

**Town of Southeast
Zoning Board of Appeals
Minutes of April 19, 2017**

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| Timothy Froessel, Chairman | Present |
| Paul Vink, Vice Chairman | Present |
| Kevin Sheil | Absent |
| Roderick Cassidy | Present |
| Debra Keiser | Absent |
| Greg Wunner | Present |
| Carla Lucchino | Absent |
| Willis Stephens, Jr., Town Attorney | Present |
| Victoria Desidero, Secretary | Absent |
| Cathy Chiudina, Assistant Secretary | Present |

Work Session:

Regular Session:

Putnam Dental Associates, 2435 Route 6

Continued Public Hearing to review an application for a variance for a second freestanding sign where one is permitted; and a variance for an off-premise sign.

Chairman Froessel: Is there anyone here for Putnam Dental Associates? No? For now we will put this application to third on the list in the hopes that someone shows for this application and if no one shows we will put it over to next month.

This application was Continued to May 15, 2017 due to applicant not being present.

Oak Ridge Partnership (aka Heidi's Motel), 1270 Route 22

Public Hearing to review an application for an 8 ft. variance for a freestanding sign where 7 ft. is proposed and 15 ft. is required.

Sean Diggin was sworn in and the mailings were found to be in order.

Chairman Froessel: This required referral to County Planning and we received the approval?

Ms. Chiudina: Yes, we did.

Chairman Froessel: Very good, so everything is procedurally in order. Why don't you go ahead and tell us about your application.

Mr. Diggin: The new sign at Heidi's, which hopefully everyone has seen and likes. If I were to try and meet the 15 ft. setback requirement it would cause visibility issues for the sign: guide wires from the utility poles, trees and shrubbery and such. So when the sign was delivered to us we tried various locations and where it sits now seems to be the best spot with the best visibility requiring a variance.

Chairman Froessel: Is the current sign in the same location?

Mr. Diggin: No, it's south about 10 ft. and further away from the highway, property line, by I think 5 ft. so it's not as close to the road. I did bring some pictures to show the obstacles and obstructions. (Mr. Diggin handed out the photos to the board members). The guide wires are here and they are covered with yellow markers so no one runs into them. So if we went to the right and away from the road it would be behind those guide wires. On the opposite side, the northern side, there's a number of trees there so if you are coming southbound those trees would cause an obstruction of view. This bush here is very nice and trimmed back now in this

picture...I took this today...that one flowers and grows larger, which of course would cause an obstruction as well.

Chairman Froessel: How long has the new sign been in place? It's been a couple months at least, right?

Mr. Diggin: About 6 months.

Boardmember Cassidy: And you say it's further back than the sign that was there previously?

Mr. Diggin: It is further back than the sign it replaced, yes. Lower and much nicer looking.

Boardmember Vink: Smaller too?

Mr. Diggin: Yes, meeting the new Sign Code.

Chairman Froessel: And the only aspect of this you need a variance for is the setback from the front property line, correct?

Mr. Diggin: From the property line, which is exactly running through this pole here.

Chairman Froessel: Okay. We are familiar with the fact that on Route 22 the Right-of-Way is typically wider. It looks like the telephone pole is right on the property line.

Mr. Diggin: Yes.

Boardmember Vink: The property line curves actually. It cuts back over.

Mr. Diggin: Also 15 ft. would put the sign partially into the parking lot too in most locations.

Chairman Froessel: Anyone feel the need to go out and look at this? No? Okay. Is there anyone in the audience that has any comments or questions with respect to this application? No? Okay, I will take that as a no also. Here is the \$64,000 question for you: We are a seven member board and to get your variance you must get a vote of at least four for approval. When there are only four of here you still have to get four votes, which means instead of batting .600 you have to bat .1000. When we are placed in this situation we always give the applicant the opportunity to defer a vote to the next month when we hopefully will have more people and you will have a better opportunity of getting your 4 votes.

Mr. Diggin: Okay.

Chairman Froessel: While your application is pending there is no enforcement action that can be taken against you as a result.

Mr. Diggin: The four of you do not decide now tonight?

Boardmember Vink: Well we can if you want us to.

Chairman Froessel: We can if you want us to to.

Boardmember Cassidy: But we all have to agree with you, every single one of us.

Chairman Froessel: You have to have all four of us vote yes whereas if we have seven next month you would only need four of the seven to vote yes. The choice is yours. I just want to make sure you understand the consequences.

Mr. Diggin: It's better to wait.

Chairman Froessel: I think you are probably better off waiting. That's my own personal opinion but if you are in a hurry and you want this to be done...we do get some situations where people are looking to get a shovel in the ground and they don't want to wait.

Mr. Diggin: I've extended the Building Permit for another year so I can wait. Will the other three see the pictures and all?

Chairman Froessel: Yes, we will have everything here next month. We will have you come back. You can answer any questions that they might have. We will definitely save these pictures and they will be in the record with your application. It is pretty prominently located. Anyone coming into Town off Route 22 is going to see it. I don't think there is any downside to waiting. What is the date of the hearing?

Ms. Chiudina: It's May 15.

Chairman Froessel: Okay, so if you want to defer you can come back on May 15 and we will vote then. I will not close the Public Hearing in case there is anything else you want to present to us next month and the other board members may have questions so we will simply just adjourn to May.

Mr. Diggin: Okay.

Morrow Equipment, 425 Route 312

Public Hearing to review an application for an appeal of the Building Inspector's Determination of March 1, 2017 regarding whether a mobile crane is a structure.

Richard O'Rourke, Keane & Beane, attorney for the applicant appeared before the Board on behalf of this application.

Terri Hahn, architect for P.W. Scott and Associates and Peter Juhren of Morrow Equipment were sworn in and the mailings were found to be in order.

Attorney O'Rourke: Good evening. Here this evening with me is our landscape architect, Terri Ann Hahn who is obviously well familiar with the project and with this property over the last 10 years or so. We also have Peter Juhren who is the Vice President of Operations for Morrow Equipment who is in from Salem, OR along with Jim Kottre, Director of Facilities and Facilities Manager for Morrow, and Tim Birrenbach who is the District Service Manager who operates here in the state of New York on behalf of Morrow. We know that there is interest in this application and what we thought might make it easier for all is if Terri gave a brief overview of the application so that everyone understands what that's all about. We have Mr. Juhren to talk a little bit about Morrow and what the company is: who they are, why they're here, and what it is that they are doing. Then head into the discussion in terms of the Interpretation.

Chairman Froessel: If any of your clients are going to speak we should swear them in now.

Mr. O'Rourke: Yes, Mr. Juhren will probably speak and I think Mr. Kottre might speak. Mr. Rossi may speak but he is an attorney.

Boardmember Vink: Before you start, if there are people who are interested in this you might want to move up to the front to get a better view of what's happening up here.

Chairman Froessel: At the outset I just want to be clear: you're appealing the Building Inspector's Interpretation of a term of a precise definition within the Code structure and you're not here for a variance for the 98 ft. height of the crane?

Mr. O'Rourke: That is correct.

Chairman Froessel: You are only here on the Interpretation aspect.

Mr. O'Rourke: That is correct.

Chairman Froessel: We are going to try to keep ourselves on that path.

Mr. O'Rourke: And I appreciate that. As you are well aware, the Zoning Board of Appeals is a quasi-judicial body charged with the responsibility of not only in terms of granting or denying area variances or use variances, but also charged with the responsibility of addressing Interpretation issues arising from a Determination by the Building Inspector so it's different. So with that, Terri would you want to go through a little overview? We will give you a quick overview so that everyone understands the application.

Architect, Ms. Hahn: In the spirit of that focus, just a brief orientation. The property is located on Route 312. It is in the ED Zone. It is approximately 52 acres in size. It has an existing approval for two buildings that were service/business related, general business, contractor yard, and also had an approval originally for the possibility as an automotive use. The proposed application combines and reduces the overall size of the building, maintains the impervious surface, and will use a single building to be located on the property for Morrow Equipment. I think I am going to stop there.

Mr. O'Rourke: If you would point out what's behind the building.

Ms. Hahn: The property is 52 acres: starts at 312, goes up over the hill and down the back. So, there's a very large hill that is the backdrop for this particular property. The area of disturbance is limited to that which is already approved including DEP (Department of Environmental Protection) approvals for Stormwater Management so it is a very small, focused area that is part of this property.

Mr. O'Rourke: And if you could just point out the interpretative issue in terms of the location of the mobile yard crane. Where is it **vis-à-vis on site and where the building is.**

Ms. Hahn: Route 312 is located on the lower area. You go into the site, which is higher. The building is between Route 312 and the storage yard. The storage yard is where the mobile crane would be located and that is located behind the building. The hill then continues up several hundred feet beyond that.

Mr. O'Rourke: I think that gives you an overview of what the application is. Mr. Juhren can you tell the Board about Morrow Equipment.

Mr. Juhren: Sure. Morrow Equipment was started in 1968 by two brothers, Richard and John Morrow. They started in Salem, OR with one crane and we've grown the company throughout the years up until our position right now: we have 23 similar offices in the United States and with this facility here we're looking to expand in our New York market. A little bit about myself: I'm a local. I grew up in Mt. Kisco, went to Fox Lane High School, and I'm a past president of the Mt. Kisco Fire Department. So this area to me is personal and I understand the needs of communities in smaller areas. Anything I can do to help answer questions I'd be more than happy to do that.

Mr. O'Rourke: And if I may, in so far as the service area to be serviced by this facility and why this location.

Mr. Juhren: This location, when you take a look at our geographic area that our New York office covers, this location geographically is ideally suited for our logistics. We cover New England, New York, and parts of New Jersey. The hub of what we do logistically, this is a great...we also take a look at the service and support that's available in the area and the employment possibilities of people also. These are some of the main factors we looked for this area in particular.

Mr. O'Rourke: Thank you. I think if I may, the important thing here and you touched on it in the beginning. This is an interpretive issue. It's one of interpretation and obviously a written submission was made on behalf of the applicant. You've had it, you've read it. I'm sure that others have read it as well and as properly framed: we're not here for a variance we are here for an Interpretation. What is at issue is the Appeal of the Determination that was made by the Building Inspector that because, in his mind based upon his reasoning, he perceives this to be a structure as such it is subject to the height limitation for the Economic Development Zone where this property is located and of course that limitation is 35 ft. Our position is that based upon our review of that Code, based upon the statutory construction that is to be applied when you are dealing with the Code where of course the Code is interpreted against the drafter, the government, in favor of the property owner the reason being of course is that you are taking away from the bundle of rights that a property owner has in terms of the use of his or her property and so given that framework, that's the framework in which we must evaluate and make sure that whatever Determinations are made, are made within that context. What I would like to do is just briefly go through a couple things that I think would be helpful in terms of the analysis. As I pointed out in the submission that was made to the Zoning Board of Appeals, what really is at issue here is the Determination and the meaning of "what is a structure" as defined in the Zoning Ordinance. We know that there are certain elements that

are put forth in terms of it being a building or something that's constructed or erected that requires location on the ground or attachment to something having a location on the ground that exceeds 4 ft. in height. Then there is an example of certain things that are spelled out, none of which of course involves something that's on wheels. It talks about fences, stone walls, telecommunication towers, antennas and then there are certain exclusions as well. Obviously in terms of breadth of structure the definition as set forth in the Code includes other things that one might say are not necessarily structures in the sense of a fence or a stone wall: a tennis court, a basketball court, a swimming pool. So there are certain examples where certain things are considered structures and specifically pointed out, none of which of course include something that's on wheels, regardless of what kind of wheels they are and we'll get to that very shortly I'm sure. Obviously the mobile crane that is part and parcel to this Use proposed by Morrow: it is mobile, and that's very, very important as we will see in terms of what some of the case law is out there that has dealt with the issue of structures, particularly in the state of New York. It moves. The other element to it that is very important is that as a piece of equipment it is something that is mobile. It is not that different from other kinds of equipment that are on wheels. You could have here on this property a mobile yard crane that would be as high and could be with inflatable rubber tires. Something like that we would respectfully submit would never be considered to be a structure that's subject to the height limitations. In many respects what we have here is something that moves, we have something that the mere placement of the wheels on rails does not immediately transform it into a structure within the meaning of the wording and the definitions that are set forth in this particular zone. One of the things that I think is important to bear in mind is: how is this treated elsewhere in the state of New York. Yesterday I had the opportunity to speak with Mr. Joshua Herman who is the Tax Assessor in the Town of New Castle where Morrow Equipment has a facility, which they have hopelessly outgrown. The size of the parcel you said was about an acre and a half?

Mr. Juhren: About an acre and a half.

Mr. O'Rourke: And it's very constrained. They have a mobile yard crane. When I spoke to Mr. Herman about it, I asked him how is this treated for purposes of real property tax? Is it a structure? Is it something under New York State law that would be considered such? He said, "No. We don't in New Castle. We've never taxed it." And the reason for it is because it moves and secondly that can be dismantled readily. It is not attached to the building. It is something that does not support the building. It is an independent piece of equipment so in the state of New York, as far as the one other application to this particular kind of question, it is treated in the Town of New Castle as being something that is akin to equipment and not a structure.

Boardmember Cassidy: I would like to ask you a quick question. How does New Castle's statute match up with ours? How does theirs read?

Mr. O'Rourke: As far as the definition of structure? I don't have it with me. I really don't. We certainly can get you...we can take a look at it. But what I think is important or equally important is the fact that in so far as, not only in the state of New York, but nationwide...and we will get back to New York in a moment...I specifically asked Mr. Juhren what happens in terms of other jurisdictions. How is this mobile yard crane treated? Is any of it treated as exempt from structure and real property or is it treated as personal property and equipment. Mr. Juhren: could you share with the Board what you have found by way of information from your other locations in the United States?

Mr. Juhren: Sure. The sheet that we're handing you right now is...I had our accounting and tax people go through each one of our current facilities where our equipment is taxed. It's not an all-inclusive because in the jurisdictions where we have facilities that aren't listed on here,

our equipment is not taxed at all. In every single jurisdiction where we currently have a facility and we have a similar crane to this every location nationwide is taxed as personal property and not as real property. The sheet that I've given you shows the locations where we do pay personal property tax and each one has a piece of equipment that are on that facility.

Mr. O'Rourke: And so the point being that it's considered not real property or structure, it's considered as personal property and equipment.

Mr. Juhren: It's considered personal property and equipment in all the other jurisdictions that we have. On the sheet you have there you'll see there's a rather large number underneath that, that's not for the yard crane but all the other pieces of equipment and the other cranes that we have at our facilities are taxed as personal property also. That's why that number is on there. We included just the cranes themselves also.

Mr. O'Rourke: What I think is equally important and is consistent with what Mr. Herman, the Tax Assessor in the Town of New Castle said in regards to the facility that's there, that in fact this is exempt from real property. It's not a structure. It's not something that's taxed as per that category. It is personal property. I have an opinion of counsel from the Department of Taxation and Finance that specifically addresses the issue of traveling cranes. Certainly I can hand this up and I can make it as part of a written submission but this particular opinion talks about what is necessary to meet the following requirements in order to be entitled to exemption from taxation, meaning that it's not real property, it's not a structure. "It has to be movable. It has to be used for trade or manufacturing. It's not essential for supporting the structure or the building or the superstructure." Of course this is not. This is an independent crane. It's not built into a wall that supports it. "It's removable without material injury to the building in which it's located." This is independent and Mr. Juhren and Mr. Kottre can talk about it. This can be readily dismantled and moved in a period of...

Mr. Juhren: About two days.

Mr. O'Rourke: "It must be essential to the operation of the facility." This is essential to the operation of this facility. The yard crane is used to take the component parts of these high cranes that go up 50-60 stories and they are almost like an erector set. They are assembled and then disassembled and transported to and from the site whenever they're used. Anyway this is a particular decision. This is Volume 7, Opinions of Counsel SBEA No. 53. The title on it is Real Property Definition of, Location of Equipment Traveling Cranes Real Property Tax Law Section 102.12(bf). In addition to that, as far as Interpretations that we have in regard to real property tax law and, again, the issue of traveling cranes there are several decisions that...and I can hand this up and we'll submit it as a written submission...there's a Third Department 1983 case involving Wallace vs. Tompkins County Board of Assessment Review where a bridge crane was "not essential to support any building, structure or superstructure and can be removed without injury to land or building." It's not to be assessed as real property. The bridge crane ran on two tracks of 600 ft. lineal runway. The tracks were supported by 16 uprights, which were bolted to the concrete piers in the ground. The crane picks up and moves scrap iron from one location to another. This crane was able to be removed from the tracks and the tracks and uprights can easily be unbolted and moved to other locations. That's analogous, we would submit, to the situation at hand here. There's another decision that doesn't have to do with cranes but it has to do more with the essence in terms of what is personal property as opposed to real property and this has to do with a commercial ski lift operation. This is West Mountain Corp vs. Minor, which is New York Subset 381 New York Subsection 606. There the commercial ski lift operation constituted a business engaged in for profit and ski lift equipment was used for trade within the meaning of exemption provision of the tax section regarding removable machinery or equipment so therefore is considered personal property as opposed to a structure.

It was used for trade or manufacturing and not an essential part for building support and the ski lifts were exempt from taxation with the exception of the concrete footings or the foundations. So from the perspective of statutory construction, from the perspective of those Courts that have addressed the issue of traveling cranes and the like, I have yet to find anywhere where this particular type of equipment has been classified as a structure. It is exempt from real property, tax or consideration, as far as we know in the state of New York. The Determination that was made in the Town of New Castle I think is something that is consistent with what our position is with this and therefore we believe that as such, and most respectfully, the Building Inspector made a mistake. Obviously this is an appellate body and we're appealing that Determination. That is what I have to say at this point.

Chairman Froessel: Question: the rails that the crane would sit on; what is their length?

Mr. Kottre: The link as in what?

Chairman Froessel: Length.

Mr. Kottre: Oh length! That would be 350 ft.

Chairman Froessel: The crane apparatus itself: how much does it weigh? Is it in the tons I would imagine?

Mr. Juhren: Oh yeah. That crane is probably...

Mr. Kottre: Counting the ballast? I would guess 200,000 lb.

Chairman Froessel: So clearly those rails need to be set on footings?

Mr. Juhren: Yes.

Boardmember Cassidy: Is it also safe to assume a crane of that weight could be on tires?

Mr. Juhren: No, mobile cranes of those capacities could be two to three times that weight and be on rubber tires or on crawler tracts.

Boardmember Cassidy: Could this crane be on rubber tires?

Mr. Juhren: This one? No it can't. It's not designed to do that but mobile cranes of the same type of capacity can be on crawler tracts like a bulldozer or on rubber tires. That's typically what you find in mobile cranes that are not affixed to rails.

Chairman Froessel: Are you aware of any type of crane on rubber tires or crawler tracts that would suit your purposes at this location?

Mr. Juhren: To work economically and to be able to service our facility, no. The option would be if we brought in a mobile crane of the rubber tire or crawler type, it would probably be in excess of 200 to 240 ft. tall for us to service the same area of our facility that we can do with the hammerhead electric crane on rails.

Mr. O'Rourke: And so you're saying that if you did bring a piece of equipment that had rubber tires it would have be...why would it have to be so much taller than what you have here?

Mr. Juhren: The crane that we're proposing to use is what they call a hammerhead tower crane where the boom itself is horizontal and almost all of the mobile cranes, whether they're crawler cranes on tracts or on rubber tires, they have what they call a movable boom and that boom is vertical. You change your radius by raising or lowering that boom so for us to take a mobile crane that can reach out 130 ft., which is about how far this tower crane reaches we would have to have a vertical height of about 230 to 240 ft. to achieve the same thing with the same capacity.

Boardmember Vink: The wheels that this sits on and then sits on the track: are these wheels affixed to the track?

Mr. Juhren: No, they roll on the track just like a train.

Boardmember Vink: They're not in any way affixed to it?

Mr. Juhren: No.

Boardmember Cassidy: The New Castle crane: what are those wheels?

Mr. Juhren: They're the same. They're just like train wheels running on rails.

Boardmember Wunner: And the movement is powered by a self-contained motor in just that unit, right?

Mr. Juhren: Yes, the entire crane is electric.

Boardmember Wunner: So it's relatively quiet?

Mr. Juhren: We burn no diesel fuel. It's an environmentally friendly crane. It's very quiet compared to the alternative in the mobile cranes, which are diesel or hydraulic powered.

Mr. O'Rourke: Where is the electric motor located?

Mr. Juhren: Well there are several. For the majority of the operation of the crane they're mounted on the upper portion of the crane. The motors that drive the actual traveling of the crane are mounted inside of the wheels themselves that drive the travel wheels.

Chairman Froessel: We have a lot of folks here tonight obviously who will want to have some comments but before we do that I would like to put into the record that we've received a number of letters from some of the neighbors. Following the custom set by my predecessor, Ed Colello, I'm going to take a few minutes and read these into the record. I will read them in order in which we received them.

The first letter is from Concerned Residents of Southeast, signed by Richard Feuerman, and dated April 11, 2017. Dear Chairman Froessel and members of the Board: The Executive Board of Concerned Residents of Southeast stands firmly behind Southeast Building Inspector Michael Levine's opinion (March 1, 2017) on Morrow Equipment's 98 ft. plus yard crane. As we understand it, the proposed 98+ ft. crane is located on a track which is affixed to the ground. We have read Building Inspector Michael Levine's opinion and we agree wholeheartedly that the crane is a structure. Further, we take issue with the comparisons made in Counsel Richard O'Rourke's letter (dated February 27, 2017) as neither Tacoma, Washington (population 207,000+) nor Pompano Beach, FL (population 99,000+) can be fairly compared to Southeast, a rural town with a population of less than 20,000. Any decision contrary to Southeast's Building Inspector will open the Town to inappropriate industrial development. While we look forward to smart growth in Southeast we do not believe that a permanent crane towering 98+ ft. fits into our Comprehensive Plan nor will it be a visually attractive addition for our community.

April 16, 2017 we received an email from Elena and Marvin Galperin which reads as follows: To whom it may concern: I live on Coffey Lane off Ice Pond road, and am not able to make the meeting on Wed. April 18th, so I am sending this email to let you know that I am **STRONGLY OPPOSED** to having Morrow Equipment open and operate their business of heavy equipment. As it is Rt. 312 has heavy traffic and gets very congested on a regular basis and it is a Narrow road!! It is a regular route for people commuting to/from the train station, the shopping area and the restaurants and businesses up by Home Depot Plaza. This in itself causes heavy traffic. To have heavy equipment blocking this narrow road right next to where the Metro North Train Crossing is, would create havoc with traffic and the road itself would sustain damage from this type of equipment being moved on the paved narrow road. Added to all this the sight of a crane 98' 7" tall would be unsightly and highly undesirable. Additionally, the School Buses traveling this route regularly, and parents driving kids to/from school on their own at a variety of hours. After school events, taking place at the schools also creates heavy traffic on Rt. 312. This is a HUGE concern! It bad enough that the intersection of Ice Pond Rd. Rt 312

Floods seasonally and after heavy rain storms – to have heavy equipment added to everything I mentioned above would create a nightmare.

On Monday April 17, 2017 we received the following email from Dr. Adam Pease of 7 Killian Lane in Brewster. Dear Chairman Froessel, I write to express my deep concern with the **proposed 98' 7" crane which is proposed to be placed 425 Route 312. I will likely be able to see this crane from my residence is on 7 Killian Lane. I understand that this nearly 100 foot crane is well over the height limit of 35 feet and that Morrow has submitted a proposal for a variance. Although I support an industrial tax-base in Southeast, the great negative impact of such an eyesore will not be offset by the negligible benefit to our community. With time, I am sure that an acceptable tenant will want to occupy this location. I write to ask that you NOT grant this variance! If you would like to discuss this proposal further, I can be reached at and he gives his contact information. There is just one correction off of that: they're not actually seeking a height variance for the crane as we discussed earlier.**

April 18 we received an email from Irina Mikhaylova at 34 Garrity Blvd, Brewster, NY, which reads as follows: Dear members of Zoning Board of Appeals, my name is Irina Mikhaylova. I live at address shown above. I came to know that Morrow Equipment company is looking to open and operate their business at 425 Route 312 in Brewster, near my very home. I want to let you know that I am not supporting this idea, because of several reasons: **electric tower crane that is planned to be installed will be an ugly landmark sight to my countryside neighborhood. This crane and any others of the proposed height will be a definite danger to close by homes, road and businesses. Moving cranes in and out of the above business address will create definite obstacles and additional congestion to route 312. Large trucks that will carry these cranes are unsafe for the busy railroad crossing. I ask you to not permit them to proceed with their plans and not to allow them to install this crane. I appreciate your attention to this matter. If you have any questions, please contact me and she gives her contact information.**

On April 18 we received a letter from Robert De Fiore of 23 Garrity Blvd. in Brewster. Dear Mr. Froessel, I am shocked that the Morrow Equipment proposal is even being considered by the Town. I have been a resident of Southeast since 1979 and have lived at 23 Garrity Blvd. since 1990. This project has no place in Dykmans. Maybe Morrow should look into a lot in the South Bronx near the East River. Dykemans is a residential area not a center for heavy industry.

Lastly on April 19 we received a letter from Cary Robinson, which reads as follows: Dear Mr. Froessel: Just a quick note to indicate my support for Building Inspector Michael Levine's ruling **regarding Morrow Equipment's proposed 98' crane at 425 Route 312. In addition, I vehemently oppose an industrial business performing outdoor work at that location. I have resided in Southeast since 1999. I did not oppose the building of Home Depot, et al and endured nearly a year of rock drilling and other noise as it was in a suitable location and part of the price of progress. I did not oppose the building of Ace Endico, et al and endured more rock drilling as it was also in a suitable location and part of the price of progress. I did not oppose the land clearing at 425 Route 312 when a self storage facility was supposedly being built and endured an entire summer of rock drilling since a low-rise self storage facility is fairly unobtrusive, however nothing was ever built there. Now, a company that deals with electric towers and needs an enormous outdoor crane to stay in business wants to set up shop less than a quarter-mile from my backyard. I cannot imagine the constant noise and traffic that this business would create, let alone the unsightly crane on permanent display. The impact on my**

neighborhood would be dramatic and irreversible. I urge the ZBA to support the Building Inspector and reject Morrow Equipment's appeal in this matter.

Here is one more. This one is from Mary Jo Lockyer of 14 Garrity Blvd and includes a signature page signed by numerous individuals. I'm not going to state all their names as I can't read a lot of the signatures but there are numerous people who have signed this letter. It reads as follows: Dear Mr. Froessel: It is my understanding that Morrow Equipment Company is seeking a Variance from the Twon's height limitation of 35 ft. for structure, in order to permanently install a 98 ft. tall crane at the subject location. I am opposed to their request for the following reasons: 1) A 98 ft. tall yellow crane will be an ugly eyesore to an otherwise country setting and totally out of keeping with the area. 2) Real estate property values will decline to the detriment of nearby homeowners. 3) Noise and pollution problems will arise associated with the operation of heavy industrial trucks and equipment. 4) Traffic safety concerns could easily occur in the vicinity of the major railway crossing and the already heavily traveled Rte 312. 5) Possible electrical interference with residential radio, television, and computer equipment emanating from the operation of their heavy equipment. 6) Possible ground pollution and contamination of residential water wells from material run-off from their operations. 7) As for the position taken by Morrow Equipment that its mobile crane is not a permanent fixture because it will be mounted on tracks is purely a semantic ploy to gain the Variance they seek. It is my opinion that as the tracks will be permanently fixed to the ground and as the crane will be permanently affixed to them it will therefore be in a permanent position within the Company's property. In summary, it is my contention that for the compelling reasons described above that this Variance be denied. Respectfully submitted, Mary Jo Lockyer and as I noted it's also signed by numerous other residents exclusively on Garrity Blvd and Killian Lane.

Chairman Froessel: So, all that having been said that covers a lot of ground. We will open it up to Public comment with the understanding that some of the letters clearly show a misunderstanding that this is a Variance application seeking a variance from the 35 ft. height restriction to build a 98 ft. crane and that's actually not what this is. This is a challenge as we have discussed to the Building Inspector's Interpretation of the term structure within the context of the crane that this applicant would like to install at that facility. If anyone would like to speak please raise your hand and we will call on you one by one if anyone has any comments.

Attorney Donald Rossi of Hogan & Rossi appeared before the Board on behalf of Clearwater Excavating Corp., which is the owner of the property.

Mr. Rossi: I'd like to comment first on the letters that were received. I think the letters set forth a bit of a blueprint for what the Planning Board's task would be in connection with this application if it were before them. These are environmental considerations. The type of things that in the Planning Board's review of an unlisted action, what we believe is an unlisted action under SEQR; those are the types of things that the Planning Board would have to take a hard look at and feel comfortable with. We certainly don't mean in any way to make light of the concerns that were raised. They're properly to be considered but in a different forum. I would like to emphasize that your Board is charged with focusing on the wording of the Zoning Code, the evidence that's been presented to you by Rick (Mr. O'Rourke) in his presentation. One of the things that happened when this application was first discussed with us was I had a bit of a reaction that this is a large crane but as time as gone on I feel very comfortable with the fact

that under your Code, which is what you're charged with interpreting, this matter and this project would be considered...a crane would be considered a piece of equipment. To find otherwise would stand to defy logic in a number of ways that on projects that typically come before your Board or the Planning Board. If on these rails were three or four train cars that were used on site I don't think anyone would consider those structures. They would not be deemed subject to the setback requirements of the Code. They would not be considered as part of the development or building coverage under the Code. They could be parked in areas like parking areas that would be not subject to setbacks applicable to buildings and structures so we need to look at interpreting this as to how the application of a Determination that the crane was a structure could extend as far as applying the Zoning Code. I think that the fact as emphasized in the tax opinion that Rick (Mr. O'Rourke) has submitted to you tonight this crane, albeit on rails, is not going to be permanently affixed to the ground. It can be removed at any time. It's not a tennis court. It's not like a basketball court. Those would involve disturbance to the ground itself and I think that's a key component of the definition of structure under your Code. Emphasis was made in Mike Levine's (Building Inspector) letter with regard to the fact that the crane would be located on the ground. I would say to you that everything is located on the ground. Perhaps a hovercraft would not be located on the ground. Perhaps a hot air balloon would not be located on the ground. But trucks, forklifts, excavators, bulldozers all pieces of equipment similar to a crane in the construction type industry are pieces of equipment that could be removed at any time and I think that has to be your focus. This isn't a question of what traffic is going to be generated, what site impacts there are going to be. This is a project in an ED Zone subject to the definitions in the Code and I think that logic dictates it's a piece of equipment and not a structure.

Chairman Froessel: Thank you. Anyone else in the audience have any comments or questions? Please state your name.

Mary Jo Lockyer of 14 Garrity Blvd. appeared before the Board and was sworn in.

Ms. Lockyer: Okay so basically I have been a resident for 17 years here. I grew up in Bedford and moved up here. I don't really...I love where I live but I do not want it turned into a construction site and basically I have to agree with the Building Department about the 35 ft. structure. Someone had mentioned that their crane, their 98 ft. crane would be essential to their business and the reason being is because it will be a permanent fixture. Basically it will be used to load other cranes onto these big trucks with diesel. Their operations start at 7:00 in the morning. I wouldn't want to hear it. I worry about the pollution. I worry about the noise. I worry about the safety. If some of these things aren't mounted securely, if they have heavy winds these cranes can blow. I did some research and their definition of a structure is each element that is physically or functionally connected to other elements. So in other words you don't need a solid structure. If you have elements that can connect to each other making it a structure so the rail ties are connected to the ground, so are the wheels. Basically I also did some research and basically any conveyor belt, any production line of a crane or a robot or anything like that is considered a structure and that 98 ft. crane probably will not be dismantled at all. I don't want to see it in the skyline and it would just be an eyesore and also I don't want to turn that area into a construction site. I would rather have something else go in there that is less obtrusive. Thank you very much.

Mr. Marco Carcich of Spring Knolls Road appeared before the Board and was sworn in.

Mr. Carcich: Well I have a few concerns and a few concerns were already addressed, I thank you. One of the concerns was the weight of the permanent installation, 200,000 lb. I believe you said. What is the radius swing in relationship to 312 and the railroad tracks once this is mobile? Has a drawing been made? This is a landscape drawing: very nice, but it's not an architectural drawing or a structural drawing of the placement of the tracks and the crane. So, my concern is the radius on the hammer and the center line of the tower when it's on the tracks, mobile and then position to lift the crane and the radius. What is the relationship of the distance of the railroad tracks of MetroNorth and 312? I don't see that in a landscape drawing. That's number one.

Mr. O'Rourke: Would you...first of all...forgive me, I'm not interrupting but I know that the question should be addressed to the Chair. You tell us when or if you want us to answer.

Mr. Carcich: Well I'm looking at a landscape drawing. I'm not looking at the proximity and distances of the road and the railroad. That's my concern. Another concern I have is...

Chairman Froessel: Excuse me, let me just interrupt you for one second. Will the radius of the crane, if it's at the very end of the tracks at any point extend beyond the lengths of your own property line?

Mr. Juhren: No.

Mr. Carcich: Well it doesn't show me that, doesn't show me distances. You're showing me...

Mr. O'Rourke: He's under oath. It's his crane and he's saying it will not extend beyond his property.

Mr. Juhren: This is the rail path of the crane. This is the radius of the hook. This is still part of the property. It doesn't even go over most of our building.

Mr. Carcich: Does the hammer go over the existing building?

Mr. Juhren: No.

Mr. Carcich: Or the building that you proposed?

Mr. Juhren: No. This is our proposed building.

Mr. Carcich: But it will go over that building?

Mr. Juhren: In New York City that's illegal. I'm a site safety manager for the City of New York, I'm a construction fire safety manager, I'm an OSHA approved authorized trainer for the Department of Labor. I handle cranes every day. Okay? You cannot, on an occupied premises, you cannot put a radius, a crane swing, over an occupied premises. It's against the law. Okay? In New York City and I believe under the OSHA Statutes, the Standards...and we'll get to that in a minute...has MetroNorth conducted an analysis of the crane placement drawings? Are they aware of the heavy crane sections passing over their tracks? We're talking about 200,000 lb. I believe that MetroNorth should do an analysis on this to see if their tracks...they've been repairing the tracks. They repaired them two years ago. I've been a resident of Brewster for the past 20 years. They've repaired that three times already, MetroNorth. I believe they should do an analysis, conduct an analysis, get their approval and then present that approval as well.

Chairman Froessel: I don't disagree with you Mr. Carcich but that's really more for the Site Plan process. It doesn't really have any bearing on what we're doing here. I understand your concern.

Mr. Carcich: Okay. Thank you. It's a concern so I just want to address it to the Board. Tower cranes and all rubber tires cranes; metal tread cranes; Manitowic 4100, the dinosaurs that were just about banned in New York City. In New York City you must provide an engineer's drawing, structural engineer's drawing of the placement of the crane. On that structural drawing you also have an analysis of the substrates, what's below the soil. To the Northwest of us is a marshland. The water table in that area in my opinion because of the

proximity of the hill, we're sitting on a high water table. A structural engineer has to verify the bottoms. How that's done is with a boring, with several borings, to determine the structural stability to hold 200,000 lb. of equipment. I believe that has to be submitted in order for us to pass this thing. I'm not negative about cranes. I've been in the business 54 years. I'm going to be 73 years old next month. I've seen everything. On the OSHA websites crane related deaths resulting from accidents have risen since 2004. In 2010 seventeen workers in this Country were killed. In 2014 25 American workers had been killed with crane-related accidents. I, in my conscience, cannot approve something in my neighborhood where local participation, employees will be at this site and if something God forbid happens to them I couldn't have that on my conscience approving this. I would adjourn this meeting until Morrow obtains MetroNorth approval, obtains a structural engineer's analysis of the substrates through borings, and if necessary to put in piles or footings...as you mentioned a tennis court, a swimming pool becomes a structure. Thank you.

Chairman Froessel: Thank you Mr. Carcich. Let me just ask you a couple of questions. I would imagine that some of the engineering calculations that Mr. Carcich talks about are included in your Building Permit application to the Building Inspector.

Mr. Juhren: Yes so when a crane is done we do a soil analysis of the ground. That's done through engineering analysis and then the footings for the crane are designed around the soil bearing pressures of the ground itself.

Chairman Froessel: And you understand that you'd have to submit a building plan for those footings?

Mr. Juhren: Yes.

Chairman Froessel: Anyone else have any questions?

Ms. Christie Cataldo, a resident of Garrity Blvd., appeared before the Board and was sworn in.

Ms. Cataldo: I just wanted to let everyone know we've been on Garrity since 2001, we built our house there. The traffic has significantly increased, heavy traffic. The tractor trailers that come through our street, which is right off of 312, we're their closest neighbor. They are right outside our gateway. When the tractor trailers hit the MetroNorth overpass you rattle so loud...that's 40 tons of trucking going over the MetroNorth tracks, our homes actually shake from that. This is going to be an active site with tractor trailers going in and out, moving cranes in and out. The visual pollution already in that area because Dykemans is significantly declining. We have the Brewster Auto Wreckers who are now, whether this Board knows it or not, parking wrecks on the opposite side of the street outside of their fenced in area. Now we're going to have more visual pollution with excavators, cranes, and if they're going to be actively working all day long we're going to be hearing the hum-drum of all this activity. When Brewster Auto Wreckers runs their machinery 3 and 4 hours straight, non-stop, it is like getting a drill bore into your head. Now we're going to have to deal with a big construction site with heavy equipment going in and out. Getting out of Garrity to either west or east onto 312 is like a cat and mouse game trying to get out of there without getting yourself killed because that's a blind curve coming right around the Brewster Auto Wreckers. I just want to clarify the reason why everybody thought this was a variance because the letter we received from their attorney stated a variance so that's why everyone came here thinking it was a variance. We are heavily affected by what's going on over there on an everyday basis. We've been made to swallow Crossroads 312. We have to deal with Brewster Auto Wreckers getting their next level of steel boxes to hide their garbage, that's what it is – garbage. We've had Grace Church ask us to accept port-a-potties and tents which I'm hoping didn't go through. We never hear what the final outcome is of all this stuff and now we have this and it's right outside our door. We're not

going to be able to miss it. When we moved there that was a wooded area. It was decimated. They cut down all the trees. In the past few years we've had to look at steel gates with mounds of dirt and now we're going to have to deal with construction equipment. We're getting all this jammed down our throats because nobody wants to either clean up...they don't want to clean up the area, they want to only make it worse and we pay the price. We have all our lives invested in our homes there. We built our homes from the beginning over there without all of this and now we just have to swallow. I just hope this Board considers that at the end of the day: that were the ones that live with it, not anybody else because they don't live there. They don't deal with it on a daily basis. We do and the school is right up the street. We have buses that go through there on a constant basis and now we're going to have to deal with more traffic. That's the end of the line there. We have nothing else, that's it, and now we're getting more and more stuff dumped on us and it's not fair to the community. Thank you.

Chairman Froessel: Anyone else have any comments?

Brian Ledley of 3 Killian Lane appeared before the Board and was sworn in.

Mr. Ledley: I had some questions for Morrow as to understanding how the actual crane that everyone seems to be talking about works. I think this gentleman said it was 350 ft. of track so I would imagine the wheels of the crane, whatever they're made out of, go up and down the track like a train or rollercoaster type?

Mr. Juhren: Yes they do. Typically if you take a look at the base of the crane, it's a square base with wheels on each corner and that's what runs up and down the rails.

Mr. Ledley: And that might be a foot high?

Mr. Juhren: The total height is 98 ft.

Mr. Ledley: And you're saying it can come down in two days, you could disassemble and take it down so I guess my question is: do you have any plans to ever do that or is it something that's going to be standing...I mean like does it come down on the weekend?

Mr. Juhren: No it doesn't come down on the weekend. It comes down for maintenance. When we do...

Mr. Ledley: And how many times a year is that?

Mr. Juhren: Well usually it would probably be about every 2 to 3 years is how often it would come down.

Mr. Ledley: Every 2 or 3 years? So it's basically up 24/7, 365 days a year?

Mr. Juhren: Yes.

Mr. Ledley: Okay, thanks.

Chairman Froessel: You're welcome, anyone else?

John Lourde, resident of Brewster appeared before the Board and was sworn in.

Mr. Lourde: I had questions also and maybe I can ask you and them. So, what is the dimensions of the base of the crane?

Mr. Juhren: Where the wheels are on the tracks?

Mr. Lourde: Yes.

Mr. Juhren: It's 30 ft. square.

Mr. Lourde: So you have to have footings to support...so it's 30 ft. square going 350 ft. and so you would have to have footings the whole length of that to accommodate that structure?

Mr. Juhren: Sure.

Mr. Lourde: The crane can weigh 200,000 lb., it could be 98 ft. tall, rails at 350 ft. long, footings 20 ft. wide...that sounds like quite a lot to just be considered a mobile crane. It sounds like it's quite a piece of engineering to support what I would like is a structure. I would

have to agree with the Building Inspector. Although cranes have not assessed real property tax according to New York State law or according to other Municipalities they're assessed as person property tax?

Mr. O'Rourke: That's our understanding, yes.

Mr. Lourde: And what is the difference in the tax rate? Is there an advantage one way or the other? I think as long as a municipality is getting tax.

Mr. O'Rourke: Well as far as personal property tax, forgive me I'm not sure the Town gets any of that, but if in so far as real property tax certainly when we get a tax bill there are essentially three major components: one is the school district, one is the Town, and one is the County and so clearly there that real property tax, that money comes back in part to the Town. As far as a personal, if you buy clothing or you buy a crane...

Mr. Juhren: The easiest analogy that someone explained to me was: it's just like registering your car. You pay a tax to register your car and a personal property tax is very similar to that as it's a taxation based on a usage of a component that you own.

Mr. Ledley: Okay, so if this isn't a structure and isn't assessed with real property tax then that would be less tax paid to a Town I assume.

Mr. O'Rourke: Again, I can't speak to...maybe someone else knows the answer to that question. There's no personal property tax in the Town.

Chairman Froessel: If you go across the State line to Connecticut they would be happy to tax you.

Mr. Ledley: It's another benefit for not being a structure. I think that a lot of infrastructure is being put in place to allow this crane to be functional and help this business but I would think that all that infrastructure that's being put in place would have to be regarded as structure and permanent. Should they leave what happens to that? So I think Michael Levine is right. I think it should be considered a structure and thanks a lot.

Chairman Froessel: Thank you. Is there anyone else that has any questions or comments?

Melinda Montanaro of 131 Ice Pond Road appeared before the Board and was sworn in.

Ms. Montanaro: I just really wanted to echo John and Brian's concerns and state my opinion on two very specific words: permanent and structure. This crane that is business critical will be up 365 days a year for 2 years, taken down temporarily for maintenance is permanent. It is affixed to rails that are 350 ft. long, permanently affixed to the ground so the crane is really an element of that and in my opinion I believe it's a structure too. I guess I just wanted to state that I do believe that this crane is a permanent structure and business critical to Morrow Equipment Company.

Chairman Froessel: Thank you.

Lynne Eckardt appeared before the Board and was sworn in.

Ms. Eckardt: I have only questions and I am speaking solely as a resident of Southeast. I did visit your facility in Millwood and I just wanted to know the height of the crane there.

Mr. Juhren: In its vertical position right there that crane is 139 ft. tall.

Ms. Eckardt: Okay. Thank you.

Chairman Froessel: Anyone else have any questions or comments?

Mr. Juhren: Even though this is not the full forum for discussion but some of the things I heard today and I understand a lot of their concerns...in particular when they talk about safety, that's one of our key fundamentals of our company. The OSHA regulations where were discussed about cranes, I actually sat on the board Federal OSHA to write those regulations. One of the reasons we do that is that we firmly believe we are a very safety-conscious

company. If any of you want to you can Google it and you can take a look at the OSHA website, we have not received an OSHA violation and that's company-wide in our entire operation. We do that by having viable safety plans and enforcing them. One of the things that was talked about was over swinging the building and over swinging the tracks, we take a look at that and do analysis before we even look at property. We know exactly what happens with railroad tracks, their verboten in our business, we don't even go near those. As far as transporting across the tracks, the trucks that transport do not weigh any more than the trucks that are currently crossing it. If we do an analysis, which I've done on truck transportation in and out of our property, we average about 10 to 12 trucks a week. It's not a constant flow. As far as safety and over swinging the building, we do that in all in compliance with OSHA. It's permitted to swing the crane over the building, you can't swing the load over the building so just to clarify some of that. So with some of these concerns that were addressed, we want to be a good neighbor. It's what we've done in all our places. We have a facility in Napa, CA so we try to adapt to the way that people work and live here do. We're very receptive and conscious of your needs and concerns. I know it's not the forum here but we can address those with the residents and further on as we go through the process but I think what's before the Board right now is fairly cut, dry and clear and that's the first hurdle we want to pass. Thank you and thank you for your comments.

Chairman Froessel: Mr. O'Rourke, do you have anything else you'd like to add?

Mr. O'Rourke: Not really. I will supplement and provide you with copies with regard to the case law if you want to take a look at that. I know certainly opinions of counsel from the Department of Taxation and Finance, what the elements are, what that definition is and all of these things go to the interpretation issue which we all know is what this is all about. I would respectfully request that you have four members...

Mr. Stephens: I have a question: you're Millwood site, when did you develop that site?

Mr. Juhren: 1969.

Mr. Stephens: Okay, did you require any variances when you developed the site?

Mr. Juhren: Not at that time, no...not that I'm aware of, but I believe not at that time, no.

Boardmember Cassidy: How tall is your crane in New Castle?

Mr. Juhren: 134 ft. tall. It's tall.

Chairman Froessel: Okay, we will not be voting tonight and I think that those of us who are here would want to deliberate on some of what we heard. I want to delve into your submission a little bit more. If you want submit any other information to consider I would suggest you do that sooner rather than later so we have time to look at it.

Mr. O'Rourke: Absolutely, got it. We thank you for your attention and time.

Chairman Froessel: We will be back on May 15.

Chairman Froessel: Going back to item #1: Putnam Dental Associates, did anyone come in for this application? No? Cathy, please let the know we will put them over to May.

Ms. Chiudina: I will.

The motion to approve the Meeting Minutes of March 20, 2017 was introduced by Boardmember Vink, seconded by Boardmember Cassidy and passed all in favor.

Respectfully submitted,
Cathy Chiudina