

Leach 2019 PJ request to be on agenda for 9 24 2019 PI Bd mtg

9/16/2019

Mr Weber,

This is my hand-delivered request to be placed on the agenda for the 9/24/2019 Cortandville Planning Board meeting.

Our attorney may attend as well or be asked to speak for us.

7 copious are hand-delivered.

This AM I hand- delivered 11 copies of the 19 page packets (letter and documents) to be sent to Cortlandville Planning Board members.

Thank you,



Pam Jenkins
607 756-6715

Leach 2019 PJ to Cortlandville Pl Bd and officials 9 16 2017 submitted

Dear Mr DelVecchio, Mr Tupper, Ms Wickwire and Cortlandville Planning Board members; Cortlandville Town Board members and officials; Mr Dineen and Cortland County Planning Board members,

We are submitting 12 copies of the following documents for the record.

- * Town of Cortlandville definition of **Commercial Garage**
- * Leach's signed narrative which accompanies his September 12, 2019 application, in which he explains the building was built for his garbage and recycling business equipment. "This equipment is for the operation related to Leach's Trash Service, residential and commercial hauling..."
- * Chapter 178, Article VIII, 178-36.2 : Uses subject to Conditional Permit in B2 (trash and recycling business does not appear on this list)
- * Leach's GML form indicating he is applying for Article VIII 178-36-2F. (Commercial garages and automotive repair shops)
- * Chapter 178, Article XIV 178 -75 A and B : Structure/use requirements for Conditional Permit
- * Pam Jenkins' 2017 Notice of Administrative Appeal of the Code Enforcement Officer's determinations. This will be followed by a 2019 Appeal.
- * October 2017 Judge Cerio's Order on Jenkins II Article 78 (first and last page)
- * June 2019 Judge Cerio's Order on Jenkins 11 Article 78 (first and last page)

Leach does not own or operate a **Commercial Garage** on the 3.11 acre site of his trash and recycling business. He never has. Tallmadge Tire is a Commercial Garage. CARS on Rt 13 is a Commercial Garage, various auto repair and muffler

shops are Commercial Garages. Leach's Trash and recycling business is not a Commercial Garage.

Leach's signed narrative details how the building was built for his trash and recycling business...he does not plan to operate a Commercial Garage at that site.

Parking a garbage truck or recycling equipment in that building does not cause that building to meet the **Cortlandville definition of a Commercial Garage**.

Under General Municipal Law Article VIII 178-36-2F does not apply, he cannot apply for that permit.

Every other time Leach built or expanded his trash business on that site he was required to apply for a Use Variance.

This is another expansion of Leach Custom Trash.

Please see Judge Cerio's Order of June 2019.

Thank you,

Pam Jenkins, Cheri Sheridan, Olga Sheridan

607 756-6715

4023 Collegeview Drive

Cortland, NY 13045

CC

Kristin Rocco-Petrella, Town Clerk

Mary Roodenburg,

Douglas H Zamelis, Esq.

- (3) A group of individuals living together in the same dwelling unit shall be presumed not to be a functional family unit, as defined in this section, if the dwelling unit is occupied by four or more unrelated adults over the age of 16 years and is not occupied by minor children.
- (4) The presumptions set forth in Subsections (2) and (3) of this definition may be rebutted by evidence of characteristics set forth in Subsection (1) of this definition.

GARAGE, COMMERCIAL

An enclosed building used as a business for the indoor storage or repair of motor vehicles, including painting and the sale of parts and accessories. A junkyard or auto salvage yard is not to be construed as a garage.

GARAGE, PRIVATE

An enclosed building for use by the inhabitants of a dwelling for private storage.

GARAGE SALE

Sale of used goods from a private residence.

GASOLINE STATION

A building servicing motor vehicles and/or supplying fuel, lubrication, supplies or accessories but not including painting or body repair. (See "filling station.")

GRADING

Alteration of the surface or subsurface conditions of land or water bodies by excavating, filling (including hydraulic fill) or stockpiling of earth materials or any combination thereof.

[Added 1-16-2008 by L.L. No. 1-2008]

GROUP HOME

A single-family residence used for the provision of health or social care for unrelated persons.

HABITABLE FLOOR

Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof (a floor used only for storage purposes is not a habitable floor).

HAZARDOUS MATERIAL

Any substance found listed in either 40 CFR Part 261, 40 CFR Part 302, or 6 NYCRR Part 371, alone or in combination, including but not limited to petroleum products, organic chemical solvents, heavy metal sludges, acids with a pH less than or equal to two alkalis with a pH greater than or equal to radioactive substances, pathological or infectious wastes or any material exhibiting the characteristics of ignitability, corrosivity, reactivity or EP toxicity.

[Added 5-1-1988 by L.L. No. 1-1988]

HOME OCCUPATION

An occupation or profession which is carried on by a person residing in the dwelling unit, and is clearly incidental and accessory or secondary to the use of the dwelling unit for residential purposes. Home occupations shall be such things as hairdressing, tailoring, teaching, carpentry, electrical and plumbing work and similar activities, and professional offices such as doctors, lawyers, architects, and real estate brokers. For the purposes of this chapter, a home occupation shall be limited by the following requirements:

- (1) There shall be no more than one paid employee on premises.
- (2) There shall be no indication from the exterior that the building is used as other than a dwelling, except as permitted under Article XVIII, Signs.
- (3) The home occupation shall encompass no more than 1/4 of the total floor space of the principal dwelling structure (including basement). If an accessory structure is used for this purpose, floor area is limited to 200 square feet.

HORTICULTURE

The science or art of growing fruit, flowers, vegetables or ornamental plants.

HOSPITAL

This narrative is to be added to the description of my conditional permit request for the addition to our storage building.

In 2017 I asked and received a conditional permit to construct an addition to my existing truck equipment storage building at 1834 Route 13. I had the addition constructed and received a certificate of occupancy and began usage of the building, at such time legal action commenced. Originally I intended to have the building be drive through capable but after negative court decisions I have had to change my intended use. In 2017 flow control legislation was enacted locally which limits my over the road transportation operations. Therefore, no need for a drive through of the building and consequently I have sold my spare tractor trailer that was to be housed in the addition.

Now my intentions are to put my garbage hauling trucks and equipment in the addition which will allow me to put under cover my recycle trailers used for household recycling, my sweeper and my snow removal equipment. This equipment is for the operation related to Leach's Trash Service, residential and commercial hauling, on this site since 1986.

Lastly, I cannot use the land behind the building, as it cannot be used in conjunction with the hauling business; therefore the construction included a wall, eliminating the drive through ability. Also, the addition is merely an extension of my already constructed building on the original property owned by me since 1986.

Sincerely,

A handwritten signature in cursive script that reads "Gregory K. Leach".

Gregory K. Leach

Town of Cortlandville, NY
Friday, September 13, 2019

Chapter 178. Zoning

Article VIII. Highway Commercial Business B-2 District

[Added 1-16-2008 by L.L. No. 1-2008^[1]]

[1] *Editor's Note: This local law also repealed former Art. VIII, Business Transition District, added 7-19-1989 by L.L. No. 2-1989.*

§ 178-35. Statement of intent.

- A. The purpose of this district is to provide areas in the Town for retail sales and commercial business enterprises that primarily serve the motoring public and that are auto-oriented in size and use, and that are compatible with, but function independently from, other adjacent and nearby nonresidential uses on highways designed to handle large traffic volumes. It is the intent of this district to prohibit uses that would be detrimental to adjoining districts, community aesthetics, aquifer protection and an orderly flow of on-site and off-site vehicular traffic.
- B. In addition to the requirements of this article, compliance with the applicable provisions of Article X, Aquifer Protection District, is required.

§ 178-36. (Reserved)

[1] *Editor's Note: Former § 178-36, Permitted structures and uses, was repealed 12-16-2009 by L.L. No. 3-2009.*

§ 178-36.1. Permitted uses subject to site plan approval.

- A. Permitted structures and uses subject to site plan approval shall be as follows:
- (1) All those permitted structures and uses, and those permitted uses subject to site plan approval, allowed under a B-1 District, except for multiple-family dwellings and their permitted accessory uses.
[Amended 12-16-2009 by L.L. No. 3-2009]
 - (2) Retail stores and sales.
 - (3) Bakeries, laundromats, dry-cleaning pick-up establishments, drugstores and pharmacies.
 - (4) Banks, savings and loans, and credit bureaus.
 - (5) Indoor and drive-through restaurants and taverns.
 - (6) Veterinary clinics, animal shelters, kennels and pet shops.
 - (7) Indoor theaters.
 - (8) Indoor commercial recreation facilities.

- (9) Automobile and vehicular sales; used vehicle sales permitted only in combination with new vehicle sales.
- (10) Customary uses accessory to the above, as defined in this chapter, which are an integral part of and used solely for the permitted use and deemed appropriate by the Zoning Officer.
[Amended 12-16-2009 by L.L. No. 3-2009]
- B. Upon determination by the Zoning Officer that a specific use originally permitted within this district is to be changed so that it involves a separate, different and distinct service, use, process or product, or involves a new operator, an application for a conditional permit must be made to the Planning Board. Prior to authorizing issuance of the conditional permit, the Planning Board may require the correction of any and all phases of the operation, which may become or have become detrimental to the neighborhood.
[Amended 12-16-2009 by L.L. No. 3-2009]

§ 178-36.2. Uses subject to conditional permit.

Uses subject to conditional permit shall be as follows:

- A. Residential:
- (1) Multiple-family dwellings with over four dwelling units.
- B. Religious institutions:
- (1) Churches, chapels, temples, synagogues and related uses.
- C. Educational institutions:
- (1) Schools, public and private; all age groups.
 - (2) Libraries.
- D. Recreational facilities and social activities:
- (1) Public and private clubs.
 - (2) Parks and playgrounds.
 - (3) Public swimming pools.
 - (4) Miniature golf, golf courses and driving ranges.
 - (5) Campgrounds, public and commercial.
 - (6) Outdoor amusement centers, outdoor theaters and drive-in theaters.
- E. Health, medical, and care services:
- (1) Hospitals.
 - (2) Clinics.
 - (3) Child day-care centers.
 - (4) Nursing homes.
 - (5) Mortuaries and funeral homes.
 - (6) Cemeteries.

- F. Commercial garages and automotive repair shops.
- G. Car wash operations.
- H. Outdoor and drive-in restaurants.
- I. Motor vehicle leasing facilities.
- J. Outdoor sales of:
 - (1) Boats.
 - (2) House trailers.
 - (3) Recreational vehicles.
 - (4) Horticultural products and supplies.
- K. Animal hospitals.
- L. Used car sales.

§ 178-36.3. Hours of operation.

No business establishments in any B-2 District shall be open to the public except between the hours of 6:00 a.m. and 12:00 midnight without prior Planning Board approval, and the Planning Board may modify hours of operation with the granting of a conditional use permit based upon the intensity of the use and potential impact on neighboring areas.

§ 178-36.4. Dimensional requirements.

- A. Lot area. The minimum lot area shall be appropriate to accommodate the necessary structures and comply with this chapter, as well as other Town requirements.
- B. Floor area. Any separate commercial, retail, professional or business use, owned or leased, shall not exceed 30,000 square feet in floor area without first obtaining a conditional permit unless otherwise noted herein.

§ 178-36.5. Prohibited uses.

Prohibited uses shall be as follows:

- A. Outside storage. The outside storage of any equipment, products, raw materials, waste or similar materials in this district that is detrimental to nearby residential uses, adjacent districts, community aesthetics, and aquifer protection, as determined by the Planning Board, is prohibited, as well as the outside storage of disabled vehicles, parts thereof, vehicles not qualifying for a New York State automobile inspection sticker, wrecked vehicles and parts thereof, and junk of any kind.

GENERAL MUNICIPAL LAW

Zoning Referral Form

Conditional Permits, Special Permits, Site Plan Reviews & Variances

Director
CORTLAND COUNTY PLANNING DEPARTMENT
37 Church St.
Cortland, NY 13045-2838
Telephone: (607) 753-5043
Fax: (607) 753-5150

GML No. _____
(Tax Map Number)

Date: _____

Submitting Officer: Bruce Weber, Planning & Zoning Officer

Municipality: Town of Cortlandville

Mailing Address: 3577 Terrace Road, Cortland, NY 13045

Phone Number: (607) 756-7052

Fax Number: (607) 758-7922

Type of Referral

The applicant request the following:

Variance: _____ Bulk - Article _____ Section _____
 _____ Use - Article _____ Section _____

Special Permit: Article _____ Section _____

Conditional Permit: Article V III Section 178-36-2F

Site Plan Review: Article _____ Section _____

Reason(s) for request: For the application of construction of
a ~~24~~ 48 x 27 truck bay.

Is the above action a Type 1 _____ ; Type 2 _____ , or unlisted action under the State Environmental Quality Review Act? Attach required environmental assessment forms for Type I and unlisted actions.

The following information is required for your application to be complete:

1. Name of petitioner: USACH Properties LLC

Owners name (if different): Deezyk Lead

Date of acquisition: _____

*Town of Cortlandville, NY
Sunday, September 15, 2019*

Chapter 178. Zoning

Article XIV. Conditional Permit

§ 178-73. Purpose.

- A. The uses and structures listed in each district, with the exception of the Aquifer Protection District, which require conditional permits are recognized as potentially desirable for the town. However, the uses and structures requiring conditional permits may, because of their nature, present some degree of hazard or danger to the Town and its people. In the Aquifer Protection District, special permits shall be considered pursuant to Article X.
[Amended 5-1-1988 by L.L. No. 1-1988]
- B. The purpose of this article is to establish guidelines for the Planning Board to use in determining whether or not a conditional permit should be issued.

§ 178-74. Application procedure; Planning Board review and decision.

- A. Application shall be made to the Zoning Officer and shall include detailed site plan to scale. Topographic information may be required in certain instances. With each application a fee shall be paid in the amount as set forth from time to time by Town Board resolution, except with an application for a change in use, in which case a fee in a different amount as set forth from time to time by Town Board resolution shall be paid.
[Amended 4-1-1987 by L.L. No. 4-1987; 8-5-1998 by L.L. No. 2-1998]
- B. At its next regular meeting following application, the Planning Board shall review the plan and give tentative approval or ask for revisions or for more detail. More detail may include complete architectural drawings of proposed structures and landscaping. (At the same time the Planning Board may set a date for a final review of the application).
- C. Referral; public hearing.
- (1) Within five days of first review, the Planning Board shall refer the application to the Cortland County Planning Board along with Town comments and recommendations (if required by General Municipal Law) and set a date for final review.
 - (2) The Planning Board may conduct a public hearing on the application. If a public hearing is considered desirable by a majority of the authorized members of the Planning Board, such public hearing shall be conducted within 45 days of the acceptance of the application and shall be advertised in a newspaper of general circulation in the Town at least five days before the public hearing.
[Added 5-1-1988 by L.L. No. 1-1988]
- D. The Town Planning Board will take no final action until it has received comments and recommendations from the County Planning Board or 45 days have passed from the date of submittal to the County Planning Board, if such is required by General Municipal Law § 239.
- E. The Town Planning Board, on the date set for final review, shall:

- (1) Approve with county recommendations;
 - (2) Approve against county recommendations with a majority plus one vote;
 - (3) Disapprove; or
 - (4) Give conditional approval.
- F. The Town Planning Board will make a factual record of all proceedings in issuing a conditional permit, and such record shall contain the reasons for the decision.
- G. If approval or conditional approval is given, a building permit shall be authorized at such time as all conditions are met. Application to the Zoning Officer for any building permit or certificate of zoning compliance authorized by resolution of the Planning Board under which a conditional permit is granted shall be made within 60 days from the date the resolution is filed with the Town Clerk or within a time period agreed upon by the applicant and the Planning Board. If a building permit is not applied for within this time frame or a building permit has expired, the applicant shall submit a new application to the Planning Board.
[Amended 8-17-1988 by L.L. No. 2-1988; amended 12-16-2009 by L.L. No. 3-2009]
- H. The Planning Board, on its own motion, may revoke any conditional permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in § 178-74C. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional permit.
[Added 8-17-1988 by L.L. No. 2-1988]

§ 178-75. Structure/use requirements for permit approval.

- A. In order to grant approval for a conditional permit, the applicant must prove that the structure and/or use:
- (1) Is appropriate for the particular lot and area, and will not conflict with allowed uses.
 - (2) Is in compliance with all other applicable sections of this chapter.
 - (3) Is physically and visually compatible with general neighborhood or planned neighborhood development.
 - (4) Provides a suitable transition when located between differing uses or districts where none is provided or provides a visual buffer by landscaped green areas or fencing.
 - (5) Has adequate space and plans for off-street parking.
 - (6) Has future expansion or revision capabilities without need for variances.
 - (7) Provides for safe handling of vehicular traffic to and from the site without causing congestion. No new vehicular entrances shall be permitted within 50 feet of an existing intersection.
 - (8) Provides for safe passage of pedestrians.
 - (9) Enhances neighboring property and does not lead to depreciation of properties (by reason of noise, traffic, dust, fumes, smoke, odor, fire, glare, flashing lights or sewage disposal).
- B. In granting a conditional use, the Planning Board shall make findings of fact consistent with the provisions of this chapter. The Planning Board shall not approve a conditional use except in conformity with the spirit, purposes, conditions and standards outlined in this chapter. In order to obtain the Planning Board's approval of a conditional permit, the applicant must prove that the location, structure, and/or use:
[Added 1-16-2008 by L.L. No. 1-2008]

- (1) Is consistent with the general intent of the Town of Cortlandville's Land Use and Aquifer Protection Plan.
- (2) Is in conformity with all applicable requirements of this chapter and all Town ordinances.
- (3) Will not pose a significant threat to the quality and/or quantity of Cortlandville's sole source aquifer or its delineated wellhead protection zones.
- (4) Is in the best interests of the Town, the community, and the public welfare, and shall not be a detriment to the properties in the immediate vicinity.
- (5) Is suitable for the property in question and designed to be constructed, operated, and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.
- (6) Does not cause unsuitable effects on highway traffic and safety with adequate access to protect streets from undue congestion and hazard.

§ 178-76. Additional specific requirements.

A. Residential.

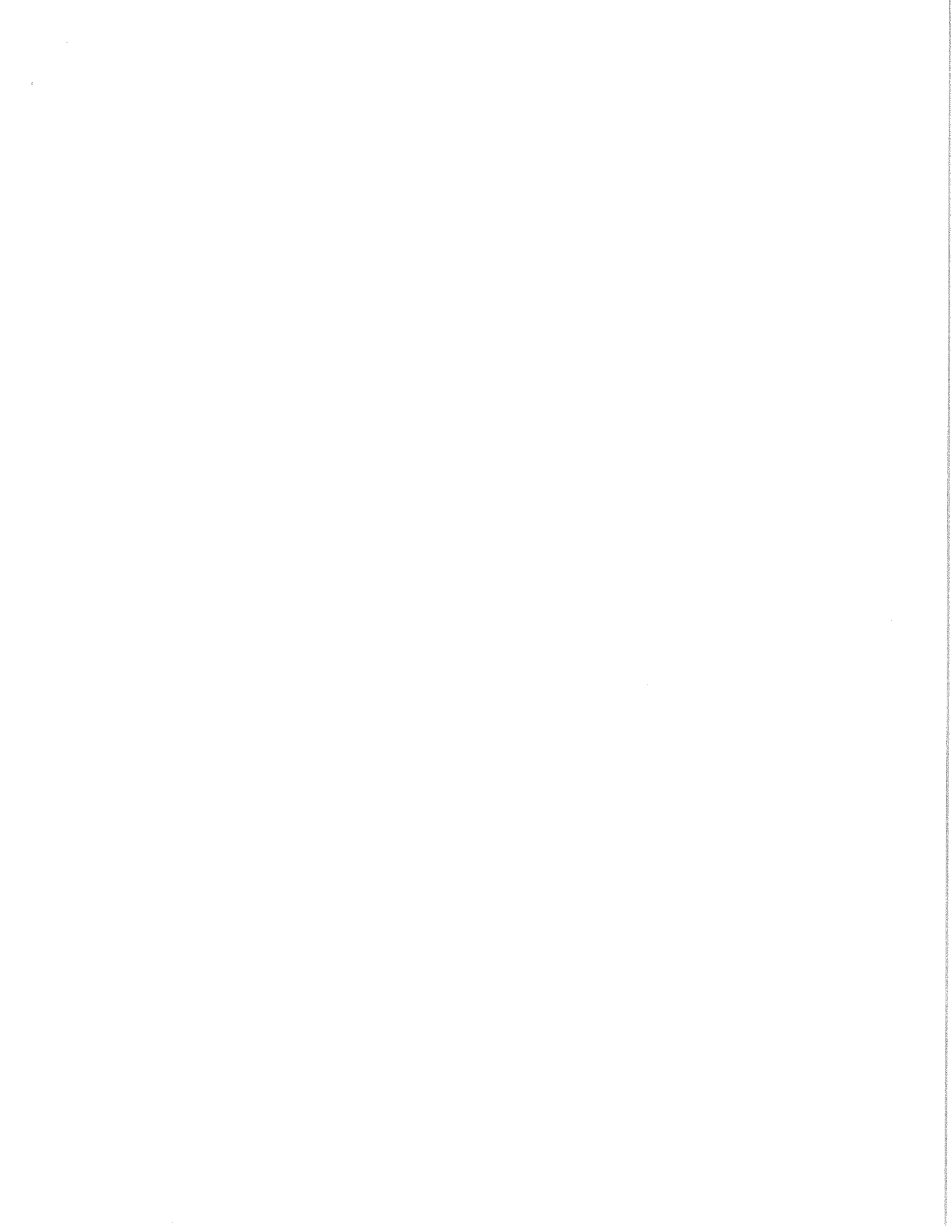
- (1) Multifamily dwellings with over four dwelling units must have two means of egress and ingress. One may be for emergency use only.
- (2) Public sewer and water facilities must be provided for multifamily dwellings with over four dwelling units.
- (3) Customary home occupations must be of a type that will not create noise and traffic problems in residential neighborhoods.
- (4) Customary home occupations must have sufficient off-street parking for all customer vehicles.
- (5) In the B2 and B3 District, multiple-family is only allowed as a mixed use with commercial. For one-story structures the commercial use shall have a minimum of 50% of the gross floor area in use for business. For multistory buildings the commercial use shall have a minimum gross floor area equal to the story with the greatest floor area. For projects with multiple structures, these percentages shall apply to gross square footage allowing for a mix of commercial and residential structures.
[Added 12-16-2009 by L.L. No. 3-2009]

B. Agricultural related uses.

- (1) Liquid and solid manure storage facilities shall be sited in a manner to reduce odor problems with adjacent residential areas.
- (2) Land application of human and animal waste products shall be carried out in a manner to reduce environmental hazard.
- (3) Visual screening of used equipment may be required for agricultural implement sales areas.

C. Educational and cultural facilities.

- (1) Lighting of fields and parking areas shall not create a glare on adjacent residential properties or roadways.
- (2) Pedestrian access must be located in a manner to reduce impact on neighborhoods.
- (3) Architectural design shall be compatible with neighborhoods.



7629A State Highway 80 • Cooperstown, New York 13326

• 315.858.6002 • dzamelis@windstream.net •

STATE OF NEW YORK

SUPREME COURT

COUNTY OF MADISON

In the Matter of the Application for a Judgment
Pursuant to Article 78 of the Civil Practice Law
and Rules of:

TOWN OF

CORTLANDVILLE
PLANNING BOARD,

Respondents

PAMELA JENKINS, CHERI SHERIDAN and OLGA
SMITH

Petitioners

NOTICE OF ENTRY

Index No.: 2017-1248

Hon. Donald F. Cerio, Jr.

GREGORY LEACH, LEACH PROPERTIES, LLC, and
PLEASE TAKE NOTICE THAT the attached is a true copy of the Decision and Order of the
Honorable Donald F. Cerio, Jr, of the Cortland County Supreme Court dated October 2, 2017,
which was filed and entered in the Office of the Cortland County Clerk on October 4, 2017.

Dated: October 5, 2016

Douglas H.

By: 

Douglas H. Zamelis

Zamelis

Attorney for Petitioners

7629A State Highway 80

Cooperstown, New York 13326

(315) 858-6002

TO:

Richard C. Lewis, Esq.

Hinman Howard & Kattell

80 Exchange Street

P.O. Box 5250

Binghamton, New York 13902

John B. Folmer, Esq.

Town of Cortlandville Town Attorney

3577 Terrace Rd.

Cortland, New York 13045

STATE OF NEW YORK
COUNTY OF MADISON SUPREME COURT

In the matter of the Application for Judgment Pursuant
to Article 78 of the Civil Practice Law and Rules of:

Decision and Order

PAMELA JENKINS, CHERI SHERIDAN AND OLGA
SMITH,

Index No. 2017-
1248

Petitioners,

-against-

GREGORY LEACH, LEACH PROPERTIES,
LLC, and TOWN OF CORTLANDVILLE
PLANNING BOARD,

Respondent

s.

The present matter comes before the Court upon the Petitioners' Notice of Verified Petition and Verified Petition, dated April 4, 2017, pursuant to Civil Practice Law and Rules Article 78, seeking to null and vacate the February 21, 2017, determination by Respondent Town of Cortlandville Planning Board, which granted a conditional permit to Respondent Leach to construct an addition to his solid waste transfer facility located in Cortlandville, County of Cortland, New York. Respondent Leach (Leach) filed a Verified Answer on July 10, 2017, and an Amended Verified Answer, dated July 18, 2017, raising therein both Objection in Point of Law and a Counterclaim sounding in the nature of harassment as it pertained primarily to Petitioner Pamela Jenkins. ¹ Respondent Town of Cortlandville Planning Board (Board) filed a

¹ This court, by Decision and Order dated June 26, 2017, directed that the respondents file their respective answers by not later than July 10, 2017. Respondent Leach filed his Amended Verified Answer on July 20, 2017.

Verified Answer and Certified record of the underlying proceedings, on July 10, 2017.¹²

11

Petitioners subsequently moved, by Notice of Motion and Reply Affirmation in Support of Motion to Dismiss Counterclaim, dated July 12, 2017, to dismiss the counterclaim as asserted in the Leach Amended Verified Answer alleging that such consisted of a so-called SLAPP Suit, i.e., a Strategic Lawsuit Against Public Participation (See Civil Rights Law "70-a and 76-a). Respondent Leach, in response to the motion, submitted an Affidavit in Opposition to Motion of counsel dated July 19, 2017, opposing the relief sought and asserting that Petitioner Jenkins was using the legal process merely as a device by which to harass Respondent Leach.⁴

On July 20, 2017, in Cortland County Supreme Court, the parties appeared by counsel and were heard.

Thereafter, under cover letter dated July 26, 2017, received on July 27, 2017, Respondent Leach submitted: (1) the undated Attorney Affirmation of counsel; (2) the July 25, 2017, Affidavit of Gregory Leach (Respondent, herein), and; (3) the July 25, 2017, Affidavit of Larie Cifaratta. Petitioners' counsel responded by letter dated July 27, 2017, received on August 1, 2017, seeking to strike the Respondent's late submission or, in the alternative, to find such submissions to be without merit.

¹ Respondent Cortlandville filed its Verified Answer and Certified Record of Proceedings on July 14, 2017, though having mailed copies of such to counsel and the clerk on July 7, 2017.

² Though the matter of standing had been tangentially addressed by the respondents, no motion to dismiss nor objection in point of law was raised specifically addressing the matter of the petitioners' standing to commence the present Article 78 proceeding. As such, this court declines to address the issue of standing.

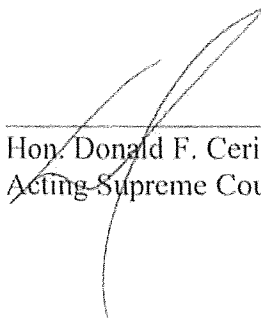
ORDERED, that the grant of the conditional permit as granted by the Cortlandville Planning Board to the respondent on February 21, 2017, is vacated and annulled, and the matter is remanded to the Planning Board of the Town of Cortlandville for further consideration consistent with Environmental Conservation Law Article 8, 6 NYCRR Section and the Town of Cortlandville Zoning Law, specifically, Sections 178-75(A) and (B); and it is

ORDERED, Respondent Leach is enjoined from using or occupying the drive-through addition which is the subject of the instant proceeding until further order of this court; and it is

ORDERED, that the Petitioners' motion seeking to dismiss the Respondent's counterclaim is denied, subject to renewal, and further subject to the Scheduling Order set forth herein.

Enter.

DATED: October 2, 2017
 Oneida, New York



Hon. Donald F. Cerio, Jr.
Acting Supreme Court Justice

STATE OF NEW YORK
COUNTY OF MADISON SUPREME COURT

In the matter of the Application for Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules of:

Decision and Order

PAMELA JENKINS, CHERI SHERIDAN AND OLGA
SMITH,

Petitioners,

Index No. 2017-
1248

-against-

GREGORY LEACH, LEACH PROPERTIES,
LLC, and TOWN OF CORTLANDVILLE
PLANNING BOARD,

Respondents

The present matter comes before the Court upon the February 21, 2019, Notice of Motion filed on behalf of Respondent Gregory Leach and Leach Properties, LLC, which was accompanied by the February 20, 2019, Petition of Gregory Leach and the February 21, 2019, Attorney Affirmation of Richard C. Lewis, Esq., seeking clarification of this court's October 2, 2017, Decision and Order. John B. Folmer, Esq., Town Attorney for Respondent Town of Cortlandville Planning Board, submitted an Affidavit dated February 26, 2019, in furtherance of the aforesaid motion. Douglas H. Zamelis, Esq., thereafter submitted an Affirmation in Opposition to Motion to Clarify dated March 12, 2019, in response to the above. Respondent Leach subsequently submitted the March 19, 2019, Attorney Affirmation in Response of Attorney Lewis.¹

This matter was scheduled to be heard in Madison County Supreme Court at the motion term held on April 12, 2019.

Town Attorney Folmer, by Memo dated July 24, 2018, provided to the Court Clerk for filing the following: The July 24, 2018, Affidavit of Attorney Folmer, with attachments, and the July 24, 2018, Affidavit of Katherine S. Wickwire, with attachments. This court is also in receipt of Attorney Zamelis' letter to Attorney Folmer dated August 1, 2018, in response to the aforesaid submissions.

Initially, this court notes that the previous Decision and Order of this court which addressed the petitioners' Notice of Verified Petition and Verified Petition dated April 4, 2017, which sought to annul and vacate the respondent's February 21, 2017, grant of a condition permit to Respondent Leach (Leach) to construct an addition to his solid waste transfer facility located in Cortlandville, Cortland, New York, was issued on October 2, 2017. That particular Decision and Order, at the first decretal paragraph, held as follows:

ORDERED, that the grant of the conditional permit as granted by the Cortlandville Planning Board to the respondent on February 21, 2017, is vacated and annulled, and the matter is remanded to the Planning Board of the Town of Cortlandville for further consideration consistent with Environmental Conservation Law Article 8, 6 NYCRR Section and the Town of Cortlandville Zoning Law, specifically, Sections 178-75(A) and (B). (Emphasis added).

The second decretal paragraph provided that:

ORDERED, Respondent Leach is enjoined from using or occupying the drive-through addition which is the subject of the instant proceeding until further order of this court.

It is from these two decretal paragraphs that the present motion ensues.²

In the first instance, this court finds that the present motion is more akin to a motion to resettle the prior order of this court as a matter of clarification rather than as a motion to reargue or renew pursuant to CPLR Section 2221. (See *Foley v. Roche*, 68 ad2d 558, 1st Dpt. 1999; *Simon v. Mehryara*, 16 AD3d 664, 2nd Dpt. 2005). The respondents' motion, if deemed to be made pursuant to Section 2221, would be substantively and procedurally infirmed and subject to summary dismissal as it does not seek to reargue that the court had overlooked or misapprehended matters of fact or law, or, for that matter, that there exist new facts exist or a change in the law would otherwise affect the earlier decision. Here, as a motion to resettle, the movant seeks merely to clarify that which this court had previously decided with respect to the October 2, 2017, Decision and Order and does not, nor can it, seek a substantive change in this court's prior order. Any such substantive change to this court's order would need be the product of appellate review rather than a motion to clarify (or resettle).

This court, upon review of the relevant decretal paragraphs of the referenced Decision and Order clearly states that the prior determination by the Town of Cortlandville Planning Board was annulled and vacated. As such, the February 21, 2017, determination of the Cortlandville Planning Board in granting to the respondent a conditional permit was for all intents and purpose invalidated by this court. This court's direction that the matter be remanded to the Cortlandville Planning Board "for further consideration" required the Planning Board to comply fully with all provisions of the Environmental Conservation Law, Article 8, and to comply with the Town of Cortlandville Zoning

Initially, this court notes that the previous Decision and Order of this court which addressed the petitioners' Notice of Verified Petition and Verified Petition dated April 4, 2017, which sought to annul and vacate the respondent's February 21, 2017, grant of a condition permit to Respondent Leach (Leach) to construct an addition to his solid waste transfer facility located in Cortlandville, Cortland, New York, was issued on October 2, 2017. That particular Decision and Order, at the first decretal paragraph, held as follows:

ORDERED, that the grant of the conditional permit as granted by the Cortlandville Planning Board to the respondent on February 21, 2017, is vacated and annulled, and the matter is remanded to the Planning Board of the Town of Cortlandville for further consideration consistent with Environmental Conservation Law Article 8, 6 NYCRR Section and the Town of Cortlandville Zoning Law, specifically, Sections 178-75(A) and (B). (Emphasis added).

The second decretal paragraph provided that:

ORDERED, Respondent Leach is enjoined from using or occupying the drive-through addition which is the subject of the instant proceeding until further order of this court.

It is from these two decretal paragraphs that the present motion ensues.²

In the first instance, this court finds that the present motion is more akin to a motion to resettle the prior order of this court as a matter of clarification rather than as a motion to reargue or renew pursuant to CPLR Section 2221. (See *Foley v. Roche*, 68 ad2d 558, 1st Dpt. 1999; *Simon v. Mehryara*, 16 AD3d 664, 2nd Dpt. 2005). The respondents' motion, if deemed to be made pursuant to Section 2221, would be substantively and procedurally infirmed and subject to summary dismissal as it does not seek to reargue that the court had overlooked or misapprehended matters of fact or law, or, for that matter, that there exist new facts exist or a change in the law would otherwise affect the earlier decision. Here, as a motion to resettle, the movant seeks merely to clarify that which this court had previously decided with respect to the October 2, 2017, Decision and Order and does not, nor can it, seek a substantive change in this court's prior order. Any such substantive change to this court's order would need be the product of appellate review rather than a motion to clarify (or resettle).

This court, upon review of the relevant decretal paragraphs of the referenced Decision and Order clearly states that the prior determination by the Town of Cortlandville Planning Board was annulled and vacated. As such, the February 21, 2017, determination of the Cortlandville Planning Board in granting to the respondent a conditional permit was for all intents and purpose invalidated by this court. This court's direction that the matter be remanded to the Cortlandville Planning Board "for further consideration" required the Planning Board to comply fully with all provisions of the Environmental Conservation Law, Article 8, and to comply with the Town of Cortlandville Zoning

Law, specifically Sections 178-75(A) and (B). To clarify further, this court, in effect, set aside, dismissed and otherwise nullified those actions undertaken by the Planning Board with respect to the issuance of the conditional permit and required the Planning Board to undertake a thorough and complete review of the respondents' application in conformity with the

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It should be noted for the record that the parties had entered into an "Agreement & Mutual Release" with respect to the respondents' counterclaim which was "So Ordered" by this court on or about October 30, 2017.

relevant mandates as contained in Environmental Conservation Law and the Cortlandville Zoning Law. In so doing, the Planning Board was not to simply reconstruct that which it had previously undertaken to do but to begin anew the processes required by which to assess and review the propriety of the respondents' application in conformity with the applicable law as set forth above. To merely reconfirm post hoc ergo propter hoc that which had been previously undertaken by the Planning Board during the course of its original review of this application would serve to suffer a disservice upon the petitioners as the mechanism by which a full, fair and open review of the application would be substantially abbreviated thereby depriving the petitioners, or others, of their right to notice and an opportunity to express reservations or objections to the application or to otherwise seek denial of the application. It is the Planning Board's obligation to fully comply with the provisions of the relevant and controlling provisions of law which this court addressed, in coordination with any other applicable provisions of law. As this court had found in its Decision and Order that the Planning Board had failed to comply with the requisite provisions of law as identified, nullification was appropriate as was a remand for further consideration of the respondents' application.

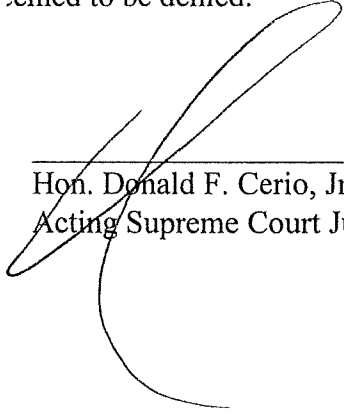
Therefore, upon the foregoing, the respondents' motion to resettle, or, more precisely, to clarify the October 17, 2017, Decision and Order, is granted as set forth herein and the Respondent Cortlandville Planning Board is ordered to comply with the provisions of the Environmental Conservation Law in toto and Town of Cortlandville Zoning Law as previously directed in all respects.

All other relief not specifically granted herein is deemed to be denied.

Enter.

DATED: June 11, 2019
Wampsville, New York

Hon. Donald F. Cerio, Jr.
Acting Supreme Court Justice



STATE OF NEW YORK
COUNTY OF MADISON SUPREME COURT

In the matter of the Application for Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules of:

Decision and Order

PAMELA JENKINS, CHERI SHERIDAN AND OLGA
SMITH,

Index No. 2017-
1248

Petitioners,

-against-

GREGORY LEACH, LEACH PROPERTIES,
LLC, and TOWN OF CORTLANDVILLE
PLANNING BOARD,

Respondents

The present matter comes before the Court upon the February 21, 2019, Notice of Motion filed on behalf of Respondent Gregory Leach and Leach Properties, LLC, which was accompanied by the February 20, 2019, Petition of Gregory Leach and the February 21, 2019, Attorney Affirmation of Richard C. Lewis, Esq., seeking clarification of this court's October 2, 2017, Decision and Order. John B. Folmer, Esq., Town Attorney for Respondent Town of Cortlandville Planning Board, submitted an Affidavit dated February 26, 2019, in furtherance of the aforesaid motion. Douglas H. Zamelis, Esq., thereafter submitted an Affirmation in Opposition to Motion to Clarify dated March 12, 2019, in response to the above. Respondent Leach subsequently submitted the March 19, 2019, Attorney Affirmation in Response of Attorney Lewis.¹

This matter was scheduled to be heard in Madison County Supreme Court at the motion term held on April 12, 2019.

¹ Town Attorney Folmer, by Memo dated July 24, 2018, provided to the Court Clerk for filing the following: The July 24, 2018, Affidavit of Attorney Folmer, with attachments, and the July 24, 2018, Affidavit of Katherine S. Wickwire, with attachments. This court is also in receipt of Attorney Zamelis' letter to Attorney Folmer dated August 1, 2018, in response to the aforesaid submissions.