK:jlp

cc: Sherlita Amler, M.D - WCDOH
File

THE Chazen COMPANIES
Proud to be Employee Owned
Engineers
Land Surveyors
Planners
Environmental Professionals
Landscape Architects

Hudson Valley Office
21 Fox St., Poughkeepsie, NY 12601
P: (845) 454-3980 F: (845) 454-4026
www.chazencompanies.com

Capital District Office (518) 273-0055
North Country Office (518) 812-0513

October 2, 2013

Mrs. Ruth Toporoff
12 Alice Road
Bedford, NY 10549

Re: 341 Succabone Road
Manure Pile Location Guideline Summary
Chazen Project # 81317.00

Dear Mrs. Toporoff,

I am writing to this letter to provide an interpretation of the documents and information listed below;

- Correspondence letter prepared by Paul Kutzy, P.E. of Westchester County Department of Health, dated September 30, 2013.
- Communication with NYSDOH, Bureau of Water Supply Protection, on August 26, 2013.
- Communication with WCDOH, Environmental Services, on August 6, 2013 and September 3, 2013.

In summary, here are the design limits that I would use based upon the DOH letter and DOH conversations.

1. A manure pile needs to be 10 feet from the Subsurface Treatment System (SSTS). Reference communication with WCDOH.
2. A manure pile that does not contaminate (or potentially contaminate) surface or groundwater (ie controls stormwater runoff) can be as close as 100 feet from a well. Reference WCDOH 9/30/2013 letter.
3. Manure spreading needs to be 100 feet from the well. Reference WCDOH 9/30/2013 letter.
4. A dumpster needs to be 10 feet from the SSTS. Reference communication with WCDOH and design manual.
5. A dumpster has no restriction . Therefore, the dumpster could be one foot from the well. Reference communication with WCDOH and 9/30/13 letter from WCDOH. There is no mention in the letter of any restriction from a well to a dumpster.

Should you have any further questions or requests, please feel free to contact me.

Sincerely,

George Cronk, P.E.
Project Manager

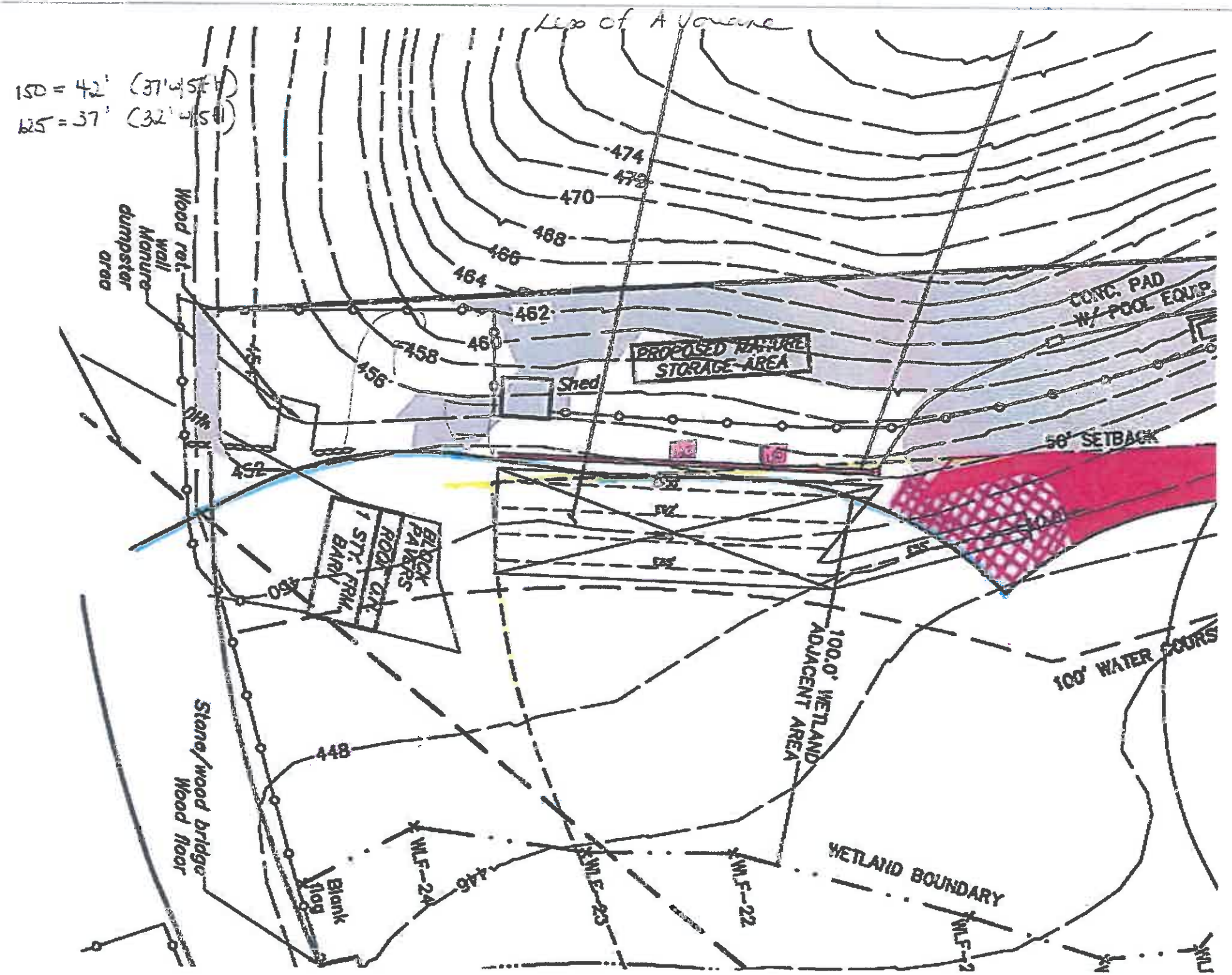
Cc: Kathleen Zalantis

Exhibit H

341 Suc

341 Succab

Exhibit I


Lip of A Volcano
150 = 42' (37'-45'H)
125 = 37' (32'-45'H)
474
472
470
468
466
464
462
460
458
456
452
448
446
Wood rail wall
Manure dumpster area
PROPOSED MANURE STORAGE AREA
Shed
CONC. PAD W/ POOL EQUIP.
50' SETBACK
100' WATER COURS
100.0' WETLAND ADJACENT AREA
WETLAND BOUNDARY
BLOCK PAVERS ON 1 STY. FRM BARN
Stone/wood bridge
Wood floor
Blank flag
WLF-24
WLF-23
WLF-22
WLF-2

ROAD
R.O.W.
50'
R=275.00' L=102.25'
N 01° 21' 12" W
N 01° 21' 12" W
181.76'
55.94'
STONE HEAD TIMBER
CB
FENCE POST
BARN FLAS
FLAGGED
CENTER LINE
200' RADIUS
BUILDING SETBA
CEMETERY
IRON ROD SET
IRON ROD SET
IRON ROD SET
APPROVED AREA
S.S.D.S. DEPARTMENT PERMIT No.
PZ06-07
EXISTING SEPTIC TRENCH
SEPTIC
SEPTIC
SEPTIC
GATE
GATE
GATE
GATE
DRIVEWAY
STONE WALL
STONE WALL
FRAME BARN
FRAME BARN
BLACK SMITH SHOP
NO ZONE
SERVICE STREET
SERVICE STREET
SERVICE STREET
SEPTIC
SEPTIC
SEPTIC

Exhibit J

Westchester gov.com

Robert P. Astorino
County Executive

Sherlita Amler, M.D.
Commissioner of Health

January 10, 2014

Ruth Toporoff
12 Alice Road
Bedford Corners, NY 10549

Dear Mrs. Toporoff:

As we discussed during our phone conversation on 1/9/14, there is no required minimum separation distance between onsite wastewater treatment system (OWTS) components and a dumpster placed on the surface of the ground. Such OWTS components include existing absorption trenches and expansion area approved by this Department.

A dumpster may be placed on the surface of the ground directly next to existing absorption trenches or any expansion area approved by this Department. A dumpster may not be placed over existing absorption trenches and precautions should be taken not to drive over, disturb, damage, or compact any OWTS components or any portion of the approved OWTS area.

I trust this information is satisfactory for your needs.

Respectfully,

Paul Kutzy, P.E.
Assistant Commissioner
Bureau of Environmental Quality

PK:jlp

cc: Sherlita Amler, M.D.
File

Department of Health
25 Moore Avenue, 1st Floor
Mount Kisco, NY 10549

Telephone: (914) 864-7206

Fax: (914) 813-4691

REDUCE REUSE RECYCLE

Shed / Barn S/Z

SZ SILVERBERG ZALANTIS LLP

Law Offices
220 White Plains Road, 5th Floor
Tarrytown, New York 10591
Tel. (914) 682-0707
Fax. (914) 682-0708
www.szlawfirm.net

March 24, 2014

VIA EMAIL AND HAND DELIVERY

Chairman Michaelis and Members of the Town of Bedford Zoning Board of Appeals
Town of Bedford Zoning Board of Appeals
307 Bedford Road
Bedford Hills, New York 10507

Re: ZBA's April 3, 2013 Special Meeting Agenda
Stefano and Suzanne Galli ("Gallis"), 341 Succabone Road, Bedford Corners, NY
Appeal/Interpretation in Connection with Accessory Structure (shed/barn)

Dear Chairman and Members of the Zoning Board of Appeals:

We represent the Appellants Michael Richman and Ruth Toporoff, who live at 12 Alice Road, Bedford Corners, New York and write to further to provide exhibits (Exhibit "A" through "F") that we intend to reference and rely upon in connection with our appeal/interpretation concerning an accessory structure (shed/barn). Thank you.

Very truly yours,

SILVERBERG ZALANTIS LLP

Katherine Zalantis

KZ:hs
Enclosures
cc: (Via Email and FedEx)
Building Inspector Steven Fraietta
Joel Sachs, Esq., Town Attorney

Exhibit A

22912

Sent from my iPhone

1 Attached file | 175KB

RECEIVED
MAY 04 2012
Bedford Building Dept.

photo.JPG

View Slideshow Download

Exhibit B

8'
09.04.2013 11:43

09.04.2013 11:43

Exhibit C

Consumer Reports Website
consumerreports.org
Expert Product Reviews and Ratings! Honest. Trustworthy. Reliable.

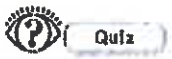
m-w.com

Quizzes & Games | Word of the Day | Video | New Words | My Favorites

New! Spanish Central »

terrace

Subm



Name That Thing
Take Our 10-Question Quiz

furniture for life

COUNTRY WILLOW

ENJOY THE SALE

terrace

Save | Popularity

21 ENTRIES FOUND:

terrace
trass
alluvial terrace

Save this word to your Favorites.
If you're logged into Facebook, you're ready to go.

Sponsored Links

Treat Airborne Allergies
Get Useful Info On How To Treat Airborne Allergies In Children...
www.healthline.com/treat-allergies

'ter·race *noun* \ˈter-əs, ˈte-rəs\

: a flat area created on the side of a hill and used especially for growing crops

: a flat area next to a building where people can sit and relax

: a row of houses that are joined together : a group of row houses

Full Definition of TERRACE

+1 Like

1 a: a colonnaded porch or promenade

b: a flat roof or open platform

c: a relatively level paved or planted area adjoining a building

2 a: a raised embankment with the top leveled

b: one of usually a series of horizontal ridges made in a hillside to increase cultivatable land, conserve moisture, or minimize erosion

3 : a level ordinarily narrow plain usually with steep front bordering a river, lake, or sea; *also:* a similar undersea feature

4 a: a row of houses or apartments on raised ground or a sloping site

b: a group of row houses

c: a strip of park in the middle of a street often planted with trees or shrubs

d: STREET

5 : a section of a British soccer stadium set aside for standing spectators

See terrace defined for English-language learners »
See terrace defined for kids »

Examples of TERRACE

rice growing in hillside *terraces*

For sale: large three-bedroom house with adjoining *terrace* and garden.

Origin of TERRACE

New Country
Audi of Greenwich
#1 Volume Dealer in Connecticut
per Audi of America

VIEW OUR SPECIALS

MORE QUIZZES

Spell It
The commonly misspelled words quiz
Hear It. Spell It »

Vocabulary Quiz
How strong is your vocabulary?
Take the Quiz »

Quizzilla: Our New App!
The Vocab Quiz Game for iPhone & iPad
"Incred'bly fun and addictive. And informative!" — User Review, iTunes
Learn More »

"Urbane," "Incisive" & Other Good Things to Be
Top 10 Sophisticated Compliments

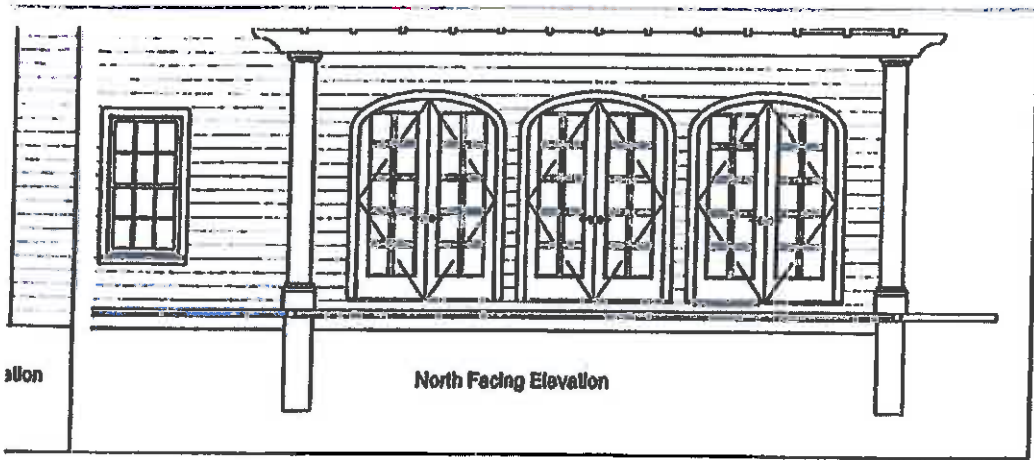
Language of Love: The Story of "Romantic," "Infatuation" & More
Top 10 Words for Valentine's Day

STAY CONNECTED

Get Our Free Apps
Voice Search, Favorites, Word of the Day, and More
iPhone | iPad | Android | More

Join Us on FB & Twitter
Get the Word of the Day and More
Facebook | Twitter

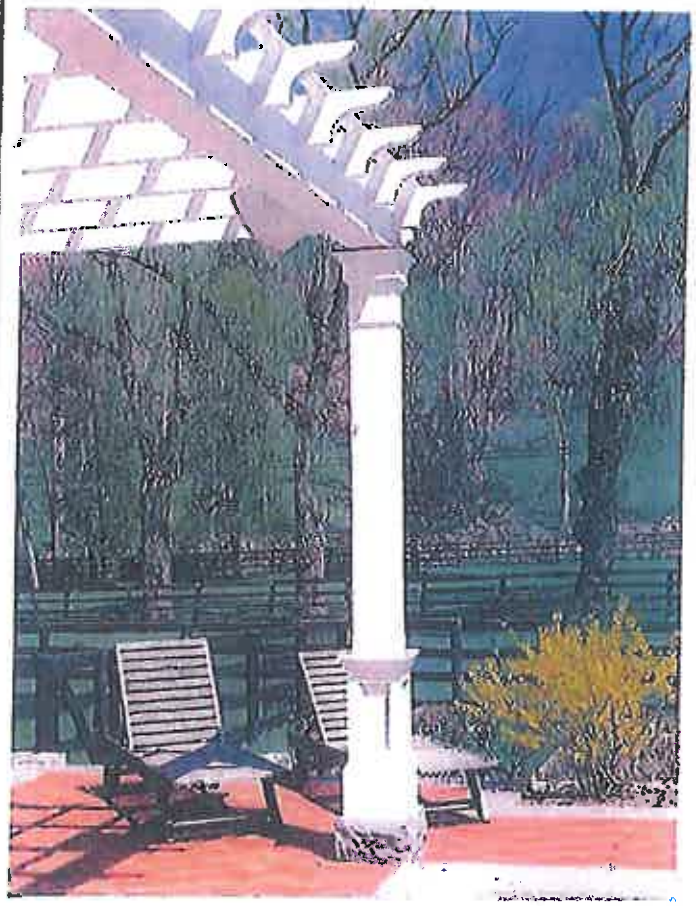
Exhibit D



Renderings

Scale:
1/2"=1'

lower section
e the stone base.



Photos

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
Galli Residence
341 Succabone Road
Bedford Corners, NY

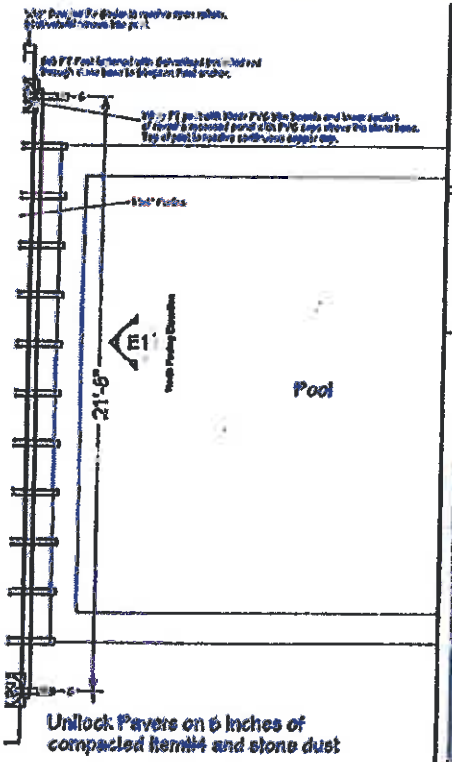
PROJECT DESCRIPTION:
Galli Pergola
As Built

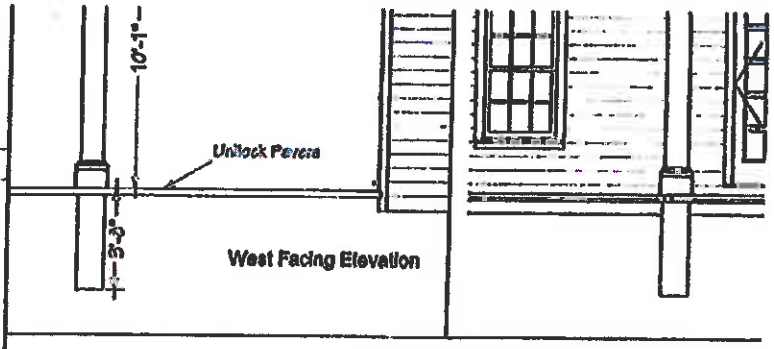
DRAWINGS PROVIDED BY:
Cusato Management Corp.
6 Lake Kitchawan Drive,
South Salem , NY 10590

DATE:
2/4/2014

SCALE:

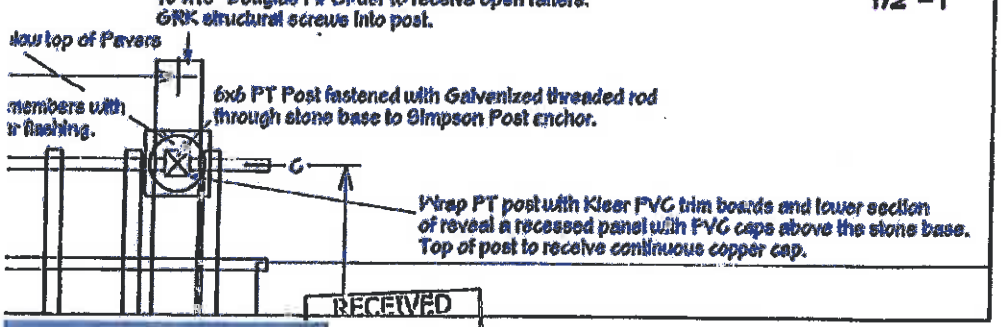
SHEET:
A-1





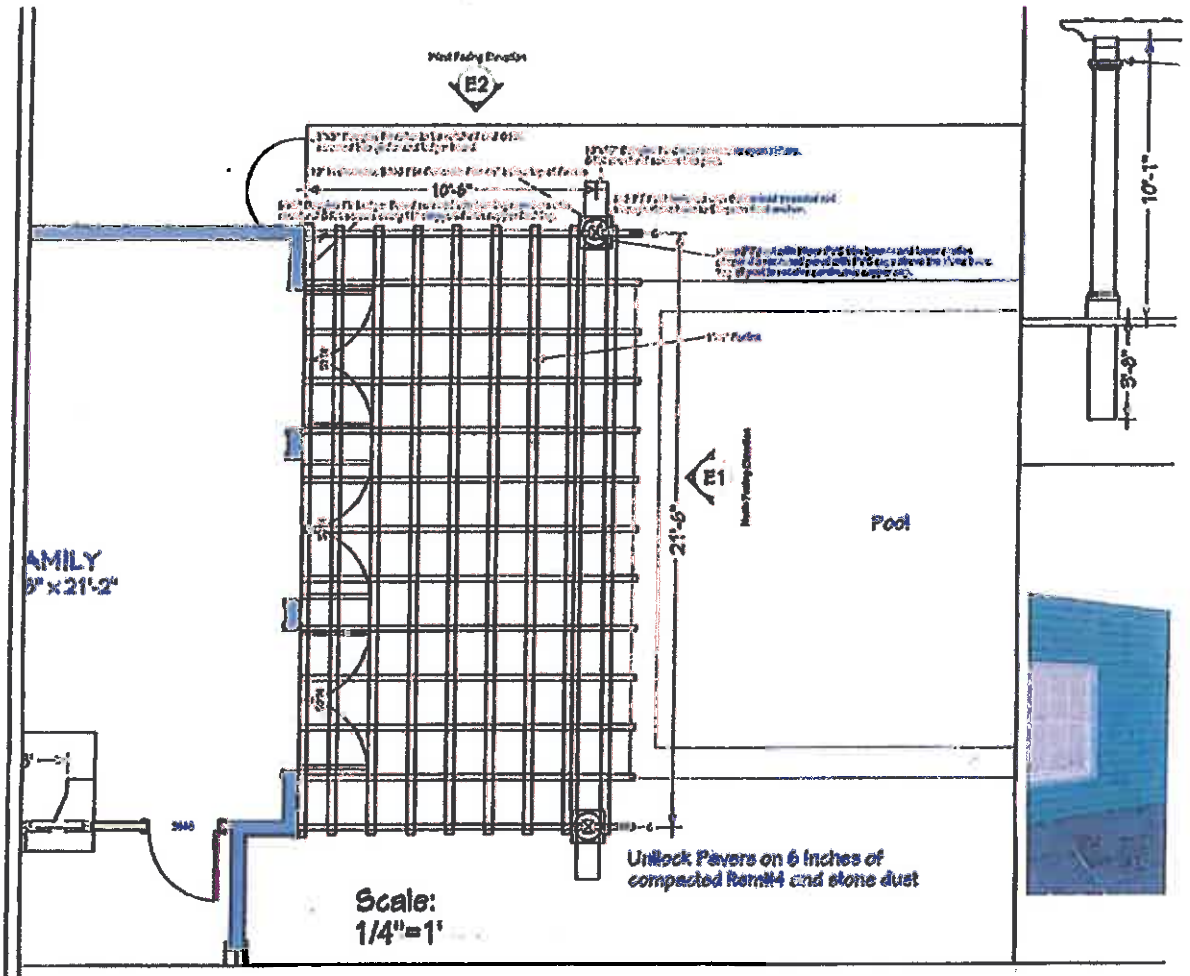
Rendering

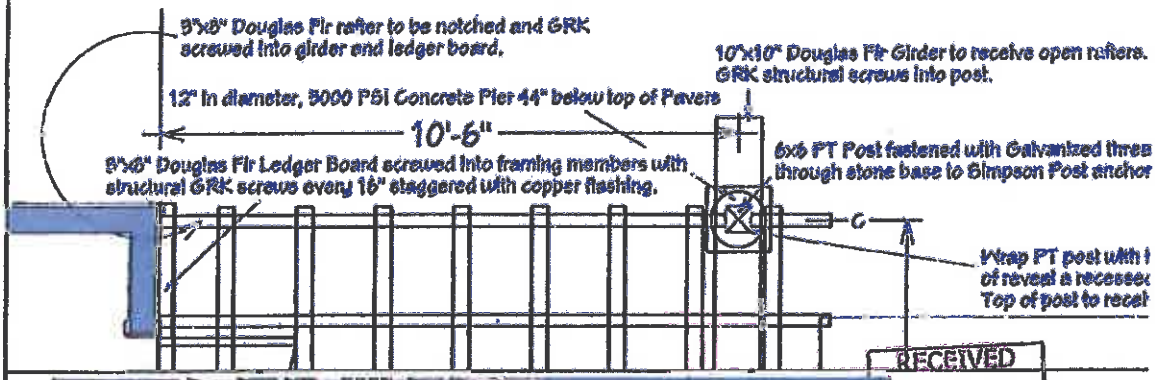
Scale:
1/2"=1'



RECEIVED
FEB 0 6 2014

As Built Photos





RECEIVED
FEB 0 6 2014

Exhibit E

Rend

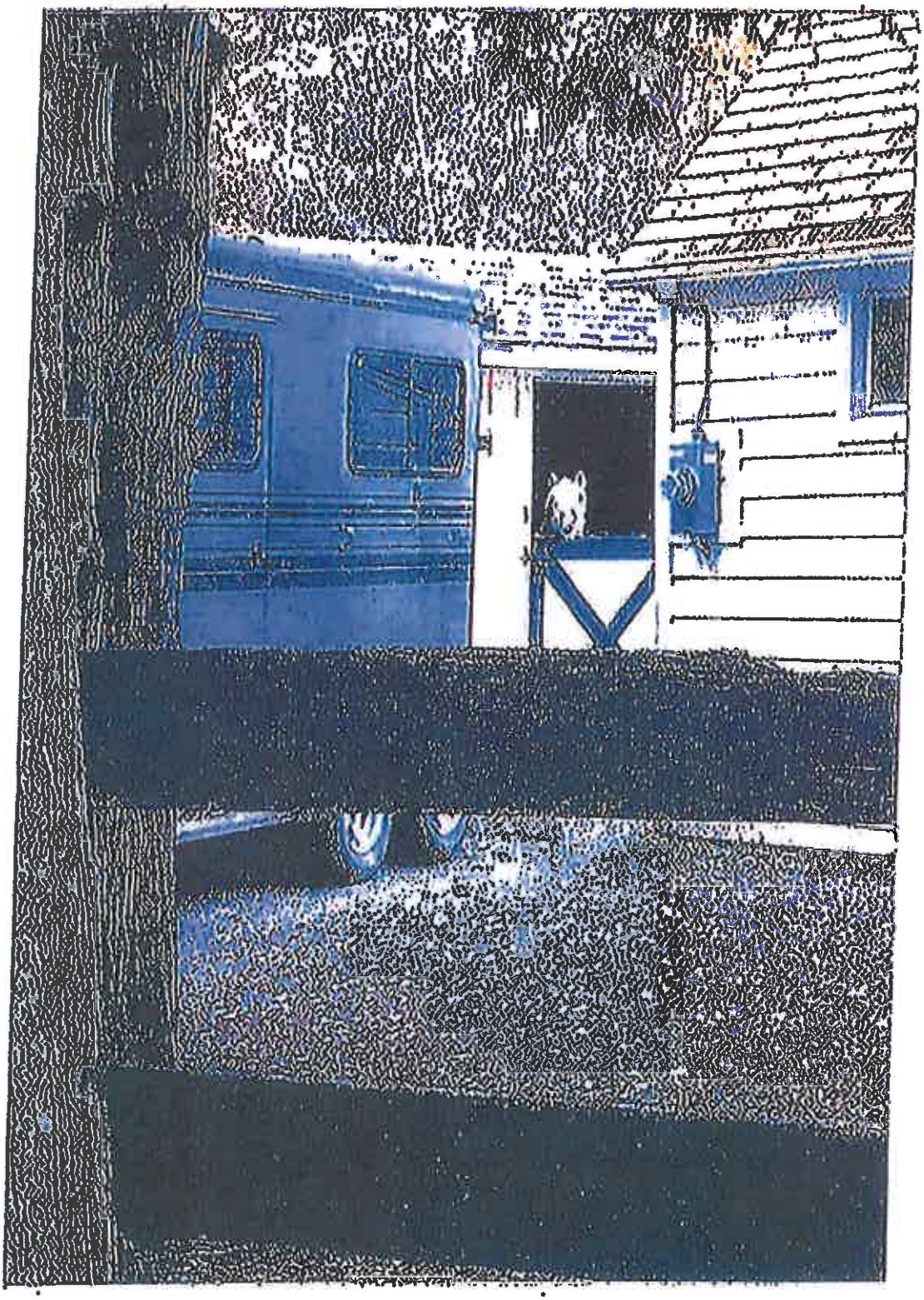
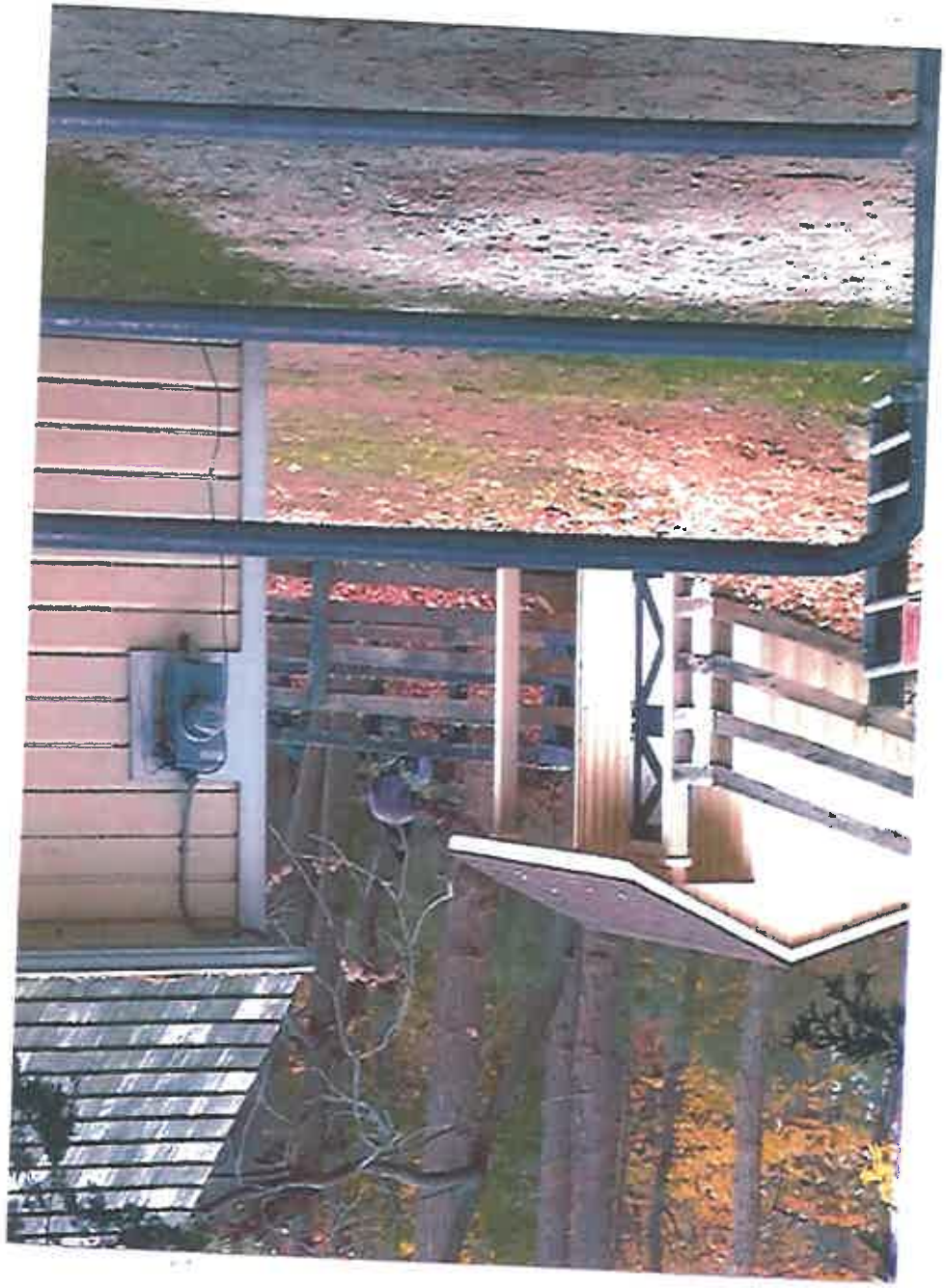
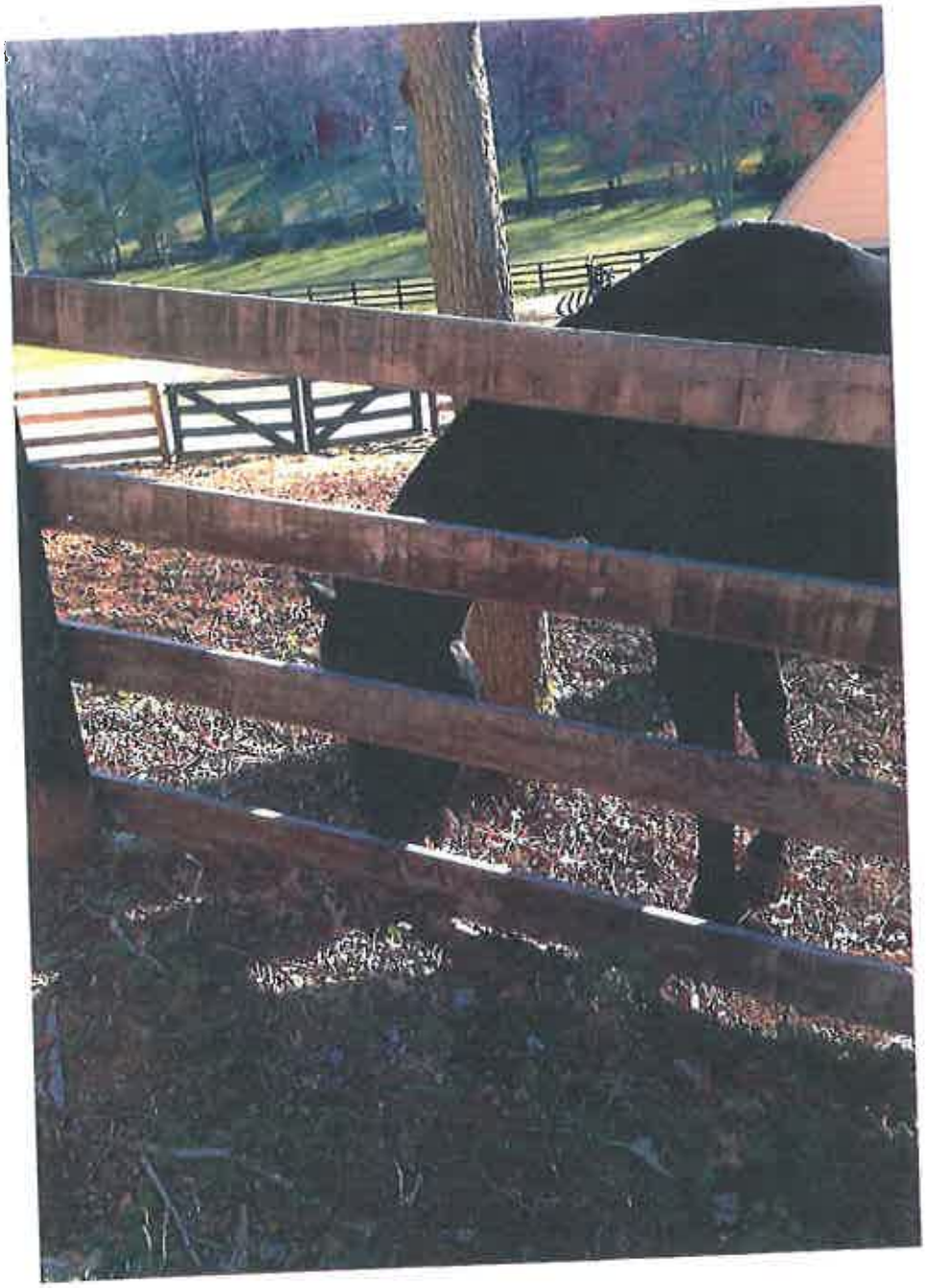


Exhibit F





Final - Barn S/2

SZ SILVERBERG ZALANTIS LLP

Law Offices
220 White Plains Road, 5th Floor
Tarrytown, New York 10591
Tel. (914) 682-0707
Fax. (914) 682-0708
www.szlawfirm.net

March 24, 2014

VIA EMAIL AND HAND DELIVERY

Chairman Michaelis and Members of the Town of Bedford Zoning Board of Appeals
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, New York 10507

Re: Appeal from Determination of the Building Inspector dated March 4, 2014

Dear Chairman and Members of the Zoning Board of Appeals:

We represent Michael Richman and Ruth Toporoff, (collectively "Appellants"), who live at 12 Alice Road, Bedford Corners, New York. We write in furtherance of our March 4, 2014 appeal to the Town of Bedford Zoning Board of Appeals ("ZBA") from a determination of Building Inspector Steven Fraietta ("Building Inspector") concerning the legality of the barn of the property located at 341 Succabone Road, Bedford Corners, New York (Parcel Identification Number 83.11-2-3) ("Galli Property") owned by Stefano and Suzanne Galli (the "Gallis"). In connection with a building coverage variance that was granted by the ZBA, the Building Inspector was instructed to review the Building Department records for all structures on the Galli property and determine if all proper permits had been issued. In response, the Building Inspector, on or after February 6, 2014, made notations on the Gallis' November 6, 2013 survey ("November 2013 Survey") indicating that a building permit and certificate of occupancy were issued for the barn (BP # 5149; C/O # 7998) (see **Exhibit "A"** to our March 5, 2014 barn appeal letter). To the extent that these notations suggest that the barn is a legal structure, we submit that this was an error and respectfully request that the ZBA vacate the Building Inspector's determination and make the determination that ought to have been made, namely, that there are no permits or approvals for the Gallis' current barn structure's size and the barn's use.

I. Overview

This appeal, which is supported by documentary evidence maintained by the Town and sworn testimony taken in a related Westchester County Supreme Court action, is actually very simple. The barn at issue in this case existed on the Gallis' property prior to them purchasing the property in June 1998 (see deed attached as **Exhibit "A"**). The barn was a nonconforming use

because it was in the wetlands controlled area and it was also nonconforming as it did not comply with two different zoning setback requirements. Because Mr. Reynolds did not house horses in the barn for years before the Gallis purchased the property, the nonconforming use of the barn to house horses lapsed. Pursuant to the Zoning Code, once the nonconforming use lapsed, any future use must comply with the Town Code.

Mr. Reynolds then obtained a certificate of occupancy for the barn on January 3, 1997. We do not challenge the certificate of occupancy to the extent that it legalized the structure, and do not object to the structure's existence. However, because the use of the barn to house horses lapsed long before the certificate of occupancy was issued, the certificate of occupancy could not legalize the use of the barn to house horses. And even after the certificate of occupancy's issuance, there were still no horses housed at the property for approximately a year and a half before the Gallis purchased the property. And therefore any alleged legal nonconforming use lapsed again.

As a result, it is illegal for the Gallis to use the barn located wholly in the wetlands and in the zoning setback area to house horses. The Building Inspector does not identify any other permits or authorizations obtained by the Gallis related to the barn after the certificate of occupancy's issuance in 1997. As such, when the Gallis began housing horses in this structure located wholly in the wetlands (in summer 1998), they did so illegally. If the Gallis want horses on their property, they must do so in a zoning and wetlands compliant location. In granting my client's preliminary injunction motion, the judge in the Supreme Court action acknowledged that there were other compliant locations where the Gallis could maintain their horse use (in the context of storing manure).

In addition, the Gallis never obtained variances or permits before they illegally expanded the nonconforming use several years later by expanding the footprint of the barn, building a concrete patio structure attached directly to the barn, and installing paddock fences next to the barn (and another structure they constructed without permits). Because none of these approvals were obtained by the Gallis, to the extent that the Building Inspector's notations suggest that the barn is a legal structure, we submit that this is incorrect because (1) using the barn to house horses is a nonconforming use that lapsed; (2) the Gallis expanded the nonconforming use of the barn to house horses; and (3) the Gallis expanded the size and footprint of the barn that does not comply with zoning setback requirements (and wetland code requirements).

II. <u>The Barn is a Nonconforming Use</u>

The barn located on the Gallis' property is entirely in the wetlands controlled area (see November 2013 Survey attached as **Exhibit "I"** to our March 5, 2014 barn appeal letter). Wetlands Code § 122-8(A), entitled "<u>Prohibited Acts</u>," states: "It shall also be unlawful to locate animal feedlots or pens, manure stockpiles or similar animal storage areas within a wetland, watercourse or wetland/watercourse buffer." Animal pens and storage areas would undoubtedly include a barn that is used to house horses.

Indeed, the Building Inspector recently issued a determination in which he interpreted this provision of the Wetlands Code and found that a manure dumpster should be considered a manure stockpile and therefore was a prohibited use "given that the intent of the law is to prevent the depositing of certain materials into controlled areas" (see **Exhibit "B"**). The same rationale would apply to a barn – another prohibited use. Therefore, the Gallis' barn that is in the wetlands controlled area is a nonconforming use because such a use is unlawful under the Wetlands Code. The Wetlands Code was originally adopted in 1973 and the current version was adopted in 1991.

Further, according to the November 2013 Survey, the barn is located 23.7 feet from the Alice Road property line. This violates two different setback requirements: (1) that all structures are set back at least 75 feet from a front property line (as reflected on the Gallis' own survey; see also Zoning Code § 125-18 & 125 Attachment 5); and (2) that all barns and structures used to house horses are set back at least 50 feet (Zoning Code § 125-25(B)(3)(b)). Therefore, not only is this barn a nonconforming use, but it is also nonconforming as to the setback requirements in the Zoning Code.

The use of the barn to house horses became nonconforming when the Reynolds owned the property. According to sworn testimony given by the Gallis' own witnesses in a related Supreme Court action, the Reynolds housed one horse on their property and that horse died in the late 1980's or early 1990's (see excerpt from transcript attached as **Exhibit "C"**). The Reynolds did not have any horses on their property from that time (at the latest the early 1990s) and there were no horses on the property until the Gallis purchased the property in July of 1998, a period of several years. But by 1991, the Wetlands Code prohibited any barn use in the wetlands controlled area. Pursuant to Zoning Code § 125-11(C)(4):

> "If such nonconforming use of a building or structure ceases for any reason for a continuous period of more than six months or is changed to a conforming use, then any further use of such building or structure and the land on which it is located shall be in conformity with all provisions of this chapter and for the district in which it is located."

This means that after the Reynolds stopped using the barn to house horses for six months, the nonconforming use of the barn lapsed. And even if the issuance of the certificate of occupancy in January 1997 legalized the nonconforming use (that was prohibited by the Wetlands Code adopted in 1991), the use lapsed again because the Reynolds did not use the property to house horses and there were no horses on the property until the property was sold to the Gallis in June 1998, eighteen months later (see **Exhibits "A" & "C"**).

As such, after the use lapsed (either six months after the Reynolds' horse died or six months after the Reynolds got the certificate of occupancy), this barn could no longer be used to house horses. While the structure could still exist in that location <u>provided it was not enlarged or expanded</u> and provided that it was used for a use permitted in the wetlands (such as potentially, a storage shed), my clients would not object to such a use. Rather, it is the use to house horses that has lapsed and is now illegal and causes impacts on my clients.

Even if the owner sought a use variance from this Board, it could not be granted because the ZBA does not have jurisdiction to modify the requirements of the Wetlands Code (see Zoning Code § 125-129(C)). Therefore, any future barn or structure to house horses would have to be in a conforming location that did not violate the Wetlands Code and setback requirements. The fact that a certificate of occupancy was issued in 1997 does not make this a legal use to house horses, and any determination by the Building Inspector to the contrary is in error.

In sum, the barn on the Gallis' property to house horses is a nonconforming use that lapsed long before the Gallis purchased the property. As such, despite what the Gallis may claim about their intentions for purchasing the property and what they understood the property to be when they purchased it, this is all irrelevant as the law is clear that the Gallis were not permitted to use this barn to house horses when they purchased the property, and they are not permitted to do so today. As a thorough review of the Town Code and investigation into the property's history would have revealed this reality, it is not this Board's job to remedy the Gallis' lack of due diligence. While the Gallis can conceivably keep the structure to use for some other purpose, like a storage shed, they cannot use it to house horses.

III. The Nonconforming Barn was Illegally Expanded

In addition to illegally using the barn to house horses, the Gallis also illegally expanded both the footprint and use of the barn. We submit affidavits from our clients with photographic exhibits (Affidavit of Ruth Toporoff, **Exhibit "D"**; Affidavit of Michael Richman, **Exhibit "E"**) outlining all of the improper construction, renovation and expansion our clients have observed the Gallis doing to the barn and its use of housing horses over the years.

Zoning Code § 125-11(C)(1) states: "Nonconforming use of structures. The nonconforming use of a building or structure may be continued, provided that: (1) Such building or structure <u>shall not be enlarged or extended</u> unless the use therein is changed to a conforming use." The evidence conclusively shows that the Gallis expanded this nonconforming use by expanding the footprint, constructing a concrete pad/block pavers and improperly installing and/or moving fences in the interior, side and rear of the property, including next to the barn.

A. Expanding the Footprint

As explained more fully in our appeal letter dated March 4, 2014, the Reynolds obtained a certificate of occupancy for the barn on January 3, 1997 based upon a survey from 1992 by H. Stanley Johnson and Company Land Surveyors, PC (attached to our March 5, 2014 barn appeal letter as **Exhibit "H"**). This survey depicts a rectangular barn that as measured from the closest corner is setback 23.7 feet from Alice Road and 51.9 feet from the cemetery property line. The Gallis' first survey of the property, which was based upon this 1992 survey and was updated in 2003, also depicts a rectangular barn with the same setbacks measured from the same corners of the barn (attached to our March 5, 2014 barn appeal letter as **Exhibit "J"**). Then, the Gallis' November 2013 survey (attached to our March 5, 2014 barn appeal letter as **Exhibit "I"**), which was also done by the same surveyor, depicts a barn with the same setbacks measures from the same corners of the barn. However, in this survey, the barn is not rectangular. On the side of the

barn facing the cemetery, the barn juts out and has been expanded, and there is also a concrete patio attached to the barn facing north that was not there previously. Further, these expansions in the footprint of the barn are depicted on the Gallis' surveys. In sum, the surveys are all similar with respect to the size and location of the barn, with the only difference being that in the most recent survey, the barn has a larger footprint and is visibly larger with a concrete patio and footprint expansion that did not exist previously. As such, this cannot be attributable to a change in surveying styles and the only possible explanation is that the Gallis improperly expanded this nonconforming use.

My clients' affidavits provide photographic evidence of, and detail when and how, the Gallis did this illegal construction. My clients observed the construction to the barn to increase the footprint, construct the attached concrete patio as an area to wash the horses and install sinks and plumbing in the barn. Not only did this increase the footprint of the nonconforming barn, but it also expanded the nonconforming use by adding a tack room and washing area for the horses. All of this was done to and around a structure in the wetlands controlled area, which is explicitly prohibited by the Code, and causes toxins associated with horse ownership and dirty water to drain into the wetlands. This is undoubtedly an illegal expansion of this improper horse use in the wetlands, which causes hazards and unsanitary conditions to nearby properties and the people and animals who reside on them.

The Building Inspector's notations did not identify any variances or building permits obtained to authorize the expansion of this nonconforming use through the construction discussed above and in my clients' affidavits, and therefore to the extent that the Building Inspector claims the Gallis' barn is a legal structure in its current state, this position is incorrect. The certificate of occupancy was based upon the Reynolds' 1992 Survey (attached to our March 5, 2014 barn appeal letter as **Exhibit "H"**) for a small barn that did not have a bumpout or concrete patio/block pavers, nothing like what currently exists on the Gallis' property today. Therefore, it is indisputable that the Gallis improperly expanded this nonconforming use by expanding the footprint of the barn in the wetlands in direct violation of the Zoning Code.

B. Installing Fences

The Gallis also unlawfully expanded the nonconforming horse use through their fences on the property, which are also discussed in detail in my clients' affidavits. In connection with the unlawful expansions described above, my clients also note that after the concrete patio was constructed attached to the barn, the Gallis then removed and reinstalled interior fences in the wetlands right next to the patio to create a ring to use for training horses and riding. This was done without any wetlands permits, even though the fencing was in the wetlands (Wetlands Code § 122-8(D)(6)). The Gallis also improperly installed paddock fences in the southwest (rear) corner of the property near the Alice Road and cemetery property line (closest to my clients' property) that do not comply with the required 5 feet setback ((Zoning Code § 125-25(B)(3)(b)), thus allowing the horses to go right up to the border. As compared to the Gallis' most recent survey from November 2013, the Gallis' 2003 survey depicts the paddock fences a substantial distance from the property lines, not right up against and in some instances over the rear property line like they are now.

Further, the 5 feet setback for paddock fences only applies to the cemetery property line. On the front property line, of which there are two on a corner lot like the Gallis' property (in this case on Succabone Road and Alice Road per the Gallis' own survey), the fences have to be setback 20 feet if they are over 4 feet high, like the Gallis' fences along Alice Road that are at least 5 feet high (see Zoning Code § 125-15(A)(1)). While my clients acknowledge that there were grandfathered fences on the property that did not comply with the setback requirements, the Gallis then removed and relocated approximately 250-300 feet of fencing in the wetlands. While the Gallis did obtain a wetlands permit, it only authorized the movement of approximately 90 feet of fencing closest to Succabone Road, which does not cover the over 160-210 linear feet of additional fencing that was also moved right next to Alice Road. As discussed above, because the Gallis moved this fencing that does not comply with setback requirements, it loses its "grandfathered" status and now much be moved to a zoning compliant location.

Lastly, there is a fence on Alice Road closest to the property line that is nearly 10 feet on Town property. Regardless of when these fences were placed there, something cannot be "grandfathered" if they were never legal to begin with. Obviously, encroaching on Town property is not legal, and this fence must be moved to a legal and zoning-compliant location.

In sum, the Gallis further expanded the nonconforming use through the installation and relocation of the fences.

IV. Conclusion

The Gallis' barn is a nonconforming use as barns are not allowed in the wetlands. The barn also does not comply with two different setback requirements under the Zoning Code. Because the Reynolds did not house horses on their property for years prior to the Gallis purchasing the property, the use lapsed and when the Gallis purchased the property they could not legally use it to house horses. Further, under the Zoning Code they could not expand or alter the barn without permits or variances from this Board.

Thank you for your consideration.

Very truly yours,

SILVERBERG ZALANTIS LLP

Katherine Zalantis

KZ:cta
Enclosures

cc: Steven Fraietta, Building Inspector (via E-Mail & FedEx)
Joel H. Sachs, Esq. (via E-Mail & Hand Delivery)

Exhibit A

WCB2

Standard N.Y.B.T.U. Form 8002 - Bargain and Sale Deed, with Covenant against Grantor's Acts—Individual or Corporation (single sheet)

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 26th day of June, nineteen hundred and ninety-eight

BETWEEN

JOHN C. REYNOLDS and
JUNE PAMELA REYNOLDS, Husband and Wife
341 Succabone Road
Mount Kisco, NY 10549

party of the first part, and

STEFANO GALLI and
SUZANNE GALLI, Husband and Wife
161 West 61st Street, Apt. 14-G
New York, New York 10023

party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

See "Schedule A" attached.

Being and intended to be the same premises as conveyed to the grantors herein in Liber 5667 cp 338.

Designated on the tax map of the Town of Bedford as: 83.11-2-3

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

John C. Reynolds
JOHN C. REYNOLDS

June Pamela Reynolds
JUNE PAMELA REYNOLDS

STATE OF NEW YORK, COUNTY OF Westchester ss:

On the 26th day of June 1998, before me personally came

John C. Reynolds and June Pamela Reynolds,

to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they executed the same.

WILLIAM R. LONERGAN, JR.
Notary Public, State of New York
No. 30-7590000
Qualified in Westchester County
Commission Expires February 28, 1999

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides at No. ;

that he is the of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. ;

that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Recorded by:
Stewart Title Ins. Co.
1 Water Street
White Plains, NY 10601

Bargain and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACTS

TITLE NO. 98A11117W

Reynolds

TO

Sulli

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
Distributed by
First American Title Insurance Company of New York

SECTION 83.11
BLOCK 2
LOT 3
COUNTY OR TOWN Bedford
83.11-2-3
County of Westchester

Recorded At Request of
First American Title Insurance Company of New York

RETURN BY MAIL TO:

Andrew L. Sokol, Esq.
292 Madison Avenue
New York, NY 10017

Zip No.

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

N05098203

DED2

2

*** DO NOT REMOVE ***

WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE
(THIS PAGE FORMS PART OF THE INSTRUMENT)

THE FOLLOWING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT DED-DEED FEE PAGE 4 TOTAL PAGES 4
(SEE CODES FOR DEFINITIONS)

STAT'Y CHARGE	5.25
REC'ING CHARGE	12.00
RECMGT FUND	4.75
EA 5217	25.00
TP-584	5.00
CROSS-REF.	0.00
MISC.	

TOTAL PAID 52.00

MORTGE. DATE
MORTGE. AMT
EXEMPT YES___ NO___

REC'D TAX ON ABOVE MTGE:
YONKERS $
BASIC $
ADDITIONAL $
SUBTOTAL $
MTA $
SPECIAL $
TOTAL PAID $

SERIAL NO.

LIBER: 12057
PAGE : 268.

THE PROPERTY IS SITUATED IN WESTCHESTER COUNTY, NEW YORK IN THE: TOWN OF BEDFORD

$ 740000.00
CONSIDERATION

DWELLING ___ 1-6 ___ OVER

_ DUAL TOWN
_ DUAL COUNTY/STATE

RECEIVED:
TAX AMOUNT $ 2960.00
TRANSFER TAX# 0018873

___ HELD
___ NOT HELD

RECEIVED
APR 5 2013
REAL PROPERTY TAX SERVICE
COMPTROLLER'S OFFICE

TITLE COMPANY NUMBER: 01

EXAMINED BY AMC8 RECORDING DATE 07/22/98

TERMINAL CTRL# 98203N050 TIME 14:16

DATE RETURNED

WITNESS MY HAND AND OFFICIAL SEAL

LEONARD N. SPANO
WESTCHESTER COUNTY CLERK

Exhibit B

Town of Bedford
Building Department
425 Cherry Street • Bedford Hills, New York 10507
Tel: (914) 666-4585 • Fax: (914) 666-2026
E-Mail: buildinginsp@bedfordny.gov
www.bedfordny.gov

Steven Fraietta, Building Inspector
James Genovese, Assistant Building Inspector
William O'Keefe, Code Enforcement Officer
Michael Repp, Jr., Deputy Fire Inspector

Alexandra J. Costello,
Sr. Office Assistant (Office Manager)

Donna M. Berkowitz, Sr. Office Assistant

March 19, 2014

Peter Michaelis, Chairman
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

Re: Galli – 341 Succabone Road, Bedford Corners
Manure Dumpster in Controlled Area

Dear Mr. Michaelis and Members of the Board:

With reference to the above and in response to the Board's request, I have reviewed Chapter 122 of the Town Code (Wetlands) and have spoken with the Town's Environmental Consultant. In Section 122-8A, it is specifically stated that among the "Prohibited Acts" are the following: "It shall also be unlawful to locate animal feedlots or pens, manure stockpiles or similar animal storage areas within a wetland, watercourse or wetland/watercourse buffer."

I believe that a dumpster containing manure should be considered a manure stockpile given that the intent of the law is to prevent the depositing of certain materials into controlled areas.

In the case of the dumpster, there is always the possibility of leachate going into the wetland. Moreover, the depositing of manure in the dumpster would require some type of vehicle to transport the manure from the barn or horse corral to the dumpster. Moreover, for the dumpster to be unloaded would require a motorized vehicle to enter the controlled area. None of these activities are in accordance with the intent of Chapter 122 which is to prohibit certain activities in controlled areas, which activities would clearly have a deleterious impact on the controlled area.

Very truly ours,

Steven Fraietta
Building Inspector

Exhibit C

Q. And was there a barn on that property when you first became familiar with it back in 1979?

A. Yes.

Q. Was there a horse at the property at some point in time?

A. Yes, their daughter's horse.

Q. And would you have occasion from the time that you first became acquainted with the Reynold's up until the Reynold's left that you would go on to their property?

A. Yes.

Q. Would you also go by their barn?

A. Yes.

Q. Were you familiar with how the Reynold's store manure at their property?

A. They had a manure pile in the back of the barn. Facing the barn would be the right-hand side.

Q. Did they have it in that same general area the entirety of the time you knew them?

A. Yes.

Q. To your knowledge, did they ever have that removed?

A. Moved the pile?

Q. Carted away.

A. No, they only had one horse and it doesn't produce a lot of manure, so they compressed it like ours did.

Q. You had horses also?

A. Yes.

Q. How many horses did you have?

A. Two and one border.

Q. And would you have occasion to go in the vicinity of that manure pile during the years that you were friendly with the Reynold's?

A. Yes. Whenever John would see the hay truck come to our house he would come over and offer help, and we would do the same for him, park on Alice Road.

Q. When you say "him"--

A. John Reynold's.

Q. You would be in that general area when the hay would be delivered off of Alice Road?

A. We would always stop over when we saw the truck.

Q. At some point in time before the Reynold's sold the property, did they stop having

horses?

A. Yes.

Q. When they stopped having horses, did they get rid of their manure pile?

A. Not to my knowledge. I never saw them take it away.

Q. Did they ever use the dumpster, referring to the Reynold's?

A. No.

Q. Is it fair to say that from the time that you first met the Reynold's up until the time they moved, there was a manure pile behind their barn?

A. Oh, yes. Everybody who has a horse has a manure pile.

Q. Is that regardless whether they had a horse or not?

A. Yes. As I said, I don't recall him ever taking it away anywhere.

MR. MCKENNA: I have no further questions. Thank you.

CROSS-EXAMINATION

BY MS. ZALANTIS:

Q. I just want to clarify your testimony.

Q. So at what point in time did you observe the manure pile after the horses were no longer on the property?

A. Well, let's see, it was probably-- again, I don't remember when the horse passed away, but it was probably late '80's, early 90's, something like that.

Q. So the manure pile that you observed was in the late '80's, early '90's?

A. It had been there since I had moved in. We were friends with them.

MS. ZALANTIS: Nothing further, your Honor.

MR. MCKENNA: No further questions, your Honor.

THE COURT: What year did you move into the neighborhood there on Succabone Road?

THE WITNESS: 1978.

THE COURT: And you moved when?

THE WITNESS: 2006.

THE COURT: Did you keep horses on your property for all or some of that time?

Exhibit D

STATE OF NEW YORK
TOWN OF BEDFORD ZONING BOARD OF APPEALS

In the Matter of the Application of STEFANO AND SUZANNE GALLI For an Area Variance to Store Manure	AFFIDAVIT

RECEIVED
MAR 25 2013
BEDFORD ZONING
BOARD OF APPEALS

STATE OF FLORIDA)
) ss.:
COUNTY OF MIAMI-DADE)

RUTH TOPOROFF, being duly sworn, deposes and states the following:

1. I reside at 12 Alice Road, Bedford Corners, New York with my husband, Michael Richman, and our three children. I have resided at this address continuously since 1995.

2. Directly across Alice Road from our property is 341 Succabone Road, Bedford Corners, New York (the "Property"), which is owned by Stefano and Suzanne Galli (the "Gallis").

3. The Gallis purchased the Property from John Reynolds in 1998 and have lived there continuously since then. Mr. Reynolds resided at 341 Succabone Road when we purchased our house in 1995.

4. There was a structure on the Property near the Alice Road property line when we moved into our house in 1995. The structure is in the wetlands controlled area of the Property.

The structure was rectangular-shaped with 3 stalls, each of which is approximately 10 feet by 12 feet in size; there was also an overhang.

5. At no time when Mr. Reynolds owned the Property did I ever see any horses on the Property. It is my understanding that the Reynolds had one horse that died before we bought our house in 1995 and after that horse died they never got another one.

6. When the Gallis purchased the Property in 1998, they began housing horses in the structure. The amount of horses varied over the years between two and four.

7. After the Gallis purchased the property, they did multiple construction and renovation projects to the structure and around the structure. My knowledge of this construction is based upon my personal observations. My bedroom window is located close to the Alice Road border of the Property where the structure is located and where all of this construction took place. During the times of construction, I heard the construction workers doing the work starting between 7:00 a.m. and 9:00 a.m., including weekends, and I observed the work from my property and Alice Road.

8. The first expansion was done a few years after the Gallis purchased the Property. They expanded the structure's footprint by constructing an additional area on the west side of the structure closest to cemetery property line to create a space to store tools and equipment for the barn. See the photographs attached as **Exhibit 1**.

9. Then, a few years later, around the same time the Gallis began renovation and construction of main residence, they did more expansions to and around the existing structure. At this time they added a large concrete patio attached to the barn/structure to be used as a wash area and a tacking area, further expanding the use of the barn. See the photographs attached as

Exhibit 2. They also removed and reinstalled interior wetlands fences to create a ring to use for training horses and riding. See the photographs attached as **Exhibit 3.**

10. The Gallis also renovated the roof and cupola of the structure.

11. The Gallis also completed renovations of the interior of the structure. As noted above, the existing structure had 3 stalls that were each approximately 10 feet by 12 feet in size. In and around the time the Gallis were doing construction to main residence, they also cut one of the stalls in half, creating an approximately 10 feet by 6 feet stall (pony stall) and a 10 feet by 6 feet tack room. In this tack room, the Gallis added counters, cabinets and, most importantly, plumbing and sinks. See the photographs attached as **Exhibit 4.**

12. All of this was done without the proper permits, which is especially troubling since they added plumbing to a structure that is in a Town-protected wetlands area.

13. I am very upset because the plumbing, along with all of the toxins and chemicals used in horse care, drain into a protected wetland. And the concrete patio mentioned above is where the Gallis wash their horses, which also drains into the wetlands.

14. I have brought this information to the Town's attention on multiple occasions and asked that the Gallis be forced to obtain the proper permits for this activity, but upon information and belief the Town has not taken any action in this regard.

15. When the Reynolds lived on the Property, they would access the Alice Road side of the Property through a large 8 to 10 feet gate on the east side of the barn/structure, closer to Succabone Road and farther from my driveway. The Gallis removed this gate within the last two years and now use the gate that is almost directly across Alice Road from my driveway.

16. The Reynolds also had over 250-300 linear feet of grandfathered, over 5 feet high fencing along Alice Road that did not comply with the 20 feet setback requirements. In the last

three years, the Gallis removed most of this fencing and relocated this over 5 feet high fencing and gate without any permits or complying with setbacks. The only approval was for the first approximately 90 linear feet of fencing closest to Succabone Road (see **Exhibit 5**), which leaves approximately 160-210 feet of linear fencing that was moved without permits and not in compliance with the Zoning Code.

17. When we installed our 4 feet high gate the Town required that it be 10 feet from the property line, and our 5 feet high fencing had to be 20 feet back from the property line. However, the Gallis have not been required to do the same and comply with the Code in this respect.

18. In the last couple of years, the Gallis also installed paddock fences along the cemetery property line in the southwest corner of the property (closest to my home) that does not comply with the 5 feet setback requirements. The Gallis then added a horse to the paddocks. See the photographs attached as **Exhibit 6**.

19. It is clear that we have personally witnessed this construction on a daily basis and swear the constructions took place, including the construction on west side of the barn, the construction of the concrete patio attached to the barn and installation of interior, rear yard and side yard fencing that violate the Code.

Ruth Toporoff, RA

Sworn to before me this
25 day of March, 2014

NOTARY PUBLIC

Notary Public State of Florida
Joe Coate
My Commission EE104667
Expires 05/19/2015

Exhibit 1

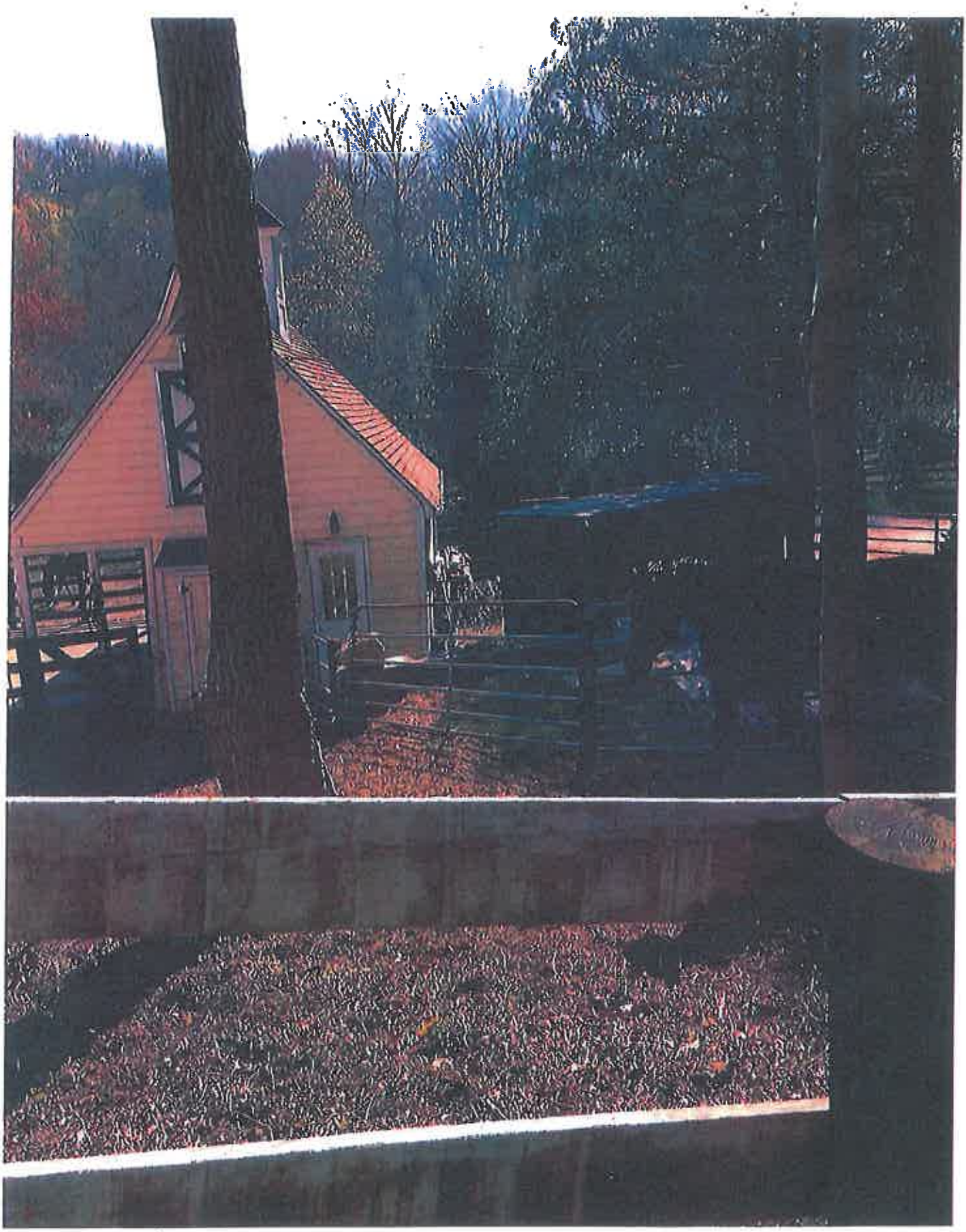


Exhibit 2

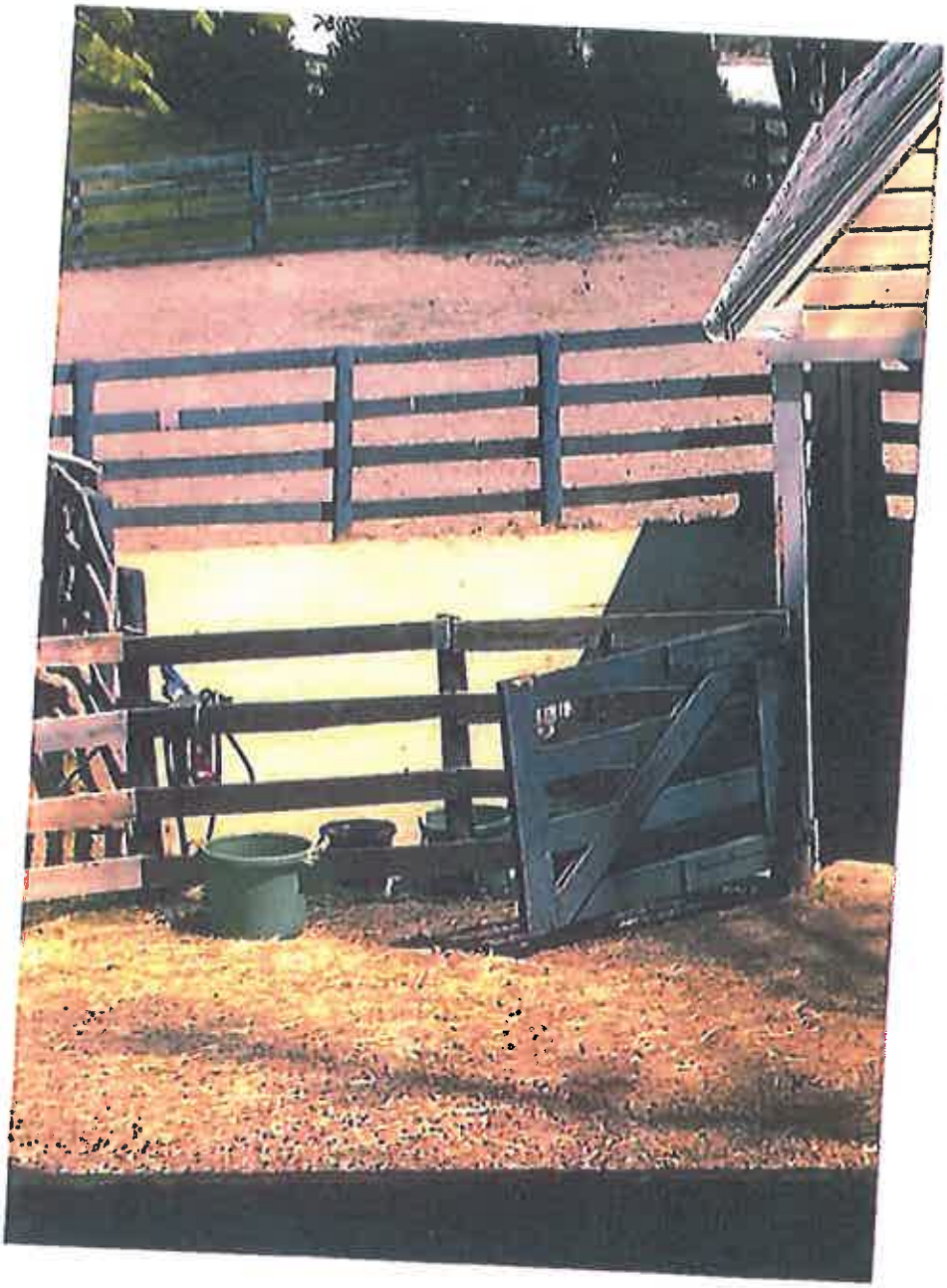
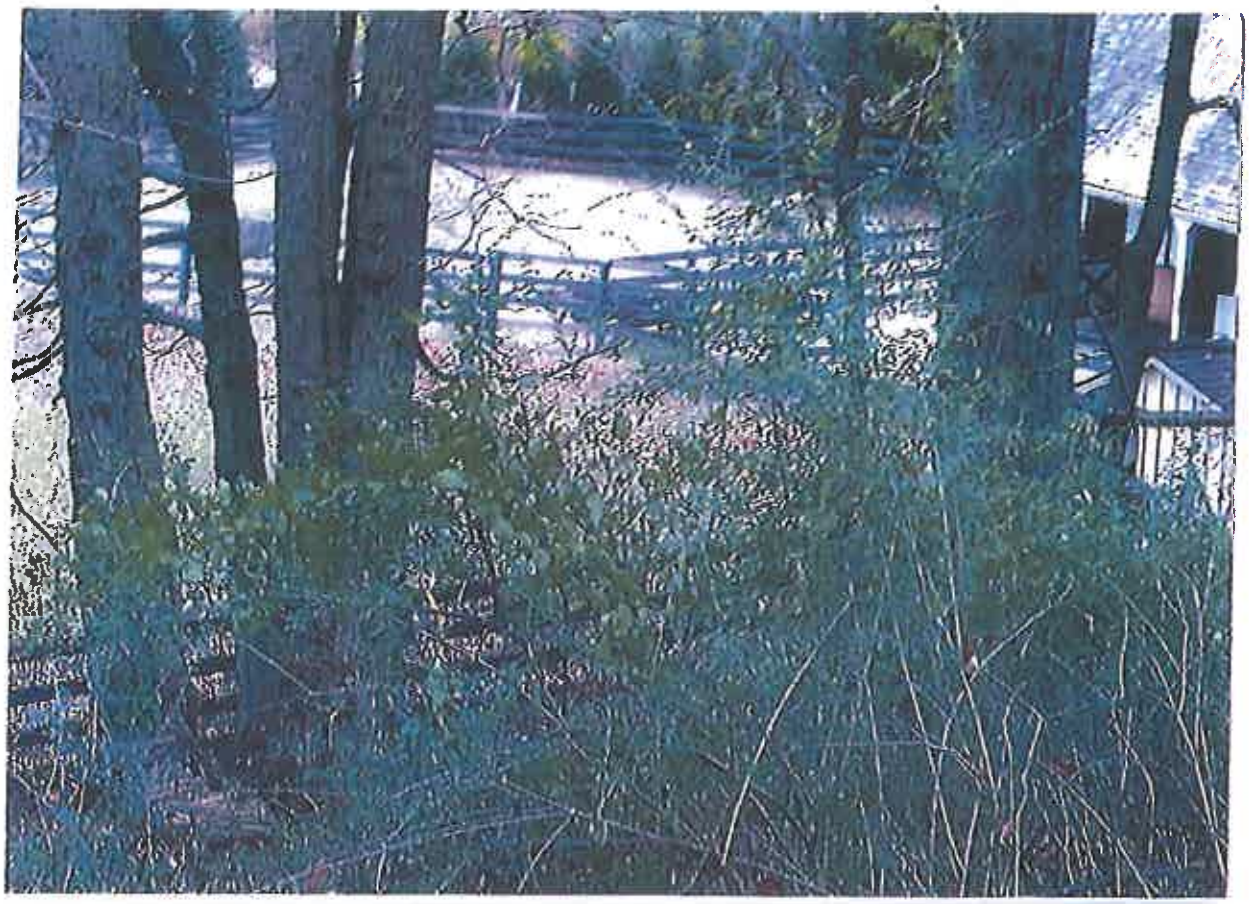


Exhibit 3



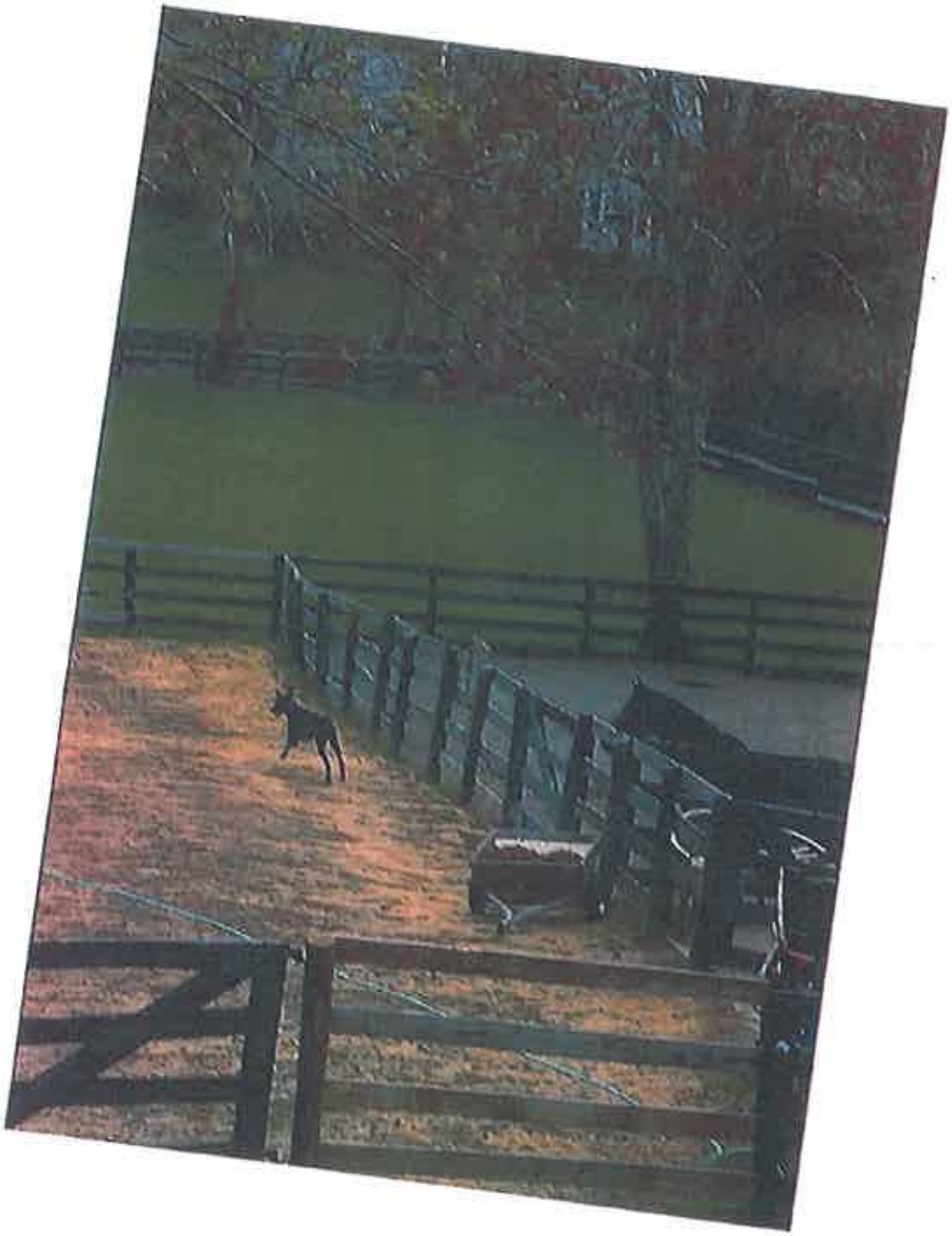
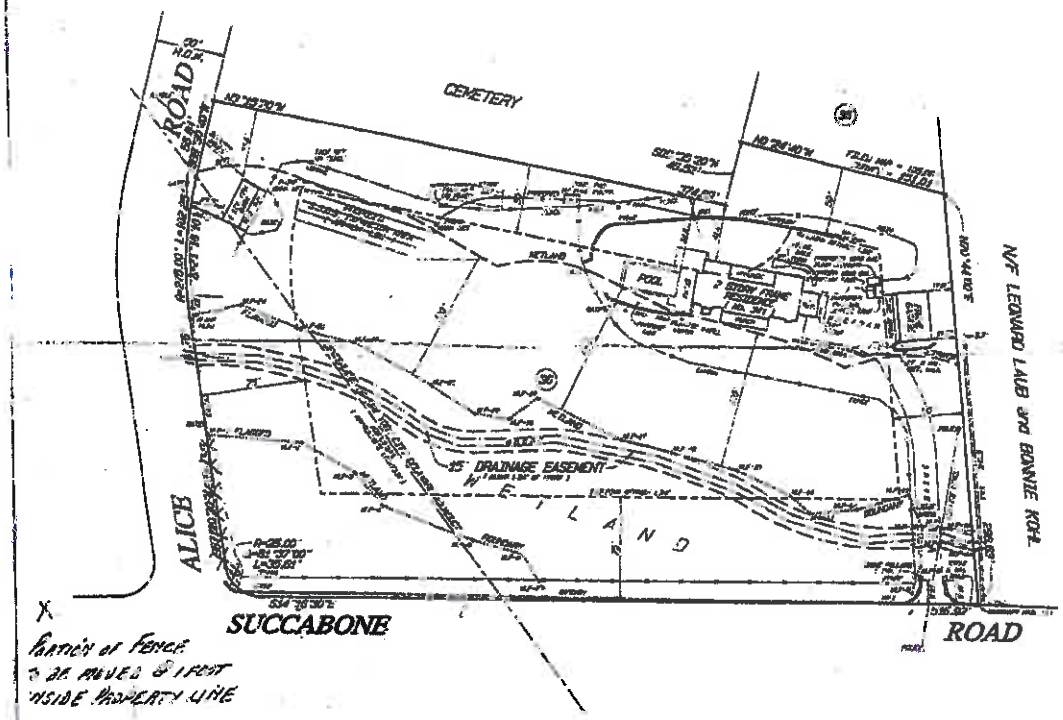


Exhibit 4

Exhibit 5



Town Zoning designation: R-4A

Area = 4.000 Acres.

Tax Identification Section 62.11 Block 2 Lot 2

Deed reference: Liber 12057 Page 158.

In accordance with the Standard Code of Practice for Land Surveys as adopted by The New York State Association of Professional Land Surveyors, P.C.

Unauthorized alteration or addition to a survey map bearing a licensed Land Surveyor's seal is a violation of Section 7209 Subdivision 2 of the New York State Education Law.

All certifications are made for this map and others thereof only to said firm or those for whom the aforesaid seal of the surveyor whose signature appears hereon.

The location of underground improvements or encroachments hereon, if any exist, are not certified or shown.

Flagged Wetland Boundary shown hereon delineated September 8 2003 by Mary Wahlig - Certified Soil Scientist, 37 Fairview Avenue, Ridgefield CT 06877.

SURVEY BROUGHT TO DATE: AUGUST 8, 2005
MAP REVISED: AUGUST 8, 2007
REVISED: APRIL 4, 2007
SURVEYED: JANUARY 30, 2003
MAP PREPARED: FEBRUARY 3, 2003

BY: _____
NEW YORK STATE LICENSED LAND SURVEYOR NO. 49741
STEPHEN T. JOHNSON, P.L.S.

SURVEY OF PROPERTY PREPARED FOR

STEFANO GALLI

AND

SUZANNE GALLI

Lot 25 as shown on a certain map entitled "Section A Park Site Rock Ridge" Said map filed in the Westchester County Clerk's Office, Division of Land Records August 31, 1955 as Map No. 30060.

SITUATE IN THE
TOWN OF BEDFORD
WESTCHESTER COUNTY, NEW YORK

SCALE: 1" = 50'

H. STANLEY JOHNSON AND COMPANY
LAND SURVEYORS, P.C.
40 SMITH AVENUE P.O. BOX 93
MT. KISCO, N.Y. 10549
TEL. 914-241-3872
FAX. 914-241-0439

PREPARED BY: RMN CHECKED BY: STJ

JOB NO. F92-026.05

Exhibit 6

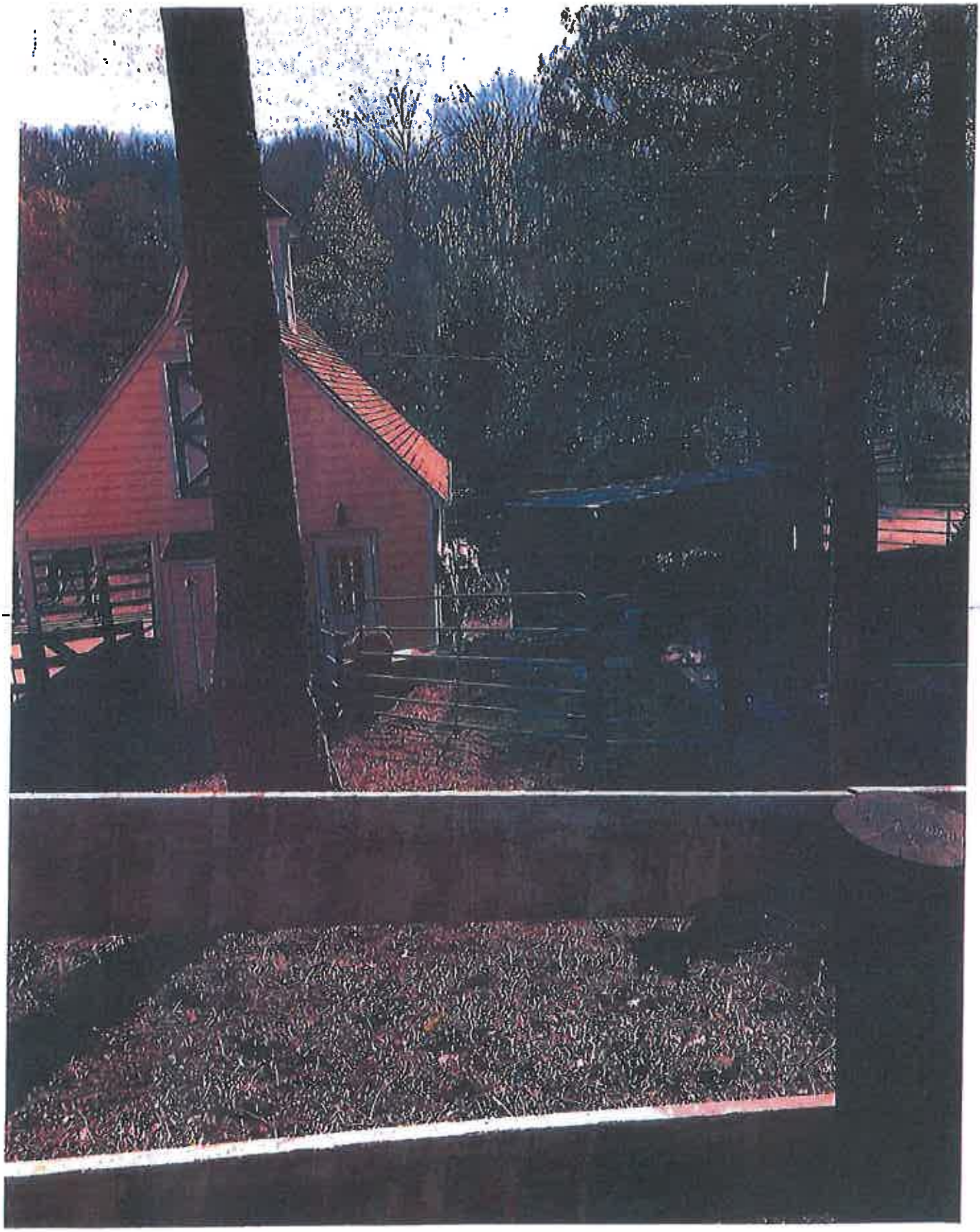


Exhibit E

STATE OF NEW YORK
TOWN OF BEDFORD ZONING BOARD OF APPEALS

In the Matter of the Application of STEFANO AND SUZANNE GALLI For an Area Variance to Store Manure	AFFIDAVIT

RECEIVED
MAR 25 2013
BEDFORD ZONING
BOARD OF APPEALS

STATE OF FLORIDA)
) ss.:
COUNTY OF MIAMI-DADE)

MICHAEL RICHMAN, being duly sworn, deposes and states the following:

1. I reside at 12 Alice Road, Bedford Corners, New York with my wife, Ruth Toporoff, and our three children. I have resided at this address continuously since 1995.

2. On the other side of Alice Road from our property is 341 Succabone Road, Bedford Corners, New York (the "Property"). Stefano and Suzanne Galli (the "Gallis") have owned and resided on this Property since 1998.

3. The Gallis purchased the Property from John Reynolds, who resided at the Property when we purchased our house in 1995.

4. When we moved into our home in 1995, there was a structure on the Property in the wetlands controlled area near the Alice Road property line. The structure was rectangular-shaped with 3 stalls and an overhang.

5. Upon information and belief, Mr. Reynolds had one horse that died before we moved into our house in 1995; and after the horse died, he did not get another horse. I never saw any horses on the Property from the time we moved into our home until the Gallis purchased the Property in 1998.

6. When the Gallis purchased the Property, they began housing between two and four horses in the structure.

7. The Gallis have done multiple construction and renovation projects to the structure and around the structure over the years. I personally observed this construction as my bedroom window is located close to the Alice Road border of the Property where the structure is located and where all of this construction was done. I had occasion to hear the construction, including sometimes on the weekends, and also saw the construction from my property and Alice Road.

8. A few years after the Gallis moved in they expanded the size of the structure by constructing an additional area on the west side of the structure closest to the cemetery property line. See **Exhibit 1** to Toporoff Affidavit.

9. A few years after that, the Gallis did more expansions by adding a large concrete patio attached to the barn to use as a wash area and a tacking area. See **Exhibit 2** to Toporoff Affidavit. They also removed and reinstalled interior paddock fences in the wetlands to create a ring to use for training horses and riding. See **Exhibit 3** to Toporoff Affidavit. I believe this construction was done around the same time as the renovations and construction the Gallis did to the main residence.

10. The Gallis also renovated the roof and cupola of the structure.

11. The Gallis also completely renovated the interior of the structure. They cut one of the stalls in half, creating a smaller stall and a tack room. In this tack room, it is my understanding that the Gallis added counters, cabinets, plumbing and sinks. See **Exhibit 4** to Toporoff Affidavit. Upon information and belief, the Gallis did not have the proper permits, including wetlands permits, for any of this construction.

12. When the Reynolds lived on the Property, they would access the Alice Road side of the Property through a large gate on the east side of the barn/structure closer to Succabone Road. The Gallis removed this gate and now use a gate almost directly across Alice Road from our driveway.

13. The Reynolds also had over 250-300 linear feet of grandfathered, over 5 feet high fencing along Alice Road that did not comply with the 20 feet setback requirements. In the last three years, the Gallis removed most of this fencing and relocated this over 5 feet high fencing and gate. Upon information and belief, the only approval was for the first approximately 90 linear feet of fencing closest to Succabone Road. See **Exhibit 5** to Toporoff Affidavit. I believe the remainder of the fencing, approximately 160-210 linear feet, was moved without permits and not in compliance with the Zoning Code.

14. The Gallis also installed paddock fences along the cemetery property line in the southwest corner of the property, which is the corner closest to my home, within the last few years and put a horse in the paddocks. See **Exhibit 6** to Toporoff Affidavit. I do not believe these paddock fences comply with the 5 feet setback requirements.

15. It is clear that we have personally witnessed this construction on a daily basis and swear the constructions took place, including the construction on west side of the barn, the

construction of the concrete patio attached to the barn and installation of interior, rear yard and side yard fencing that violate the Code.

Michael Richman

Sworn to before me this
25 day of March, 2014

Notary Public State of Florida
Joe Coote
My Commission EE104867
Expires 09/19/2015

NOTARY PUBLIC

Activ wetland/Z/S

SILVERBERG
ZALANTIS LLP

Law Offices
220 White Plains Road, 5th Floor
Tarrytown, New York 10591
Tel. (914) 682-0707
Fax. (914) 682-0708
www.szlawfirm.net

March 27, 2014

VIA EMAIL & FEDERAL EXPRESS

Steven Fraietta
Building Inspector
Town of Bedford Building Department
425 Cherry Street
Bedford Hills, New York 10507

Re: Stefano & Suzanne Galli, 341 Succabone Road, Bedford Corners, NY
Continued Unlawful Activities in the Wetlands

Dear Mr. Fraietta:

We represent Michael Richman and Ruth Toporoff, who live at 12 Alice Road, Bedford Corners, New York. Based upon your recently issued March 19, 2014 determination, violations should be issued for the Gallis' continuing improper actions in the wetlands.

You specifically determined that the Wetlands Code prohibited certain activity in the wetlands, including having "motorized vehicles" enter the controlled areas. Yet, the Gallis on a daily basis park their oversized vehicles and horse trailers in the wetlands and routinely allow large vehicles to enter into the wetlands near their barn. They also store their horse equipment and tractors in the wetlands. Attached as Exhibit "A" are some pictures, most of which were previously provided to the Town/the ZBA, depicting various vehicles in the controlled wetland areas.

Also, you explained there would be "the possibility of leachate going into the wetlands" with a manure dumpster in the controlled area and how this would "have a deleterious impact on the controlled area." Yet, the Gallis routinely spread manure all over the wetlands. They have been spreading manure on a daily basis (except when the ground was covered in snow) for more than year. Now that the snow is gone, they started spreading manure again – as they did so on Monday and Tuesday of this week. Attached as Exhibit "B" are some pictures that you have also probably seen before of the Gallis spreading manure.

The Gallis have the gall to submit an expert report to their March 24, 2014 ZBA submission that goes into great detail about the substantial harm from manure polluting the groundwater and how accumulated manure and manure mismanagement causes health, odor and

water quality problems. This is what my clients have been asserting in papers for months. Yet, the Gallis for months and months have spread manure in the wetlands controlled area and with the snow thawing, they are now starting to resume this practice.

And despite what Mrs. Galli implies before the ZBA, the Watershed Agricultural Council ("WAC") has never sanctioned the daily introduction of manure in the wetlands controlled area. Rather, WAC contemplated that manure would be composted and soils samples taken on all fields, pastures and paddocks so that a nutrient management plan could be developed. This is not what the Gallis are doing.

The Gallis' practice of introducing and placing manure directly in the wetlands controlled area creates a dangerous condition for the groundwater and neighboring properties. Given your recent determination about the controlled area, is the Town of Bedford going to continue to look the other way and ignore the Gallis continued violation of the Wetlands Code? Is the Town going to continue to sanction through its non-action the Gallis' daily entry and storage of motor vehicles in the controlled area when you yourself stated that would be contrary to the Wetlands Code. And even though you yourself discussed the deleterious impact on the controlled area from manure in the controlled area, is the Town going to continue to sit on the sidelines while the Gallis resume their dangerous and unlawful practice of placing manure in the wetlands and around an existing well on a daily basis?

These unlawful and dangerous practices by the Gallis cannot be tolerated. This Town must fairly and equally enforce the laws to protect all property owners – not just the Gallis.

Thank you for your consideration.

Very truly yours,

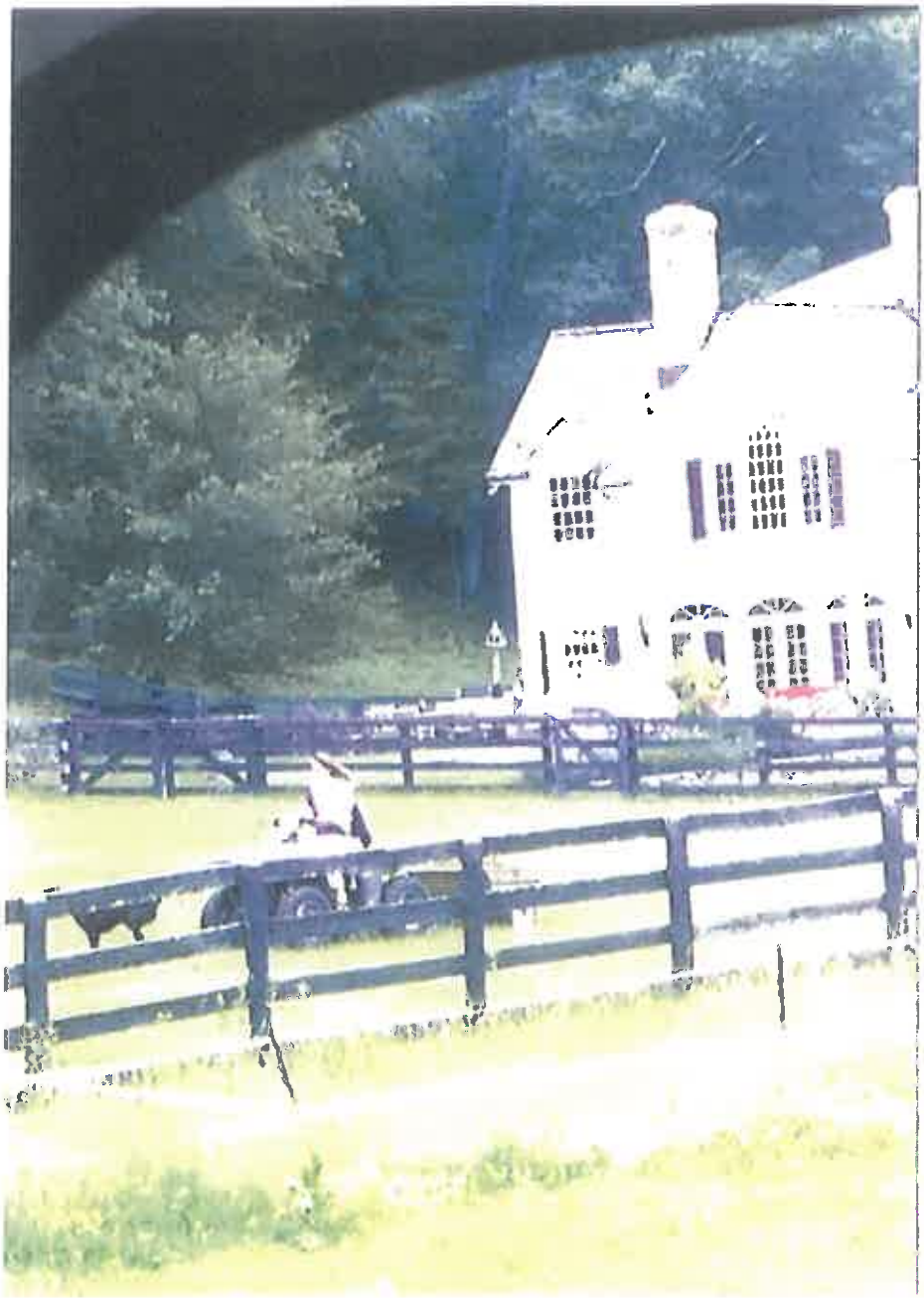
SILVERBERG ZALANTIS LLP

Katherine Zalantis

KZ:
Enclosures
cc: (Via email)
Joel Sachs, Esq., Town Attorney
Chris Burdick, Town Supervisor
Peter Michaelis, Chairman of ZBA c/o Alex Costello, ZBA Secretary

Exhibit A

Exhibit B



IMG_9771

IMG_9770

Barn Wetland S/2

SILVERBERG ZALANTIS LLP

Law Offices
220 White Plains Road, 5th Floor
Tarrytown, New York 10591
Tel. (914) 682-0707
Fax. (914) 682-0708
www.szlawfirm.net

March 27, 2013

VIA EMAIL & FEDERAL EXPRESS

Steven Fraietta
Building Inspector
Town of Bedford Building Department
425 Cherry Street
Bedford Hills, NY 10507

Re: Stefano & Suzanne Galli, 341 Succabone Road, Bedford Corners, NY
Barn construction in wetlands

Dear Mr. Fraietta:

We represent Michael Richman and Ruth Toporoff, who live at 12 Alice Road, Bedford Corners, New York and write regarding the property of Stefano and Suzanne Galli (the "Gallis") located at 341 Succabone Road, Bedford Corners, New York ("Galli Property").

We have previously advised you that the Gallis improperly expanded their barn in the wetlands without the proper building permits or wetlands permits by (1) increasing the footprint of the barn and (2) installing a concrete patio/block pavers attached to the barn. We never received any acknowledgement of our letters or responses to our concerns. When we raised these issues yet again at the March 5, 2014 Zoning Board of Appeals ("ZBA") meeting, you commented that you did not have plans showing the barn when it was originally built even though the survey that the Town's approval was based upon (and several subsequent surveys all of which are in the Town's records), depicted a much smaller rectangular structure than the structure that currently exists on the property that has a concrete patio/block pavers and an expansion of the footprint on the west side of the barn facing the cemetery. We now write again to bring to your attention a letter submitted to the ZBA by the Gallis' attorney dated March 24, 2014, which goes even further in conclusively establishing that the Gallis have improperly expanded the barn. Attached is a copy of the letter (without exhibits) for your reference).

Illegal Expansion of Footprint of Barn in Wetlands

First, in response to our claim that the Gallis expanded the barn's footprint located entirely in the wetlands control area by adding the "bumpout," the Gallis' attorney stated "[i]t

will have been removed well before the special meeting on April 3, 2014" (p. 6). **This is incredibly telling**.

While we previously submitted documentary evidence (in our letters and barn appeal dated March 5, 2014) to conclusively establish that the Gallis unlawfully expanded their non-conforming barn without required permits or variances, the Gallis have responded to our claims by making no legitimate attempt to show their action were legal. Instead, they stated that they will remove their illegal expansion. Obviously, the Gallis would not remove something that is actually legal, but they know it is not and they can no longer deny that when the conclusive documentary evidence establishes that this expansion was done (1) without proper building and wetlands permits (2) by the Gallis after they purchased the property. Moreover, the timing is obviously fortuitous as the Gallis intend to remove the footprint expansion "before the special meeting on April 3, 2014" because they know the ZBA cannot consider a variance application while there are violations on the property – further confirming that the footprint of the nonconforming barn in the wetlands was illegally expanded.

After being presented with this type of concession, the Building Inspector, whose job it is to enforce the Town Code, cannot continue to turn a blind eye to this and must issue the appropriate violations immediately. And now that the Gallis essentially admit to improperly expanding the barn in the wetlands without proper permits or variances, they cannot just "take it back" by removing it. By doing construction in the wetlands without proper permits, they caused damage to a Town-protected area. Removing the improper expansion by engaging in more construction does not "undo" the damage, it doubles it. As such, it is too late for the Gallis to just revert the barn back to the way it was when they purchased the property and pretend this never happened. The damage has already been done, and now violations should be issued and the Gallis should have to apply for and obtain the proper permits and land use approvals before engaging in further construction in the wetlands.

For months we have presented you with irrefutable documentary evidence and have been imploring you to investigate this illegal expansion of the barn's footprint, and now that you know the Gallis intend to remove the illegal expansion, we demand that the Building Department take immediate action to issue violations and ensure the Gallis do not engage in any further construction without the proper building and wetlands permits.

Illegal Construction of Concrete Patio/Block Pavers in Wetlands

We have also previously brought to your attention that the Gallis constructed a concrete patio/block pavers attached to the barn in the wetlands. The Gallis' attorney does not deny this in her letter. Instead, in an attempt to toe the line between conceding that her clients are serial Zoning Code violators and avoiding misrepresenting the facts, she makes the illogical insinuation that the cement patio/block pavers is "pre-existing" because there was an enclosed grooming area in that area when the Gallis purchased the property (p. 6). Of course, this makes no sense because the fact that there was a fence around grass when the Gallis purchased the property is in no way comparable to the Gallis expanding the nonconforming barn by installing

cement block pavers attached to the barn in the wetlands controlled area, and surely does not make the block pavers "pre-existing."

In making this claim, the Gallis rely upon the 1992 survey of the previous owners, which shows a semi-circle fence around the north side of the barn beyond the roof overhang that existed in 1992 and is still present on the Gallis' most recent survey. Notably, what the 1992 survey does not depict, and the Gallis' attorney does not deny, is that the cement patio/block pavers were not there in 1992 or in several surveys prepared and certified from after the Gallis purchased the property. If the block pavers existed when the Gallis purchased the property, and/or the Gallis did not install the cement patio/block pavers, surely the Gallis' attorney would have said that. However, she could not say that without misrepresenting the facts, and thus, by omission, concedes that the Gallis improperly installed the concrete patio/block pavers

Again, like with the expansion of the barn's footprint, we insist that you finally take action in response to the evidence that has been in your possession for months, and has now essentially been conceded by the Gallis' attorney, and issue violations to the Gallis for improper installation of the concrete patio/block pavers attached to the barn in the wetlands without proper permits.

Farther Illegal Expansion: Plumbing Introduced in the Wetlands

Notably, the Gallis also illegally installed plumbing in the barn, which you can easily confirm by observing the inside of the barn and, as to our knowledge, there are no plumbing permits/authorizations for the barn. This is yet again a further expansion of a nonconforming use and is especially egregious as there is no mechanism to manage runoff from all the water the Gallis introduce in the wetlands controlled area, including when they wash their horses on the illegally constructed patio that introduces toxins into the wetlands controlled area.

Steep Slope Area

Much like with the Gallis' illegal expansion of the barn, we have also been trying to get the Town to acknowledge that the location where the Gallis propose to place their manure dumpster is a steep slope area that requires a steep slopes permit. For months, the Town refused to even consider this possibility, to the point that I was admonished by the Chairman of the ZBA for calling it is steep slope area when you said it was not. This was even though our expert, Chazen Companies, based its determination that it was a steep slope area upon the Town's own topography maps. Now, in your March 19, 2014 letter you stated that you could not determine whether the area the Gallis proposed to locate the dumpster was a steep slopes area and required that the Gallis submit plans with elevation, which was not included on any of their prior surveys. The ZBA should not go forward with the Gallis' variance application until the Gallis adequately address this issue and submit a survey with accurate elevations as there is no way for the ZBA to assess the impacts without this information.

We hope that you are beginning to see that our claims and statements have merit and that the Gallis are at the point where they can no longer just deny it without being able to present any

support for their position. There may be a lot of issues that we bring to your attention, but that is only because the Gallis do and say a lot of things that blatantly violate the Code, while my clients make every effort to comply with the law and are still issued multiple violations. We ask that you finally look into the issues we have raised, both with respect to the illegal barn expansion, the slopes of the proposed manure storage area, and all of the other issues we have raised over the last year with respect to the Gallis' improper actions. If you want, we would be happy to provide you with copies of the letters we previously submitted. Further, as you well know, so long as you believe there may be violations on the property (which cannot be denied at this point), the ZBA should not be allowed to go forward with their consideration of the Gallis' variance application.

We thank you in advance for your anticipated attention to this matter.

Very truly yours,

SILVERBERG ZALANTIS LLP

Katherine Zalantis

KZ:cta
Enclosures
cc: (Via e-mail)
Joel Sachs, Esq., Town Attorney
Chris Burdick, Town Supervisor
Peter Michaelis, Chairman of ZBA c/o Alex Costello, ZBA Secretary

HOGAN & ROSSI
Attorneys At Law
3 Starr Ridge Road - Suite 200
Brewster, New York 10509

Telephone: (845) 279-2986
Facsimile: (845) 279-6425
(845) 278-6135

John J. Hogan
Donald M. Rossi
David Simon
Michael T. Liguori*

*Also Admitted in CT
**Also Admitted in Maryland, Virginia & Washington D.C.

Of Counsel
Charles J. Acker
Nancy Tagliafierro*
Emily Gooding Naughton**
Mary Jane MacCrae

March 24, 2014

Via Hand Delivery
Hon. Peter Michaelis, Chairman
Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, New York 10507

Re: Petition for Area Variance;
Premises: 341 Succabone Road, Bedford Corners, New York;
Owners: Suzanne and Stefano Galli;
Tax Map Designation: Section 83.11, Block 2, Lot 3;
Zoning District: R-4A Residence Four Acre District

Dear Chairman Michaelis and Members of the Board:

As you know, we represent Suzanne and Stefano Galli of 341 Succabone Road (the "Premises.") This letter will briefly address the matters to be heard by this Board at the April 3, 2014 special meeting which has been scheduled to hear the Gallis' variance application and the various appeals of Ruth Toporoff and Michael Richman of 12 Alice Road (Toporoff/Richman.")

I. The Galli Variance Application for a Manure Storage Dumpster

This application seeks a variance of the setback requirements for a 10 yard covered manure storage dumpster on the Premises from 50 feet to 22.7 feet (the "Manure Storage Variance") from the adjoining westerly property line. Significantly, the proposed storage area does not require a variance from the setbacks relating to Alice Road, but rather, is proposed to be located 64.4 feet from Alice Road. This location would place the proposed manure storage dumpster 114.4 feet from the Toporoff/Richman property line and approximately 210 feet from their residence. As set forth in the photographs included in our March 4, 2014 submission, extensive natural screening from Alice Road makes the proposed manure storage area virtually invisible from 12 Alice Road. Moreover, the Gallis plan to install additional fencing as screening as depicted in Exhibit "A" to

further reduce any possible visual impacts. Therefore, the proposed manure storage location will not have any negative impacts upon Toporoff/Richman, whether visual, environmental or otherwise.

As we have previously advised this Board, this particular area was carefully chosen by the Gallis for manure storage because the proposed location is situated as far from Alice Road as possible in an area which (i) complies with prohibition on storage of manure within the designated wetlands or wetlands controlled area; (ii) complies with the Department of Health separation distances from the Galli's well; (iii) complies with standard engineering practices regarding 10' separation distances between driveways and septic areas/septic trenches; and (iv) facilitates emptying of the dumpster on a periodic basis via an already existing driveway. In support of the foregoing, attached hereto for the Board's consideration as Exhibit "B" is a Wetland and Environmental Impact Assessment Report prepared by Matthew D. Rudikoff Associates, Inc (the "MDRA Report"). The MDRA Report was prepared to confirm the unique combination of conditions and regulatory constraints affecting the Premises which severely limit the possible areas for manure storage. The MDRA Report was also sought to obtain an opinion as to the suitability of locating a manure storage area within the wetlands or wetland buffer area. As the MDRA Report demonstrates, due to the existing constraints on the Galli property, an area of less than five (5%) percent of the entire Premises is available for appropriate, compliant manure storage. This report conclusively establishes that the proposed manure storage area is the most logical and environmentally suitable area on the Galli property for manure storage for the following reasons:

1. The proposed site is not constrained by the regulated environmental features which constrain most of the Premises, i.e. wetlands, wetland buffer area, required wellhead separation distances and the existing septic expansion area;

2. The proposed area is near the barn and accessible from the already existing driveway off of Alice Road;

3. No trees will have to be removed and only minimal grading would be necessary,

4. Further site disturbance to wetland buffer area will be avoided, and no new impervious surface are will be necessary because no new driveway for vehicular access is necessary;

5. The area is sufficiently screened from Alice Road by existing trees and shrubs and the dumpster will be graded to reduce visual impacts; and

6. The adjoining property is an abandoned cemetery which has reverted into a hardwood forest.

When we were last before the Board in March, the objections from Toporoff/Richman generally relied upon the unsupported assertion that the requested variance is not the "minimum variance necessary" because innumerable other feasible alternatives exist for manure storage within the wetland and wetland buffer. These assertions, like most of the so-called "evidence" submitted by Toporoff/Richman, are incorrect and should be disregarded by this Board in light of (i) the MDRA Report; and (ii) the determination of the Building Inspector (after consultation with the Town's Environmental Consultant) dated March 19, 2014, that location of a manure storage dumpster within the wetland or wetland buffer is prohibited pursuant to Town Code §122-8(A). (That determination is annexed hereto as Exhibit "C" for the Board's ready reference.)

Thus, all of the locations suggested as "zoning compliant" in Exhibits I and J to the Toporoff/Richman February 7th submission are, in fact, not compliant with either Town Code or New York State regulations because they (i) are located within the regulated separation distance from the Galli well; or; (ii) are located in the prohibitive wetlands or wetland buffer area.

Obviously, the Gallis are permitted to keep horses on their property pursuant to Bedford Town Code §125-25(3)(B), and they therefore are entitled to a means to manage the manure. The Gallis seek to store manure in a manner that is aesthetically pleasing and has no adverse impacts upon the surrounding properties. It is respectfully submitted that no one would be impacted by the location of a covered, efficiently managed, manure storage dumpster located 22.7 feet from the property line of an abandoned cemetery which is now essentially a wooded forest. Moreover, as a measure to ensure that there will be no adverse impacts upon any of the surrounding properties or the neighborhood as a whole, the Gallis are willing to accept the requested variance subject to the following conditions:

- The dumpster will be a covered dumpster;
- Fencing and a gate will be installed as depicted in Exhibit "A;"
- The pad for the dumpster will be set at grade level with the existing driveway; and
- Spreading of manure will be limited to twice a year (spring/fall) in each field.

If deemed necessary, the Gallis will also consider additional, reasonable screening, but given the extent of existing screening and the limited visibility of the driveway/barn area and the screening of the dumpster location from Alice Road and the Toporoff/Richman residence, it appears none should be required.

We have made prior submissions in support of this variance application, which will not be repeated, but those submissions are incorporated herein by reference. However, we urge the Board to revisit the table included in our February 4th submission outlining the many inaccurate statements

submitted by Toporoff/Richman in this matter, all of which have been flatly refuted. That table, the MDRA Report and the obvious appropriateness of the proposed dumpster location clearly indicate that the reasons proffered by Toporoff/Richman in opposition to the variance request are illogical and are based on outright misstatements made regarding other "feasible locations". This abuse of the zoning process and any other processes available to them (including threats of litigation against the Town) are unjustified and legally unsupportable attempts to prevent the Gallis good faith efforts to properly use their private horse farm property. The personal motivations of an objecting neighbor are not a sufficient reason for this Board to deny the requested variance absent clear evidence of potential detriment to that neighbor's property. No such evidence exists in this case.

II. The Toporoff/Richman March 4, 2014 Appeal regarding the Galli Barn

A. An Undated, Handwritten, Unsigned Notation Does Not Constitute an Appealable Determination

An undated, handwritten and unsigned notation in an existing document in a file does not constitute a valid "order, requirement, decision or determination." Moreover, the appeal assumes, but cannot state with any certainty, that the notation was made by the Building Inspector. Town Law §267-a limits the jurisdiction of an appeal to the Zoning Board of Appeals as

> ".....appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article."

Moreover, Town Law §267-a mandates that an appeal be taken within sixty days of the date of filing of such determination. Because the notation does not constitute an appealable determination, this Board does not have jurisdiction to consider this matter and the appeal must dismiss this appeal. Moreover, Toporoff/Richman cannot demonstrate that the "appeal" is timely, since the note is undated

B. The Appeal Must Be Dismissed

Should the Board decide to consider the appeal, it must be dismissed on its merits because (i) the appeal is based upon an erroneous application of the Town Code; and (ii) there has been no illegal expansion of the barn.

Toporoff/Richman asserts that the 1997 Certificate of Occupancy No. 7998A issued relating to the barn was erroneously issued because the barn "use" lapsed when no horses lived in the barn for a period of time before the Gallis purchased the Premises. This argument, while creative, is completely erroneous. The barn is not a pre-existing nonconforming use (such as a pre-existing gasoline station in a neighborhood that has since been zoned as a residential zone) but it is a pre-existing, nonconforming structure which does not conform to current setback regulations. The Bedford Town Code defines a nonconforming use as:

> A use of a building or of land that does not conform to the regulations **as to use in the district** in which it is situated, which use was lawful at the time this chapter or amendments thereto became effective. (Emphasis supplied) Bedford Town Code, §250-3.

A barn is an accessory structure, which is defined under the Code as a "building subordinate to the principal building on the lot and used for purposes customarily incidental to that of said principal building." Bedford Town Code, §250-3. In fact, barns are specifically permitted accessory structures in the R-4 zoning district. (*See* Town Code §125, Attachment 3, Schedule of Use Regulations-Accessory Uses, which specifically enumerates barns as accessory structures).

The barn was erected 23.7± feet from the Alice Road property line, before the enactment of the fifty foot building setbacks now required pursuant to Town Code. Town Code 125-11(5)(d) defines nonconforming structures as:

> Dimensional nonconformity. A building or structure that is conforming in use, but does not conform to the lot area, effective square, yard dimension, height, setback, coverage, off-street parking, loading or similar dimensional requirements of this chapter, shall be deemed to be dimensionally nonconforming. No permit shall be issued that will result in the increase of any dimensional nonconformity, but any building or structure or any portion thereof may be altered to decrease its dimensional nonconformity. An increase in the height of a dimensionally nonconforming structure shall constitute an increase in dimensional nonconformity and, consequently, no permit shall be issued authorizing such an increase in height.

The barn is conforming in use, but does not conform to the setback requirements, therefore, is a permitted preexisting structure (not a nonconforming use) which is dimensionally nonconforming. The application of §125-11C(4) is erroneous, as that section applies to a

discontinuance of a nonconforming uses, and does not apply to dimensionally nonconforming structures.

C. There has Been No Expansion of the Nonconformity of the Barn

Toporoff/Richman contend that the barn has been illegally expanded because there is a new "bump out" and because the block pavers were not there when the Gallis purchased the Premises. The argument is incorrect because, even if it were true, which it is not, the bump out and the "block pavers"(the block pavers are actually a pre-existing fenced grooming area). do not increase the dimensional nonconformity of the barn.

The Barn lies within 23.7 feet of the lot line of the Premises adjoining Alice Road, rather than the fifty feet currently required under the Town Code. The Town Code prohibits the expansion of the nonconformity of a structure, but not the alteration of such a structure. Pursuant to Town Code Sec. 125-11(5)(d) "[n]o permit shall be issued that will result in the increase of any dimensional nonconformity..." The only way to increase the nonconformity of the barn, therefore, would be to increase its size so that it further reduces the setback from the existing 23.7 feet from Alice Road. Thus, if the Gallis expanded the grooming area with block pavers or added the bump out, such would not increase the dimensional nonconformity of the barn. Moreover, the patio was present, as depicted on the 1992 survey, (Exhibit "D") as an enclosed grooming area when the Gallis purchased the premises and the Gallis reduced the size of the grooming area. Furthermore, even though the enclosure of an already existing overhang supported by columns (a/k/a the "bump out") is permitted, it will have been removed well before the special meeting on April 3, 2014.

III. Other Toporoff/Richman Appeals regarding Galil Property

With regard to the request for an interpretation or appeal from the August 6, 2013 determination (which was revised on November 15, 2013 based on a survey dated November 6, 2013 and submitted on November 12, 2013) of the Building Inspector, Town of Bedford, regarding the inclusion of wetland areas in calculating building and impervious surface coverage in accordance with Zoning Code Article III Section 125-14 and Section 125-50, the Gallis agree with the determination of the Building Inspector dated November 4, 2013 and request that the Board deny this appeal. With regard to the appeal from the Town of Bedford Building Inspector's determination that an accessory structure (shed) is 98 square feet as built, in accordance with Zoning Code Article V Section 125-50 and Article V Section 125-27 C, the Gallis also request that this appeal be denied,.and the Building Inspector's calculation, as confirmed by the November 6, 2013 survey of the Premises, be confirmed and approved. Finally, with regard to the suggestion that the presence of a second driveway is inconsistent with the character of the neighborhood, three of the four residences on Alice Drive, including Toporoff/Richman, have two driveways.

We look forward to discussing these issues with you at the April 3, 2014 meeting.

Respectfully submitted,

Nancy Tagliafierro