

In The Matter Of:
Town of Mamakating
Zoning Board of Appeals

Poplar Grove Cemetery
March 24, 2016

Jeric Corporation
Court Reporting Services
P.O. Box 385
Narrowsburg, NY 12764
(845) 252-3515

COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

- - - - - X

In the Matter of:

POPLAR GROVE CEMETERY
Public Hearing
Tax Map Section 4; Block 1; Lot 48
Hamlet Center Zone

- - - - - X

Town Hall
Town of Mamakating
March 24, 2016
7:02 p.m.

ZONING BOARD MEMBERS:

- CATHERINE DAWKINS, Acting Chairwoman
- GEORGIA RAMPE, Board Member
- BEVERLY MARTIN, Board Member
- KENT FINDLEY, Board Member
- LINDA FRANCK, Secretary
- JOHN C. CAPPELLO, ESQ.
- MARY GRASS, Building Inspector/Code Enforcement

Also Present: JANET LYBOLT, Treasurer, for Applicant

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Reported by: Rosemary A. Meyer

1 - POPLAR GROVE CEMETERY -

2 CHAIRMAN MORDAS: Good evening, ladies and gentlemen.
3 Welcome to the Mamakating Zoning Board of Appeals meeting
4 for March 24th. I'm your chairman, Matthew Mordas.

5 I'd like to start the meeting with a roll call.
6 Beverly Martin.

7 BOARD MEMBER MARTIN: Present.

8 CHAIRMAN MORDAS: Georgia Rampe.

9 BOARD MEMBER RAMPE: Here.

10 CHAIRMAN MORDAS: Catherine Dawkins.

11 BOARD MEMBER DAWKINS: Here.

12 CHAIRMAN MORDAS: Kent Findley.

13 BOARD MEMBER FINDLEY: Here.

14 CHAIRMAN MORDAS: And serving as our attorney tonight
15 for Steve Mogel, we have Mr. John Cappello.

16 MR. CAPPELLO: Good evening, everyone.

17 MR. MORDAS: Before I go into the meeting, I'd like to
18 clarify some wordage from our last meeting. I spoke --
19 well, generally, I misspoke in regards to the Poplar Grove
20 Cemetery hearing that we had last month. On the third
21 paragraph of our minutes I used the words "not-for-profit
22 groups". I really meant volunteer groups in this
23 community. I just wanted to get that straight for the
24 record.

25 Okay. Our first group on the agenda is the Poplar

1 - POPLAR GROVE CEMETERY -

2 Grove Cemetery.

3 So as not to cast a shadow of impropriety over these
4 hearings, due to the volunteer work I did over the past two
5 summers at the cemetery, I need to recuse myself from any
6 conversations or decisions involving Poplar Grove tonight.
7 So I am, for Poplar Grove, handing over the chairwomanship
8 to Cathy Dawkins.

9 Thank you.

10 (Chairman Mordas was excused
11 from the dias.)

12 ACTING CHAIRWOMAN DAWKINS: So John, I think the first
13 thing we have is a public hearing.

14 MR. CAPPELLO: Yes.

15 MR. LESER: You need to speak up. We can't hear.

16 ACTING CHAIRWOMAN DAWKINS: I think we need a motion
17 to open the hearing.

18 MR. CAPPELLO: Yes. You would open the public hearing
19 and then someone would read the Notice of Public Hearing.

20 BOARD MEMBER RAMPE: Well, I'll make a motion to open
21 the public hearing.

22 BOARD MEMBER FINDLEY: Second the motion.

23 ACTING CHAIRWOMAN DAWKINS: And John, do you have a
24 copy of that? Or Linda, do you have a copy?

25 MR. CAPPELLO: I could read it.

1 - POPLAR GROVE CEMETERY -

2 "Notice is hereby given that the Zoning Board of
3 Appeals of the Town of Mamakating will hold a public
4 hearing on the 24th day of March, 2016, at seven p.m., or
5 as soon thereafter as the matter can be heard, concerning
6 the application of Poplar Grove Cemetery Association
7 regarding, No. 1, appeal the Notice of Violation for
8 Section 199-61(a), building permits; Two, an appeal of
9 Notice of Violation for Section 160, stormwater management;
10 and three, a request for an interpretation of Section
11 199-61(a), building permits re: Sign regulations.

12 "Said property is located at 180 PhillipSPORT Road,
13 PhillipSPORT, New York, Tax Map Section 4; Block 1; Lot 48
14 in the Hamlet Center Zone.

15 "The application is available for review Monday
16 through Friday, ten a.m. to four p.m., at the Town of
17 Mamakating Town Hall, 2948 Route 209, Wurtsboro.

18 "The Zoning Board will hear all persons interested at
19 the aforementioned time and place."

20 Just for the record, that was published in the paper,
21 as required. I actually saw it. And we do have an
22 Affidavit of Publication. It was published on March 13.

23 ACTING CHAIRWOMAN DAWKINS: John, this afternoon, very
24 late, electronically, I received a letter from a
25 constituent, Sherry Beigelsen. It's a two page letter. I

1 - POPLAR GROVE CEMETERY -

2 had provided a copy of that to all of the board members
3 except for the Chair who had recused himself. I don't know
4 if you need a copy for the record.

5 MR. CAPPELLO: If I could, if you're going to discuss
6 it. And I would also suggest you give a copy to the
7 stenographer so it's included and acknowledged in the
8 record.

9 ACTING CHAIRWOMAN DAWKINS: And I don't know if I need
10 say anything. That letter, it went on for two pages. I
11 don't think we need to read it in it's entirety?

12 MR. CAPPELLO: You don't have to read it word for
13 word. We can just recognize that it's into the record. If
14 someone on the Board wanted to summarize the statements set
15 into it, if you were going rely on it, that might be ...

16 ACTING CHAIRWOMAN DAWKINS: Okay. I've read the whole
17 thing. I don't know if anybody else has got a chance to.
18 It's from, as I said, Sherry Beigelsen.

19 She states in the second paragraph that she has lived
20 across the road from the cemetery for nearly 46 years; has
21 friends and neighbors who have been laid to rest in the
22 cemetery. She goes on for several paragraphs to articulate
23 how the cemetery, over a great deal of time, had fallen
24 into a state of disrepair and lack of maintenance and had
25 even evolved into what I would call some vandalism going on

1 - POPLAR GROVE CEMETERY -

2 at the cemetery, as well as some water runoff.

3 Then she actually had gone so far as to make several
4 complaints both to police and local community. I guess she
5 called the cemetery associations in the area. Discovered
6 that there was this move afoot to improve the cemetery,
7 bring it back into compliance with cemetery standards.
8 She's pleased and happy with the work that has been done.
9 The usual maintenance is now taking place regularly. She
10 feels that the work that the Cemetery Association has done
11 was generous; it showed a spirit of volunteerism, often
12 hard-pressed to find. And after all the hard work was
13 done, why would anyone file a complaint discouraging
14 altruism.

15 She contacted the inspector for the New York State
16 Division of Cemeteries; asked what the procedure would be
17 if the current association were to dissolve as a result of
18 loss of whatever limited funds currently exist. He
19 explained the procedure would entail notification to the
20 press that new volunteers were sought. If there was no
21 response, all of the duties and expenses of the cemetery
22 would then fall under the jurisdiction of the town by Town
23 Law 291.

24 Additionally, he stated in his years of experience in
25 his position as an inspector covering a widespread area, he

1 - MATTHEW MIGLIACCIO / PUBLIC COMMENT -

2 never encountered a situation where a complaint was lodged
3 against anyone who had volunteered to rescue a cemetery
4 from abandonment.

5 Anyway, generally, she supports the cemetery and
6 objects to filing the complaint.

7 So do we have public comments? Anyone here in the
8 room, if you would step up to the podium, state your name.

9 MR. CAPPELLO: Do we want to have the Applicant
10 present the appeal first and then maybe the public could
11 get a better --

12 ACTING CHAIRWOMAN DAWKINS: We had done that last
13 meeting.

14 MR. CAPPELLO: Oh, okay. Okay.

15 ACTING CHAIRWOMAN DAWKINS: But we can again if you
16 feel it's appropriate.

17 MR. CAPPELLO: I don't know if you feel it would be
18 appropriate for the folks here to, before they comment,
19 understand exactly what the application is for.

20 ACTING CHAIRWOMAN DAWKINS: Unless somebody in the
21 audience feels they need an explanation, we've gone through
22 that once.

23 Okay. If you just come and state your name and the
24 town of your residence, please.

25 MR. MIGLIACCIO: Hello. My name is Matthew

1 - MATTHEW MIGLIACCIO / PUBLIC COMMENT -

2 Migliaccio. I reside in Phillipsport in the Town of
3 Mamakating. I wear several hats in the Town of Mamakating,
4 but tonight I'm here as a resident.

5 I'm appalled. Instead of criticizing the efforts that
6 were made to improve, I think we should be applauding the
7 Poplar Grove Cemetery, their volunteer board, and over 85
8 community volunteers that were working over the past three
9 years putting in hundreds of hours to bring dignity to our
10 deceased war veterans going back to the Civil War and our
11 founding families.

12 I think what we should talk about is a former
13 councilman and chairman of the Republican party that
14 misused his town's authority to gain access to public
15 charities record to try to get information from Sullivan
16 Renaissance which formed the basis for this complaint.
17 That is a reprehensible act. We're not acknowledging
18 hundreds of hours of volunteer work. The spotlight should
19 be on greed, perceived self-serving political gain and
20 negating almost a hundred volunteers looking to make
21 improvements to our town.

22 Thank you.

23 MR. CAPPELLO: This may be a time to discuss exactly
24 what this appeal is for. The appeal is appealing a
25 determination from the code enforcement officer that a

1 - MATTHEW MIGLIACCIO / PUBLIC COMMENT -

2 building permit was required for the shed and that some
3 erosion control measures were required per certain sections
4 of the code. As code recited, there's a specific violation
5 here. It's not an indication of who was doing the work or
6 why the work was being done or whether it was being done by
7 volunteers or profit. You're here to interpret and hear
8 the appeal on that law that was cited and determine if that
9 was a correct determination. I know there's feeling a lot
10 ways, but unfortunately, or fortunately, you have to look
11 at this book as the law and make an interpretation, as it's
12 written in the code, as to whether a permit is required.
13 To do otherwise would be setting a precedent for other
14 people who you may not feel had the same good intentions.
15 So the real question is, as you hear this, and the real
16 input from the public would be what was the violation for,
17 what does the law say and was a permit required to be
18 applied for or not regardless of who is doing the work or
19 whether it's a good cause or a cause for profit. You have
20 to look at the words and the language in this book and
21 determine what authority you do have to change and what you
22 don't. So after we hear the public comment and we
23 deliberate, I can guide you through some of the
24 determinations you have to make. But I just think to clear
25 the record. I understand this is a volunteer effort and

1 - JANET LYBOLT / PUBLIC COMMENT -

2 offense and the previous one.

3 And as far as Offense Section 199, Subsection 61(a),
4 Building Permits, Town Code Section 199-29, Sign
5 Regulations, states: C, Exempted signs. No permit is
6 required for the following classes of signs. 8: Signs
7 indicating a name or address of the occupant.

8 The sign in question is approximately 50 inches wide
9 by 69 inches high. It was constructed by a local artist in
10 the community. All it says is -- you have pictures of it.
11 All it says is Poplar Grove Cemetery, which are letters
12 welded together, and our 911 identifying address of 180.
13 It is a see-through sign. It is not ostentatious. It
14 doesn't preclude seeing past it. You can see right through
15 it. It was designed to mimic the original sign that was
16 placed at the first entrance in 1867 when the cemetery was
17 donated by the Budds and came into existence. So I'm
18 requesting a ZBA interpretation that it falls within the
19 exception, and I truly appreciate you hearing us.

20 And knowing that this is a not-for-profit, the
21 trustees that are sitting here, we don't get paid for doing
22 this. All right? We get paid in looking at the work that
23 we and the community members do and seeing that we took a
24 cemetery that the State was about to take over and turn
25 over to the Town and we brought it back from disrepair into

1 - JANET LYBOLT / PUBLIC COMMENT -

2 winning Sullivan Renaissance's highest award in 2014 and
3 winning third place award last year for the same category.
4 This is a labor of love. Like I said, we do not get paid
5 for this. We spend our own time, our own money, our own
6 machinery to do this work.

7 And, you know, the cemetery, when we took over, had
8 \$16.16 in the maintenance fund. It doesn't have money, you
9 know, to spend on lawyers or engineers. So we're
10 respectfully requesting that you grant us relief. And I
11 thank you.

12 BOARD MEMBER FINDLEY: Can I ask you a question?

13 MS. LYBOLT: Yes.

14 BOARD MEMBER FINDLEY: I think you said a building
15 permit was applied for.

16 MS. LYBOLT: Yes. And Mary Grass sent it back, turned
17 it down, with a whole litany of different things wrong.

18 ACTING CHAIRWOMAN DAWKINS: When did you make the
19 application?

20 MS. LYBOLT: As soon as we got the original violation
21 notice within, I think it was five days, Dave brought it in
22 and submitted it.

23 BOARD MEMBER FINDLEY: Do we have the denial of the
24 building permit?

25 MS. LYBOLT: We're asking for an area variance for

1 - SANDRA RIGSBY / PUBLIC COMMENT -

2 that.

3 BOARD MEMBER FINDLEY: Do you have a copy of that?

4 ACTING CHAIRWOMAN DAWKINS: Any other public comment?

5 MS. RIGSBY: My name is Sandra Rigsby. I am also a
6 resident of Phillipsport, in fact, right around the corner
7 from the cemetery. I was among those who volunteered to
8 help bring Poplar Grove back.

9 I've lived here, at least in the summertime, all of my
10 life. I have watched and knew the people who cared for the
11 cemetery when I was much younger, and then saw it fall into
12 decay as Sherry Beigelsen described. But more important
13 than the vigor that the Lybolts brought to the whole effort
14 to rejuvenate the cemetery, that's the right word, I want
15 to say I have a lot of sadness and puzzlement because it
16 seems to me that for an effort like this that profits no
17 one but all of the community, I feel there should be a
18 certain amount of goodwill and a hand reached out to those
19 who are trying very hard to make a contribution that will
20 profit them or benefit them not at all. That a hand should
21 be reached out by the community and those in power and
22 those with responsibility to guide this group through the
23 process to make sure that things are done correctly, not to
24 sit and wait, to sabotage and to accuse and to sue, if
25 that's the right word, for fault because that does nothing

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2 for any of us. It may slightly enrich the coffers of
3 Mamakating, but it certainly doesn't add up to what the
4 Town is saving by having this nonprofit entity put its
5 money, its time and volunteer effort into maintaining what
6 needs to be maintained, if not by a volunteer group, then
7 by the Town itself. So what is the purpose, really? What
8 purpose does Mary Grass or anyone else involved in this
9 process serve by not showing goodwill and reaching out in
10 cooperation, but waiting to pounce at the first error, the
11 first mistake, the first oversight, to punish people who
12 are trying to do a good deed.

13 I travel up and down Phillipsport Road every single
14 day and I can tell you that there is enough wrong on
15 Phillipsport Road to keep Mary Grass busy, if she chose to
16 be, from one end to the other without focusing on a
17 nonprofit community contributor, and I hope that you will
18 keep that in mind when you ready to make your decision.

19 Thank you.

20 BOARD MEMBER FINDLEY: I just want to -- Janet, I
21 don't see a denial in this, I just see the actual
22 application. I just want to know why it's denied, that's
23 all.

24 ACTING CHAIRWOMAN DAWKINS: And for the record, the
25 application was made on the 2nd of October, 2015.

1 - DAVID LYBOLT / PUBLIC COMMENT -

2 BOARD MEMBER FINDLEY: Does anybody else want to ...

3 MR. CAPPELLO: I think that issue is important, Kent,
4 because what I see in the appeal, and maybe I don't have
5 all the paperwork, is that what was being appealed was the
6 necessity of a permit. If a permit was applied for and
7 denied, then maybe the appeal would be based on why the
8 permit was denied. I don't see that in the application and
9 maybe that is something we would need to make an
10 appropriate ...

11 MR. LYBOLT: We don't necessarily disagree that we
12 require one.

13 My name is David Lybolt. I'm the president of the
14 Poplar Grove Cemetery Association.

15 We're not in disagreement that the cemetery requires a
16 permit for the building. We weren't aware, and shame on us
17 for not being aware of the size regulation. However, I
18 will point out that it's extremely hard to find that
19 regulation anywhere in our code, okay, online or in the
20 code book itself.

21 Basically, we're looking not necessarily even for an
22 area variance. We're looking -- well, no, I guess we are.
23 We're looking for an area variance for the shed, to say:
24 Okay, we'll issue the permit. We're perfectly willing to
25 pay the fees, etcetera, for the shed. Our disagreement is

1 - DAVID LYBOLT / PUBLIC COMMENT -

2 with the other two violations.

3 MR. CAPPELLO: I just want to clarify. The size of
4 the shed, as I understand it, is the reason that under New
5 York State law a building permit was required.

6 MR. LYBOLT: Right.

7 MR. CAPPELLO: I didn't see anything in the code that
8 says you couldn't build a shed that size as an accessory
9 use to a permitted cemetery.

10 MS. LYBOLT: Right, right.

11 MR. CAPPELLO: So you wouldn't need a variance for it,
12 you would just need a permit to build it.

13 MS. LYBOLT: Permit, yes. That's what we'd like.

14 MR. CAPPELLO: So we have to find out, then, why the
15 permit was denied.

16 BOARD MEMBER FINDLEY: Well, it's right here, and I'll
17 show it to you quickly. Fee will be calculated once you
18 receive planning approval for all items. Site plan lacks
19 information distance to property lines and distance to
20 other structures.

21 MS. LYBOLT: Which we did.

22 BOARD MEMBER FINDLEY: Planning Board approval for
23 placement of new storage shed and new sign and substantial
24 site work. Need information on gravel base: type of
25 gravel, thickness, how it's stabilized, weighted or whole;

1 - CHRIS LESER / PUBLIC COMMENT -

2 sign design and construction.

3 That is our only copy so ...

4 MR. CAPPELLO: But I'm

5 BOARD MEMBER FINDLEY: I'd like to ask a question.

6 Can I speak? Do you want to go?

7 MR. CAPPELLO: No, go ahead.

8 BOARD MEMBER FINDLEY: I'd like to ask questions about
9 the disturbance area.

10 ACTING CHAIRWOMAN DAWKINS: Why don't we deal with the
11 shed first. Do you mind if we do them one at a time?

12 BOARD MEMBER FINDLEY: I'd like to ...

13 ACTING CHAIRWOMAN DAWKINS: Okay. Go ahead.

14 BOARD MEMBER FINDLEY: Whatever you want to do.

15 ACTING CHAIRWOMAN DAWKINS: Well, I wasn't ready to do
16 the full discussion. I wanted to make sure we had
17 addressed all of the public comment before we get into full
18 discussion.

19 BOARD MEMBER FINDLEY: Okay.

20 ACTING CHAIRWOMAN DAWKINS: So I know there was at
21 least one more hand up.

22 MR. LESER: I am Chris Leser.

23 I agree quite a lot with what Sandy said. We can't
24 have our town falling apart. It seems to me that this has
25 become a political issue with a few people.

1 - CHRIS LESER / PUBLIC COMMENT -

2 I took a ride over there. I've been past the Poplar
3 Cemetery several times, but last week I decided to take a
4 physical, to go into the place.

5 The shed apparently seemed to be a great controversy.
6 I'm surprised that it's not bigger for all the equipment
7 that anybody could possibly use with the size of that
8 cemetery. It's a nice little shed. It even hides the cup
9 with two holders behind it. I think that's pretty
10 historic.

11 Going down to the far side of that walk, I do have one
12 issue. I suppose I should stick with one at a time.

13 I don't suspect that this board should give the
14 cemetery a free ride because they have a lot of community
15 members that are involved with it. We're following the
16 code. I would like to shorten things up for everybody
17 concerned, that if there's a fee, if there's a penalty,
18 whatever that code violation is, let's get on with it and
19 be done with it instead of let's drag this out for days and
20 days and weeks and weeks.

21 Going further down where they have brush, trees and
22 stuff, there's a great big ravine, a great, big cavernous
23 area, there's wire there, there's a few metal fence posts.
24 There's some chicken wire that looks similar to that.
25 That's one of my thoughts, that possibly shouldn't be

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2 comment, you may want to. But I ...

3 ACTING CHAIRWOMAN DAWKINS: Do you want to leave it
4 open?

5 MR. CAPPELLO: I would leave it open and do the
6 discussion because I think as we do the discussion, I heard
7 a little bit tonight that changes, to me, the complexion of
8 this application in what you really have to decide and what
9 you can decide. So why don't we have the discussion and
10 then you can see whether you feel you're ready or not.

11 ACTING CHAIRWOMAN DAWKINS: Okay.

12 BOARD MEMBER FINDLEY: I would like to ask more about
13 the area that was disturbed, the Section 160 --

14 MS. LYBOLT: Yep.

15 BOARD MEMBER FINDLEY: -- erosion sediment control. I
16 don't have this code available to me, but I believe the
17 code says two acres.

18 MS. LYBOLT: It has to be two acres, over two acres --

19 BOARD MEMBER FINDLEY: Before --

20 MS. LYBOLT: -- and it is not.

21 BOARD MEMBER FINDLEY: -- is disturbed?

22 MS. LYBOLT: In the packet that you got last month is
23 a diagram which is an accurate measurement of that section,
24 that area. This is an area that has always been intended
25 for graves. On the 1858 map that we have it shows the

1 - POPLAR GROVE CEMETERY -

2 lines where they were going to put graves. And starting
3 next month, we have six graves to be sold in that area.

4 BOARD MEMBER FINDLEY: Can you --

5 MR. LYBOLT: This is the section that is in question.
6 This map was produced, I'm not sure when, but certainly
7 before I was born. Okay? And it's clearly shows the
8 existing grave sites. This is the section in question. It
9 clearly shows that the intent was always for this to be a
10 burial area. The area, for many years, was not maintained.
11 We simply maintained it as it should be.

12 BOARD MEMBER FINDLEY: Can someone show me -- I mean I
13 see this map. What area was disturbed? No, I got it.
14 What area was disturbed?

15 MR. LYBOLT: The center.

16 BOARD MEMBER FINDLEY: The whole center.

17 MR. LYBOLT: The entire center area.

18 BOARD MEMBER FINDLEY: Approximately 300 feet?

19 MR. LYBOLT: Uh-huh.

20 BOARD MEMBER FINDLEY: 122 at the widest?

21 MR. LYBOLT: Yes.

22 ACTING CHAIRWOMAN DAWKINS: I drove through the
23 cemetery within the last seven days and it was clear to me,
24 in looking and driving through this, that the center area
25 here had had soil disturbance, and that was where the water

1 - POPLAR GROVE CEMETERY -

2 runoff issue had occurred. It appeared to me that it had
3 subsided, that the --

4 MS. LYBOLT: Grass is growing.

5 ACTING CHAIRWOMAN DAWKINS: -- plant growth, the
6 vegetation was growing in, as well as the fencing. I don't
7 know what you call that fencing.

8 MS. LYBOLT: Silt fence.

9 ACTING CHAIRWOMAN DAWKINS: Silt fence.

10 MS. LYBOLT: It's always had runoff because of the
11 slope of the cemetery.

12 BOARD MEMBER FINDLEY: Just quickly, 300 feet, I don't
13 know if anybody objects to the number of 300 feet, I didn't
14 measure it --

15 MS. LYBOLT: We did.

16 BOARD MEMBER FINDLEY: 122 across and it's a tier drop
17 so it's not --

18 MS. LYBOLT: Yes.

19 BOARD MEMBER FINDLEY: -- the full width, if I do that
20 math, it's 36,600 square feet --

21 MS. LYBOLT: That's correct.

22 BOARD MEMBER FINDLEY: -- which is -- it's less than
23 an acre.

24 MS. LYBOLT: Yes, 8,000. Yes, it's under an acre. An
25 acre is 44,560.

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2 BOARD MEMBER FINDLEY: And this is the only area
3 that's disturbed.

4 MS. LYBOLT: Yes.

5 MR. CAPPELLO: I would interject, Kent, and just you,
6 because we have it's -- unfortunately, not clean as it
7 would state.

8 First, Section 160 is not a zoning regulation. Since
9 it's not a zoning regulation --

10 MS. LYBOLT: No. It's stormwater management.

11 MR. CAPPELLO: -- this board doesn't have the
12 authority to interpret or vary Section 160. However, if
13 you read 160, it refers back to the zoning ordinance. So
14 certain portions of Section 160 that refer back to
15 definitions that were in the zoning ordinance you can
16 interpret.

17 Now, the applicability of 160-4, it says: This
18 chapter and 199-44, which is a zoning statute, shall apply
19 to all land development activity. So then you have to go
20 to 199-44 and look at the definition of land development
21 activity.

22 Land development activity is defined as construction
23 activity, including clearing, grading, excavating, soil
24 disturbance or placement of fill that results in land
25 disturbance of equal to or greater than one acre; or

1 - POPLAR GROVE CEMETERY -

2 activities disturbing less than one acre of total land area
3 that is part of a common plan, or development, or sale,
4 even through multiple separate and distinct land
5 development activities may take at different times and
6 different schedules for land less than one acre which is
7 upstream of an environmentally sensitive area such as a
8 state jurisdiction wetland, municipal recreation facility,
9 New York State DEC streams with classifications AB or CT,
10 or other areas determined by the stormwater management
11 officer. And I believe --

12 ACTING CHAIRWOMAN DAWKINS: But both 160 and 199-44
13 talk to as part of construction of private development. I
14 was a little troubled stumbling over that because there
15 clearly was no construction or development taking place.
16 There was clearly a cleanup taking place. There was,
17 clearly, soil disturbance that occurred, but it didn't
18 occur as part of construction or development.

19 MR. CAPPELLO: Well, I think the "including clearing,
20 grading, excavation" would determine that. If it's not an
21 exempt activity, which unfortunately, the exempt activities
22 under Section 160, which is not interpreted by you but you
23 could certainly give guidance if you believe an exemption
24 is there. You to have realize, once again, we're looking
25 at something that is positive, but you have to keep in mind

1 - POPLAR GROVE CEMETERY -

2 that if someone not relating to a construction activity
3 decides they want to cut down three acres of trees on their
4 site because next year they're going to come in for a land
5 development activity, those trees are already gone, Section
6 160 is intended to address that type of situation. That's
7 why the construction activities includes clearing, grading.
8 And itself, I think is defined as a construction activity.

9 MS. LYBOLT: Well, if I may, this was routine cemetery
10 maintenance. This was originally planned for additional
11 graves and because the cemetery hadn't been mowed and
12 maintained in 20 something years, you had invasive species.
13 You had poison ivy, there were brambles. I had a grape
14 arbor growing up in the trees. Okay? And what we did is
15 we took out all the scrub brush, cut everything down, and
16 we planted grass. We kept the large trees that are around
17 the perimeter and just made it available for grave sales
18 again so that we can continue to maintain the cemetery.

19 ACTING CHAIRWOMAN DAWKINS: Can you tell me what
20 process was used? The soil was clearly disturbed in order
21 to plant the grass seed.

22 MS. LYBOLT: He took a york rake and he took a york
23 rake --

24 ACTING CHAIRWOMAN DAWKINS: What's a york rake?

25 MS. LYBOLT: A york rake looks like a big comb that

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2 goes on the back of a tractor.

3 He york raked everything and then he seeded it and
4 hayed it.

5 BOARD MEMBER DAWKINS: So it was raked. Was there
6 digging, was there shovel, was there backhoe?

7 MS. LYBOLT: No. It didn't need to be. We cut down a
8 couple of saplings that were in the middle. We took out a
9 bunch of -- because the middle had -- it was more or less
10 concentrated, the growth, in the middle. Okay? The end
11 tier dropped. And at the wide end, at that end, was clear.
12 Matter of fact, we had a bluebird house there which has to
13 be replaced. But there was, you know, bushes just --

14 MR. LYBOLT: Well, you're going to disturb the earth
15 by pulling out some of the roots and so on and so forth.
16 The york rake basically smoothed out whatever disturbance
17 we did, and then planted grass seed.

18 MS. LYBOLT: And hayed it.

19 MR. LYBOLT: It was supposed to be that, anyway.

20 ACTING CHAIRWOMAN DAWKINS: So hay was applied.

21 MS. LYBOLT: Oh, yes.

22 MR. LYBOLT: Yes.

23 MR. CAPPELLO: So you have that. That's the one
24 definition of land development, so that's a decision.

25 But the other one, and this ties back to my concern

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2 about the purpose of this application because the other
3 provision in Section 160, it's applicable to everything
4 that is defined as land development activity, and it's also
5 applicable in Section 160-4(c) to all land development
6 activity subject to review and approval by the Planning
7 Board of the Town of Mamakating under Subdivision Site Plan
8 or Special Permit regulations. That shall be reviewed
9 subject to standards contained in this chapter, in 199-44.
10 That's why the issue of whether it needs a building permit
11 I think is solved. But the issue of whether it needed site
12 plan approval is an issue you can determine pursuant to
13 Section 199 --

14 ACTING CHAIRWOMAN DAWKINS: Forty-four.

15 MR. CAPPELLO: Well, 44 is the stormwater control.
16 Section 45 is the provisions as to what requires site plan
17 approval and review by the Planning Board.

18 So that really wasn't in the application, and I think
19 that's what we need to clarify here because the Applicant
20 did concede that a building permit was required. One
21 question, if it's more than an acre in and of itself it
22 required a land clearing permit pursuant to 160. The other
23 issue is if it required site plan approval from the
24 Planning Board to put the shed there, then it required site
25 plan which went back to site development review. And if

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2 you go into 199-45, site plan review and approval sets
3 forth what needs site plan approval. I think that's what
4 the code enforcement officer determined, but I didn't have
5 a rationale and I didn't know that was determined, frankly.

6 ACTING CHAIRWOMAN DAWKINS: Give us a little bit of
7 guidance with respect to the fact that Chapter 160, Section
8 5 provided two distinct exemptions which appear to apply.
9 So the exemptions were the routine maintenance activities
10 for less than two acres and the cemetery graves.

11 MR. CAPPELLO: We get to the exemptions, if you
12 determine that pursuant to the definition of land clearing
13 and you determine it didn't need site plan, then nobody has
14 to get to the exemption because it's not subject to the
15 code so it doesn't have to be exempt from the code. If you
16 determine it was subject to it, then it may be subject but
17 exempt pursuant to that section. So that's kind of a
18 different analysis that you only have to go through if you
19 determine it was subject to it.

20 ACTING CHAIRWOMAN DAWKINS: So we need to determine.
21 So one of the possible options before us is to determine if
22 a site plan was or was not necessary in order to do routine
23 maintenance and brush clearing and --

24 MR. CAPPELLO: The shed, to locate the shed.

25 ACTING CHAIRWOMAN DAWKINS: And for the shed, and to

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2 plant grass seed.

3 MR. CAPPELLO: Yes. So we would go through. If site
4 plan wasn't required, then the next step would be, well,
5 was there over an acre of disturbance. If site plan wasn't
6 required and there wasn't an acre of disturbance --

7 ACTING CHAIRWOMAN DAWKINS: It's done.

8 MR. CAPPELLO: For that issue. You have the sign
9 issue, but ...

10 However, if site plan approval was required or an acre
11 was disturbed, the issue of whether it's exempt is
12 something you may want to give guidance on, but it's
13 something that you're not authorized to interpret because
14 it's only in Section 160 and it's not in Section 199.

15 ACTING CHAIRWOMAN DAWKINS: Even though --

16 MR. CAPPELLO: Well, the exemption portion doesn't.
17 The applicability referred back to the zoning code. The
18 exemptions don't refer back. It doesn't say: Routine
19 maintenance as defined in Section 199-44, then we'd be
20 okay.

21 MR. SANTACROSE: Excuse me.

22 ACTING CHAIRWOMAN DAWKINS: I need your name and your
23 place of residence.

24 MR. SANTACROSE: My name is Joe Santacrose. I live in
25 Newburgh. I'm a member and a trustee of the association.

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2 I'm just having a little bit of trouble here with as
3 far as the land and clearing and site plan. Particularly,
4 I think we need to kind of turn back the clock here a
5 little bit and think of this as what it was 150 years ago
6 when this was laid out. It was a cemetery. That's what it
7 was laid out as when this property was donated to the
8 cemetery and part of the purchase.

9 You know, if you took your front lawn today and you
10 let it go for 150 years and then decided to go out front
11 and wanted to clear it, you'd have some work to do. That's
12 really what we needed to do here. It would be a lot of
13 work to go out there and clear it. We're not taking new
14 sections of property and turning into a cemetery. This is
15 just a cemetery and we're going out there and we're putting
16 it back to the way that it was as it was originally
17 intended. So it's not like we're going out there and
18 clearing woods and making an entire new section in the
19 cemetery. I think that's really what the distinction is
20 here. So I just hope we're all clear as far as that's
21 concerned.

22 BOARD MEMBER FINDLEY: That's the question I wanted to
23 ask. If the property was always used as a cemetery, and it
24 appears, according to that map, from --

25 MS. LYBOLT: 1868.

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2 BOARD MEMBER FINDLEY: Something like that. It was
3 cleared and designated. It was cleared at one time.

4 MS. LYBOLT: Yes. Oh, it was totally cleared. It was
5 the Budd farm.

6 BOARD MEMBER FINDLEY: Does maintenance require a site
7 plan, I guess is what I'm asking.

8 MR. CAPPELLO: Well, let's read it. Routine
9 maintenance is exempt if it's determined that it's routine
10 maintenance. So, yes, if you're moving grass that's
11 overgrown, you can mow your grass whether it's the
12 cemetery, whether it's your home, whether it's your
13 business and you have a field next to it. And then the
14 next thing is if there's some shrub and bushes that's not
15 there, you know, you can do that. I mean that's your
16 determination, from the photos, that it is part of this.
17 But on the exemptions, I would say that you give advice on
18 that because I don't see in here where it's required.

19 But let's go through the site plan issues. I really
20 don't see anything in here from the code enforcement as to
21 her determination that site plan approval was required for
22 the shed. It's an accessory use to a cemetery. Under
23 199-45, a site plan would need an approval. Approval is
24 required except for single-family and two-family residence,
25 agricultural operations and accessory uses appurtenant to

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2 the foregoing. Approval of a site plan is required for the
3 development or redevelopment of any property or structure
4 for a new use that proposes a building, structure or
5 disturbed area in excess of 1500 square feet of cumulative
6 gross floor, a structure that will be used for two or more
7 stories or office. So it's not that. So it doesn't
8 require site plan because it's not that.

9 Whether a disturbed area is in excess of 1500 square
10 feet is the same kind of determination: Is it disturbance
11 or is maintenance.

12 B is: The development or redevelopment of any
13 property requiring the issuance of a special use permit.
14 This doesn't. No one determined it required a special used
15 permit.

16 The expansion or relocation of any existing use
17 resulting in a building, structure or disturbed area in
18 excess of 1500 square feet of cumulative gross floor area.
19 The shed's not that.

20 The paving of nonresidential parking areas and
21 associated driveways for purposes of reviewing stormwater
22 facilities and to ensure adequate landscaping and
23 screening. There's no paving there.

24 And the development or redevelopment of any property
25 or structure for a new use, including single-family and

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2 two-family residences in accordance with 199-42.

3 Then it goes to no creation of a sludge lagoon or
4 similar waste facility.

5 Three: Accessory structures or uses which exceeds the
6 gross floor area of the principal structure shall not be
7 exempt from these regulations. That doesn't. I don't know
8 what the principle structure is other than the graves
9 areas.

10 Development of property with structure or building
11 that involves 1500 square feet or less of gross or
12 disturbed area shall be reviewed by the building inspector
13 and shall meet the requirements of this chapter. A
14 building permit and CO shall be obtained for said
15 development. For purposes of this section, "disturbed
16 area," meaning any area which is proposed to be graded,
17 filled or cleared other than associated with landscaping.

18 Then five isn't applicable.

19 I think the crux of it for the stormwater is is it
20 less than acre and is it not subject to site plan approval.
21 That's the determination. It's clear the building's less
22 than 1500 square feet. The issue is is the work, grading
23 and clearing associated with this or is it maintenance of a
24 cemetery.

25 ACTING CHAIRWOMAN DAWKINS: Having visited the area,

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2 and I actually drove through it, the area in question is
3 the area that was and is the cemetery. It's not a new
4 area. I just can't see how it can be construed any other
5 way.

6 And by the way, there are still piles of some of the
7 yard debris sitting in that area, and so it's clear to me,
8 the biggest thing I saw was a stem that was about this big
9 that had been cut. So what was in evidence that was there
10 was small brush that you would expect when a piece of
11 property had, at one time, been cleared, that undergrowth
12 had started, vegetation had started.

13 MR. UNIDENTIFIED SPEAKER: All the volunteers will be
14 out there one of these weekends coming up. We have some
15 more cleanup to do, and we're all looking forward to get
16 out there and do some more work.

17 MR. CAPPELLO: Was there change to the topography?

18 ACTING CHAIRWOMAN DAWKINS: In fact, the road, no.
19 The road that I drove, when I drove the cemetery, looked
20 like the road on the map, the 1800s map.

21 MS. LYBOLT: Yes.

22 ACTING CHAIRWOMAN DAWKINS: Same configuration. It's
23 an unpaved, essentially ungraveled dirt road.

24 MR. CAPPELLO: Was that road improved or any ...

25 ACTING CHAIRWOMAN DAWKINS: No.

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2 MS. LYBOLT: It is a gravel road. It always has been
3 a gravel road, both the upper section of the cemetery and
4 the lower. And we just recently, with the award money from
5 Sullivan Renaissance, Sullivan Renaissance actually
6 purchased the gravel and we paved paid a local resident, Ed
7 Budd, to come in, get the gravel and spread it around to
8 keep the road stable because the last time it was done, who
9 knows. Twenty, thirty, forty years. So with our winnings
10 from Sullivan Renaissance, that enabled us to get money to
11 keep that road maintained. And this spring we will do the
12 upper road because after a while, the gravel just packs
13 into the dirt and it goes away, disappears.

14 ACTING CHAIRWOMAN DAWKINS: We had a discussion on
15 this. Do we take up the vote on whether or not site plan
16 was required? Is that your recommendation, John?

17 MR. CAPPELLO: Well, you can --

18 BOARD MEMBER FINDLEY: You don't have a picture before
19 the cleanup?

20 MS. LYBOLT: No.

21 BOARD MEMBER FINDLEY: The cleanup, the maintenance?
22 I mean I think you have some afters.

23 MS. LYBOLT: I thought there was a before in there.

24 BOARD MEMBER FINDLEY: Well, they're not descriptions
25 so I don't know if one of these is before or one's an

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2 after. I'm sorry.

3 MR. CAPPELLO: Do you want to see if the building
4 inspector, who's been out there --

5 BOARD MEMBER FINDLEY: Sure.

6 (Board members conferring.)

7 MR. CAPPELLO: We should have this conversation. Just
8 so there's a record of it, ask your questions and stand at
9 the lectern answer it so we could have a good record so
10 when a decision is made one way or another, it's supported.

11 Could you just identify, Mary, what you gave them?

12 MS. GRASS: I gave them a picture that was taken off
13 the cemetery's web site.

14 MS. LYBOLT: Yes, which is a copyrighted photo from
15 Pamela Phelps (phonetic). And you didn't have permission.

16 MS. GRASS: It's on your web site.

17 MR. UNIDENTIFIED SPEAKER: They're still copyrighted
18 photos off of the web site.

19 ACTING CHAIRWOMAN DAWKINS: Sir, you have to identify
20 yourself when you're talking for the official transcript,
21 please.

22 (Board members conferring.)

23 ACTING CHAIRWOMAN DAWKINS: So what we were doing is
24 comparing the photograph that was taken from the web site
25 with photographs that were the after photographs and noting

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2 certain of the trees that were primary trees that are still
3 in existence in the after photographs which lends the
4 impression that this was cleanup rather than clearing.

5 BOARD MEMBER FINDLEY: (Inaudible comment.)

6 BOARD MEMBER DAWKINS: But they raked the soil put the
7 gravel in. And the raked soil, when there was an amount of
8 rain, did create some soil disturbance which was then
9 addressed by the --

10 BOARD MEMBER FINDLEY: Silt fence?

11 ACTING CHAIRWOMAN DAWKINS: -- silt fence.

12 Any other discussion, Georgia or Beverly?

13 BOARD MEMBER RAMPE: No.

14 MR. CAPPELLO: Does the Board feel it helpful if you
15 take a visit? I mean if you need to make a decision, would
16 you feel better if you took a site walk as a board and
17 actually looked at what was done? Given the time and given
18 the effort that's been expended, it might be -- whatever
19 decision you make, I think it's just important that it's
20 documented because one way or another, whatever decision
21 you make will be used by others who may not be the same
22 level of care on level or level of support. Therefore, I
23 think if you're going to make a decision, it would be great
24 to be able to say, We walked it and we saw, and here's why
25 it's maintenance and here's why it's there, so we're very

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2 site specific and you have a determination that will not
3 set, potentially, dangerous ...

4 BOARD MEMBER FINDLEY: Is the one acre thing in our
5 zoning or is it in 160?

6 ACTING CHAIRWOMAN DAWKINS: The one acre limit is in
7 160; correct?

8 MR. CAPPELLO: No. The one acre limit is in 199-44.
9 It's referred to in 160, land clearing activities as
10 defined in 199-44, and activities that are subject to site
11 plan approval as set in 199-44. So if it's not more than
12 an acre and it's not required to site plan, that's an
13 interpretation you can make. If it is required, the site
14 plan, or it is more than one acre, the interpretation of
15 whether it's routine maintenance is ...

16 BOARD MEMBER RAMPE: Right. We've decided it was less
17 than an acre. Is that correct?

18 ACTING CHAIRWOMAN DAWKINS: Yes.

19 BOARD MEMBER FINDLEY: Yes. I mean it's 300 long, 122
20 across at its widest. And if I do the math of 300 times
21 122 it's like 36,600. It can't be --

22 MR. CAPPELLO: Well, maybe we can ask the code
23 enforcement officer why she determined that it was subject
24 to site development.

25 BOARD MEMBER FINDLEY: We can do that.

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2 MS. GRASS: It's not just the tier drop work that was
3 done.

4 MR. CAPPELLO: Go to the mic.

5 MS. GRASS: It wasn't just work in the tier drop, it
6 was work that went down towards the other person's
7 property, so it's not just the tier drop where there was
8 work. And because there was such bad erosion and silt,
9 runoff, that's why the violation was issued. It wasn't
10 until after then that it was grassed and then a silt fence
11 was put up.

12 And on March 8th I had actually had gone out there and
13 there was still runoff. It's just not stable. The concern
14 is people going there, even the workers going there, all
15 that they removed, the trees and stuff out in the middle,
16 it's still unstable to have that runoff. The grade is
17 pitched up. So there probably really should be somebody
18 who knows something about soils to help them make that more
19 stable.

20 MS. LYBOLT: That section has always, in that one
21 spot, has always had runoff. The cemetery is built on a
22 hill. Water runs down. There's nothing that can be done
23 about running down. All right?

24 When Mary was out there, that was right after that.
25 That was at that time with the big storm, where Hurricane

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2 Wakeem came through and then that nor'easter. All right?

3 And --

4 MS. GRASS: It wasn't. I was out there before that.

5 It wasn't after the storm.

6 MS. LYBOLT: The one spot --

7 MR. CAPPELLO: One person should talk at the mic and
8 provide evidence and then the next person can respond. If
9 the Board wants to --

10 MS. LYBOLT: The cemetery is built on a hill and you
11 can't change that. Okay? What we tried to do is to
12 improve it so that there is grass. All right? And it will
13 stabilize the area. We removed brush; we left the big
14 trees. Big trees in a cemetery are aesthetically pleasing.
15 All right? And we have -- next month we'll going out and
16 we will mark that area for graves. I have six graves that
17 are waiting to be purchased in that area.

18 BOARD MEMBER FINDLEY: Mary, do you have a map, a
19 calculation of the area that exceeds this acre?

20 MS. GRASS: No. No site plan was provided with the
21 dimensions of that area.

22 BOARD MEMBER FINDLEY: How did you determine the acre?
23 That's all I want to know.

24 MS. GRASS: Through the town engineer.

25 BOARD MEMBER FINDLEY: Okay. And does he have

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2 anything that shows more than an acre? You know, a
3 measurement? I'm looking at this thing trying to figure
4 out where the acre is, that's all.

5 MS. GRASS: Well, it's not just in the tier drop.
6 It's above the tier drop and all the way down to the
7 property line.

8 MS. LYBOLT: We did no work above the tier drop.
9 Sorry, but that's incorrect.

10 BOARD MEMBER FINDLEY: Let's all take -- I'm just
11 trying to determine how because you're saying an acre,
12 where the acre is, that's all.

13 MS. GRASS: Sure.

14 BOARD MEMBER FINDLEY: Did the engineer, the town
15 engineer, provide anything, or you just estimated?

16 MS. GRASS: He just told me to immediately issue a
17 violation, and they immediately had to do some remedy to
18 stop the runoff.

19 BOARD MEMBER FINDLEY: Is that why they put up the
20 silt fence?

21 MS. LYBOLT: That's correct.

22 MS. GRASS: I'm assuming.

23 MS. LYBOLT: Just a note, that the entire cemetery is
24 only seven acres. It's a little bit over seven acres.
25 This is a small, little piece in the back section.

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2 MS. GRASS: We also are in the MS4 zone, which is
3 another reason the engineer was concerned.

4 BOARD MEMBER FINDLEY: Say that again.

5 MS. GRASS: We're in an MS4 zone. The Town of
6 Mamakating is in an MS4 zone.

7 MR. CAPPELLO: You might want to explain for the
8 record what an MS4 zone is.

9 BOARD MEMBER FINDLEY: Yes.

10 MS. GRASS: MS4 is an area that we have to report,
11 make reports on the area. Any construction areas need
12 stormwater runoff. Myself and the engineer have to report
13 that on a yearly basis. There's certain areas that they
14 determined to be in these, in other towns, as well. We
15 happen to be in one of them, MS4 zone.

16 MS. LYBOLT: And why is it in an MS4 zone?

17 MR. CAPPELLO: New York State. It's New York State
18 designates the zones in the state. The Town of Mamakating
19 is an MS4. That's why the Planning Board, whenever we do a
20 site plan approval, we have to do a stormwater maintenance
21 agreement that's filed against the property, ensuring that
22 any stormwater facilities are maintained by the applicant
23 because the Town, if the Town drainage gets worse, the Town
24 could be cited for it. So New York State requires those
25 easements be filed when there is site plan approval.

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2 ACTING CHAIRWOMAN DAWKINS: Dave.

3 MR. LYBOLT: Dave Lybolt.

4 I just have a quick question. Mary says that the town
5 engineer suggested that she immediately issue the
6 violation. I'm curious. Is there any record of the town
7 engineer visiting the site and did he take measurements?
8 Is there a record of measurements being made by anybody of
9 authority here? And if so, can we see those measurements
10 in the record, of the engineer visiting the site to make
11 the determination that a violation should be issued?

12 MS. LYBOLT: I think we'd have a bill from the
13 engineer for that, wouldn't we?

14 MS. GRASS: The engineer works for the Town so
15 generally, they don't bill the Building Department. I
16 don't know if I still have the e-mail or the e-mail back
17 and forth. Possibly. Nothing I can produce right now.

18 MR. CAPPELLO: Well, it's before this board now to
19 make a determination. So if you decide a couple of you
20 want to walk out there with the town engineer and decide
21 whether there was an acre of disturbance or more, that can
22 be done. And even if there's less than an acre, the town
23 engineer may suggest -- I mean his area of expertise is
24 stormwater. He may suggest a couple measures that you may
25 want, or the Applicant may want to do just to address the

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2 situation and stabilize the slope. It's your call.

3 ACTING CHAIRWOMAN DAWKINS: You want to do a visit?

4 BOARD MEMBER FINDLEY: Yes.

5 ACTING CHAIRWOMAN DAWKINS: Okay. Sounds like we want
6 to do a site visit.

7 Georgia, Beverly.

8 MR. MIGLIACCIO: Can I say something, please? Matthew
9 Migliaccio.

10 I can't believe that -- I really can't believe that
11 we're talking about an ancient cemetery when there are so
12 many other more important issues that need to be addressed
13 in this town. The amount of time being spent by this board
14 on this minor issue of clearing an ancient cemetery is
15 adominable. I just cannot believe this. To go even
16 further than this discussion tonight to make a decision, I
17 can't believe that there's not enough information present,
18 in writing, by oral testimony, in written documentation, to
19 make a decision that it was clearing of property, grading
20 and seeding, end of quote. That the shed was built and
21 might have been over the square footage, address that. The
22 sign was put in and it addresses the 911 number for
23 emergency; address that. I can't believe all of this
24 runaround and the fear that was presented that you better
25 be clear about your decision for fear of retribution. I

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2 cannot believe that statement, that a board would be --

3 MS. UNIDENTIFIED SPEAKER: Intimidated.

4 MR. MIGLIACCIO: -- corrected to --

5 ACTING CHAIRWOMAN DAWKINS: Let me be clear. Let me
6 clear up something. I can't speak for everybody on this
7 board, but I am not intimidated by anyone in this room, and
8 I will not be.

9 MR. MIGLIACCIO: Good. Good.

10 But my intent was not to intimidate, my intent was --

11 ACTING CHAIRWOMAN DAWKINS: The purpose of this board
12 is to ensure that every citizen and every organization
13 within the limits of this town is treated fairly and
14 equitably. We will not treat anyone unfairly and we will
15 not give anyone beneficial treatment. That's why we're
16 seriously considering the issue that's before us. We are
17 not intimidating the people of Poplar Grove Cemetery and we
18 are not intimidating the building inspector. We are doing
19 our best to understand the facts of the situation that sit
20 before us and make a fair and equitable determination,
21 period.

22 MS. RIGSBY: I'd like to thank you for clarifying
23 that.

24 And I'd like to suggest that what Matthew -- first of
25 all, I want to agree with Matthew.

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2 And secondly, I've heard you're being cautioned not to
3 act because you think there might be repercussions. I
4 don't -- other political repercussions, I don't know what
5 they could be.

6 MR. CAPPELLO: Let me clarify when I say
7 repercussions. Any decision you make sets a precedent, so
8 any decision you make has to be supported. So when you're
9 saying something is less than an acre is cleared, you can
10 bet your bottom dollar, there will be someone in here who
11 will push that decision a little farther who may not be the
12 type of person that's a volunteer, that will pull down a
13 hill or cut down a tree. And you can be darn sure they
14 will say: You did it for the cemetery. Why are you making
15 me now go through? And it will be a little bit different.
16 And I will need to be sitting here because there will be as
17 many people, or more, that are sitting here today screaming
18 at me: Why can't you stop them? And I will need to be
19 able to demonstrate: Well, they're in the cemetery. They
20 walked out there, they saw it and this is why there was no
21 clearing, and this is why we made the decision and this is
22 why that is different. If you don't do that and you just
23 say, We have a drawing here, and I'm going to say based
24 upon that pencil drawing that we're going to calculate it
25 and it's less than an acre, you can bet your bottom dollar

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2 that someone will take advantage of it and you will be
3 screaming at me then that why am I letting those people
4 take advantage of it. That's why we have it.

5 MS. RIGSBY: I personally would like to see you set a
6 precedent on the side of common sense. That's my own
7 personal opinion.

8 MR. CAPPELLO: Well, common sense --

9 MS. RIGSBY: But I --

10 MR. CAPPELLO: -- says is when you go out there and
11 you say, I saw it and this is what it is, then I can write
12 it down.

13 MS. RIGSBY: Well, they have a map and it tells you
14 it's not an acre. I mean I don't know why physically
15 standing on it is going to make a difference.

16 BOARD MEMBER FINDLEY: We have the building inspector
17 testified that it was something other than that. We're
18 going to go look for ourselves and we're going to make a
19 determination based on what's in the code.

20 MS. RIGSBY: The only other think I'd like to say,
21 please, just as an aside, I don't know whether this is
22 relevant for you or not, but as a child and as a young
23 adult, I walked through that property. It was our shortcut
24 to get to what used to be Oscar Hurley's ice cream store,
25 and I can tell you that was always wet. This is not

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2 something that just happened now that they cleared the land
3 and took off the last stick. It was always wet.

4 BOARD MEMBER FINDLEY: Maybe, maybe we can learn
5 something from the town engineer to make it even better.

6 MS. RIGSBY: I hope you do. I also hope you learn
7 something from the feelings that you have in this room
8 tonight.

9 BOARD MEMBER FINDLEY: No, it's actually appreciated.
10 I like to see the community involved and it's good to see
11 everybody here.

12 ACTING CHAIRWOMAN DAWKINS: And I think it's important
13 not just to see the size of the area that we're talking,
14 that's important, but I think it's also important for
15 everyone here to see what kind of things were cleared. I
16 had been out there but everyone else has not had that
17 privilege. What I saw fell clearly within my personal
18 framework of what would be routine maintenance. It was not
19 clearing, it was cleaning up. But everyone on the board
20 has to see that for themselves.

21 MR. LYBOLT: Dave Lybolt. I just want to say I just
22 have a question as to prior to a violation being issued,
23 why wasn't a measurement done? Do we just guess in the
24 town at the size of an area? And I don't have a problem.
25 I don't have a problem with you going. Be my guest,

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2 please. We have no problem with visitors at the cemetery
3 for whatever reason. Okay? But I don't understand how you
4 can issue a violation without doing the work first. That's
5 all I have to say.

6 MS. LYBOLT: And I would also like to reiterate that
7 this is a cemetery. This not is a lot, a residential lot,
8 where you're clearing for site prep for a house. This is a
9 place where we're burying people and it's always been
10 designated a cemetery. Over time, the grass grew, the
11 brambles grew. We're just trying to reclaim it back and do
12 the best that we can with as little funds as we have. All
13 right? This is not --

14 BOARD MEMBER FINDLEY: We appreciate it.

15 MS. LYBOLT: We're not building anything, we're
16 planting people.

17 MS. GRASS: I would say one thing just to clarify
18 something. As a building inspector, when I receive a
19 complaint I have to act on that. This, for some reason, is
20 seeming like a personal vendetta attack against me. Was I
21 caught in a political move? Probably. Will I ever take a
22 verbal violation, a complaint again, from a council person,
23 for a supervisor, from anybody? Absolutely not. If you
24 have a violation, in our code it says it has to be in
25 writing. I went out to the property. There was runoff;

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2 the soils were unsafe.

3 I don't care who they are. I'm grateful for
4 volunteers. The fire department are volunteers. They just
5 built a whole new building, but they came in. They talked
6 to the Building Department, they came before the Town
7 Board, the Planning Board and the Zoning Board. There are
8 hundreds of volunteers all over the place. However, when a
9 violation is given to me, I'm acting on it. This is not a
10 personal vendetta, I'm going my job. I did do my job and I
11 did go to the engineer with this.

12 Any other site, we have a cemetery before the Planning
13 Board as we speak. They want to put up a sign. They have
14 to get Planning Board approval. It has to be fair across
15 the board. That is what I've been told for the last four
16 years and that is what I'm trying to do.

17 I'm grateful for the volunteers and I'm grateful for
18 the people who volunteer in the cemetery. It's a wonderful
19 thing, as well as the firemen, the ambulance and everybody
20 else. Just doing my job.

21 BOARD MEMBER FINDLEY: I think we agree with you and
22 that's why we're taking it seriously and actually going to
23 go visit the site.

24 MS. GRASS: And I appreciate it.

25 BOARD MEMBER FINDLEY: We agree.

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2 Do we need a date or do we just go on our own?

3 ACTING CHAIRWOMAN DAWKINS: No.

4 BOARD MEMBER FINDLEY: Or will the engineer accompany
5 us?

6 MR. CAPPELLO: That's up to you. If you do go with
7 more than -- you're a five member board so if more than two
8 people go, it's not necessarily a meeting if you go and you
9 just go fact-finding and you walk with the engineer and
10 nobody else was there and you didn't discuss the merits of
11 the application, you just asked where's this line on the
12 map, where's this, and it's purely for fact, and then you
13 come back in a public meeting and discuss it, then is
14 permissible. But would be better to designate two people
15 to go with the engineer, report back to the board, and then
16 the other board members go at a different time? That would
17 be the cleanest way to do it.

18 BOARD MEMBER FINDLEY: I would prefer going on my own
19 because I work during the day, so I wouldn't be available.
20 I could probably go this weekend.

21 ACTING CHAIRWOMAN DAWKINS: I've already been.

22 BOARD MEMBER RAMPE: Do you want to go on your own?

23 BOARD MEMBER MARTIN: I can go on my own.

24 BOARD MEMBER FINDLEY: Well, I think someone should go
25 with the engineer. I just -- I just can't.

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2 Do you want to go with the engineer?

3 ACTING CHAIRWOMAN DAWKINS: Well, I don't think so.

4 Although I have to --

5 BOARD MEMBER FINDLEY: Well, you can --

6 ACTING CHAIRWOMAN DAWKINS: I'll get the engineer and
7 go with the engineer.

8 MR. CAPPELLO: Just so you know, I know he'll here
9 physically, the second Tuesday of the month. We have our
10 Planning Board work session here during the day, so that'll
11 save paying for a trip, to come special.

12 MS. LYBOLT: I respectfully request to be able
13 accompany you to the cemetery.

14 MR. CAPPELLO: It's your property. But there could be
15 no discussion. You can only be there to observe as a
16 property owner. If you discuss it with the engineer or you
17 add anything, that could potentially be -- if he asks you a
18 question to point out something, you can point it out. But
19 it's purely a fact-finding mission. It's not a mission to
20 discuss the merits of the application.

21 MS. LYBOLT: That's fine. Okay.

22 MR. LESER: Could I interrupt and get out of your
23 hair?

24 I'm glad that you, Cathy, took a ride over there, you
25 saw the same washout that I saw, where the gravel was

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2 coming across the road and they put up that thing. It was
3 fairly new. I appreciate you being there.

4 Secondly, I'd like to say what John saw was very
5 important. I've got a small cemetery near me. Can I put,
6 or can our local people put a shed on that cemetery
7 property? It's very small. It goes back to the 1800s. I
8 agree exactly with what John's saying because someone down
9 the road could say, Well, you opened the door for the one
10 over in Poplar Grove.

11 ACTING CHAIRWOMAN DAWKINS: It's the size of the shed.
12 It's size of the shed that matters. And I would strongly
13 suggest you go visit the Building Department and discuss it
14 with them.

15 MR. LESER: Now, that was a manufactured shed that was
16 bought. But what about if you build one on the site? Is
17 there any difference of building one on the site as opposed
18 to have a manufactured shed brought in?

19 MR. CAPPELLO: She'll know. I think it's the size.
20 If it's a small shed, I think you could build it itself.
21 If it's above a certain area, it's subject to New York
22 State Building Code and then it would have to meet
23 standards. But Mary would know that better than I would.

24 MR. LESER: One further note. You can write this down
25 if you want. The property for an acre is 43,560 square

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2 feet. Notice, I said square feet. In a perfect world,
3 it's 208.7 feet square. One is square feet, the other is
4 feet squared.

5 BOARD MEMBER FINDLEY: Thank you.

6 MR. LESER: You're welcome.

7 ACTING CHAIRWOMAN DAWKINS: John, the issue of the
8 sign is separate and distinct from the issue --

9 MR. CAPPELLO: Yes.

10 ACTING CHAIRWOMAN DAWKINS: -- of whether or not we
11 view this as needing a site plan.

12 BOARD MEMBER FINDLEY: That's the way the denial
13 reads.

14 ACTING CHAIRWOMAN DAWKINS: No.

15 BOARD MEMBER FINDLEY: That's the way the denial
16 reads. I was just saying that the denial reads that the
17 site plan is all encompassing, the sign, the erosion.

18 ACTING CHAIRWOMAN DAWKINS: They have three separate
19 comments.

20 BOARD MEMBER FINDLEY: Right. If you look at the --
21 if you look as when they applied for a building permit, it
22 implies a denial.

23 Are these originals?

24 MS. LYBOLT: Yes. I need those, that two set of paper
25 back.

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2 BOARD MEMBER FINDLEY: I don't have them anymore.

3 BOARD MEMBER RAMPE: It's right here.

4 ACTING CHAIRWOMAN DAWKINS: It's right here.

5 BOARD MEMBER FINDLEY: The denial implied that the
6 site plan would encompass all.

7 ACTING CHAIRWOMAN DAWKINS: Well, I would contend that
8 199-51(a) provides three separate and distinct exemptions,
9 all three of which would apply to the sign. The least
10 important, frankly, is exemption No. 6 which says:

11 Memorial plaques, cornerstones, historical tablets and the
12 like. Clearly, a cemetery qualifies as a memorial and this
13 particular one qualifies as historical. It was
14 incorporated in 1867 and is clearly a historical treasure
15 of our community. Signage to identify and locate it,
16 especially signage that is in keeping with the historical
17 nature of it, conforms to this exemption. I would also say
18 that the sign that is in question actually mimics the sign
19 of the upper portion of the cemetery.

20 Exemption No. 7 provided under that same code
21 stricture provides that signs required to be maintained or
22 posted by law or governmental order, rule or regulation,
23 unless specifically prohibited, limited or restricted, are
24 also exempted.

25 And as the applicants say, the sign is necessary to

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2 mark the cemetery for 911 purposes, and I would contend
3 that because you very frequently have an excessively
4 elderly population associated with funerals, it's
5 especially important that that be marked for 911 purposes.
6 So I think that that applies.

7 And then exemption No. 8, signs indicating the name,
8 address of the occupant, well, the sign purely says Poplar
9 Grove Cemetery, No. 180. It says nothing more and nothing
10 less.

11 So I would contend that the sign is something that we
12 can deal with tonight, fairly, effectively. It's under our
13 authority, it's under our jurisdiction. In my mind, there
14 are clearly three exemptions authorized by the code that
15 would allow this particular sign to not require a sign
16 permit.

17 BOARD MEMBER FINDLEY: Make a motion.

18 ACTING CHAIRWOMAN DAWKINS: Discussion.

19 MR. CAPPELLO: If it's determined that it needed site
20 plan approval, then the location of the sign usually is
21 part of the site plan approval. So if it had to go for
22 site plan approval. Once again, you're not saying the
23 sign. So I think that is an issue, then -- for 911
24 identification there's a minimum size for 911 dedication.
25 I don't know the size of this as it relates to that. If

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2 it's that and you want to make that decision, you certainly
3 can. I haven't seen the photo of the sign.

4 BOARD MEMBER FINDLEY: I think we should wait and
5 determine if it's requiring a site plan and then we can
6 handle it all at once.

7 ACTING CHAIRWOMAN DAWKINS: Deal with this all at
8 once. Okay.

9 John, before we leave this issue I would like to make
10 a comment just for the record. At the last meeting, on the
11 25th of February, I was provided with a copy of a letter
12 from Robert G. Justus that indicated that I should, we, the
13 Board, should contact certain individuals who might provide
14 information relative to this issue. I just want to note
15 for the record that I had information in hand. I had two
16 letters from Mary Grass, and I personally took the
17 opportunity to contact every single individual and
18 organization that was listed in that letter. I contacted
19 and personally spoke with each person and I was not able to
20 discern or identify any information beyond that which has
21 been discussed tonight and which was provided in the
22 original materials for the Board.

23 So we're going to -- yes, Mr. Herrmann.

24 MR. HERRMANN: I can't be quiet, I'm sorry. My name
25 is Bill Herrmann. I'm the town supervisor of the Town of

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1
2 Mamakating.

3 I agree with Matt Migliaccio that unfortunately, it's
4 my personal belief that this is politically motivated and
5 I'm sorry that it got to this point. I'm sorry that it's
6 tearing our community apart.

7 I disagree with Matt that this is taking an inordinate
8 amount of time. I've served seven years on this board and
9 I've never seen so much effort given into one thing. Matt
10 and others, I believe that it is important that we enforce
11 the law, that we look at everything and take everything
12 seriously no matter how big or small a project is. I
13 commend the Board for the time they're putting into this.

14 I disagree with the statement that was made that the
15 Town is trying to fill their coffers because the Town does
16 not take fees from not-for-profit organizations. The only
17 money that was charged were for professional services. So
18 the Town does not enrich themselves in something like this,
19 so that is absolutely not true.

20 I do want to defend Building Inspector Mary Grass.
21 Her and every one of our boards and every one of our
22 departments have been instructed to give fair and equal
23 treatment to everyone. Doesn't matter who you are, what
24 political party, what religion, how big, how tall. It
25 doesn't matter. Everybody gets treated the same. And so

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2 while the emotional stuff with the cemetery and volunteers
3 we all appreciate, that really should not factor into it.
4 The law is what we need to be addressing here, only the
5 law.

6 And I really appreciate the consideration you're
7 giving and I really do encourage you to go out and visit
8 this site and take all the facts into consideration.

9 Thank you.

10 ACTING CHAIRWOMAN DAWKINS: I think we can keep -- if
11 people want to submit written comments, that's fine. I see
12 no real reason to close the public comments at this point.

13 MS. FRANCK: They usually keep them open for ten days,
14 written comments for ten days.

15 MR. CAPPELLO: It's up to you.

16 ACTING CHAIRWOMAN DAWKINS: The only reason I would be
17 inclined to keep it open is because if the Board is going
18 to go out to the site, if the Board has additional
19 information that we --

20 MR. CAPPELLO: You want to discuss it and --

21 ACTING CHAIRWOMAN DAWKINS: -- to provide and the
22 public wants to have an opportunity to comment on that, I
23 think they should.

24 MR. CAPPELLO: You can just adjourn it to the next
25 meeting and then anybody can submit anything in writing.

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BOARD MEMBER FINDLEY: Does anyone have any more comments on the site? We should continue the public hearing 'til the next meeting.

MS. FRANCK: You need a motion to keep the public hearing open?

ACTING CHAIRWOMAN DAWKINS: I don't think we have to. We just don't vote.

MR. CAPPELLO: Just adjourn it to the next meeting.

ACTING CHAIRWOMAN DAWKINS: We're just going to leave it open.

BOARD MEMBER FINDLEY: Do we need a motion to adjourn the public hearing?

MR. CAPPELLO: You can do it if you feel like it.

MS. FRANCK: So wait a minute. are you going to take comments for ten days, or not?

ACTING CHAIRWOMAN DAWKINS: We're going to leave it open until the next meeting.

(Time noted: 8:30 p.m.)

* * * * *

REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings herein, to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.

A handwritten signature in black ink that reads "Rosemary A. Meyer". The signature is written in a cursive, flowing style.

ROSEMARY A. MEYER

Date Transcribed: June 4, 2016

K E Y W O R D I N D E X

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	P	L
Matthew Migliaccio.....	7	25
Janet Lybolt.....	10	5
Sandra Rigsby.....	13	5
David Lybolt.....	15	13
Chris Leser.....	17	22

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