

SUPREME COURT
STATE OF NEW YORK COUNTY OF CAYUGA

MORLEY FLYNN, GLENN FLYNN, and LESLIE FLYNN,

Petitioners-Plaintiffs,

vs.

TOWN OF STERLING, TOWN OF STERLING TOWN BOARD,
CNY SCRAP PROCESSING, LLC, and CARRIER SALVAGE &
RECYCLING, LLC,

Respondents-Defendants.

**NOTICE OF
PETITION**

Index No.: E2024-0246

PLEASE TAKE NOTICE that upon the annexed Verified Petition and Complaint, with Exhibits, verified by Jonathan R. Tantillo on March 20, 2024, an application will be made to this Court by Petitioners-Plaintiffs Morley Flynn, Glenn Flynn, and Leslie Flynn (“Petitioners”) at the Cayuga County Supreme & County Courthouse, located at 152 Genesee Street **May 14, 2024** Auburn, New York 13021, on ~~July 1, 2024~~, at 9:30 a.m., or at such other date and time as this Court may specify, for an Order and Judgment, pursuant to CPLR Article 78 and § 3001, the New York State Town Law, the Town of Sterling Land Use Regulations, the New York State Environmental Quality Review Act, the Open Meetings Law, the New York State General Municipal Law, and/or other legal authorities as follows: (1) annulling as illegal, arbitrary, and/or capricious the issuance by the Town of Sterling (the “Town”) Town Board (the “Town Board”) of a resolution (the “Town Board Resolution”) and the entrance into a subsequent Memorandum of Understanding (the “MOU”) which purported to allow CNY Scrap Processing, LLC (“CNY”) to operate an unpermitted scrap processing facility and junkyard (the “Scrapyard”) on three tax

parcels (#19.00-1-33., #19.00-1-35.111 and #19.00-1-35.112) in the Town; (2) declaring that the Town Respondents were without power to adopt the Town Board Resolution or the MOU and that the Scrapyard lacks the necessary approvals to operate; (3) declaring that (i) CNY's use of any of the parcels as part of the Scrapyard is not a lawful nonconforming use, or alternatively, (ii) CNY's use of Tax Parcel Nos. 19.00-1-35.111 and 19.00-1-35.112 as part of its Scrapyard does not constitute a lawful nonconforming use; 4) awarding Petitioners their reasonable attorney fees under the Open Meetings Law; and (5) granting such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that a Verified Answer, Administrative Record, and supporting Affidavits, if any, must be served at least five (5) days before the return date of this proceeding.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 409, Respondents must produce all other papers not already in the possession of the Court necessary to the consideration of the questions involved at the date of the scheduled hearing.

Cayuga County is designated as the venue of this proceeding based on the location of Petitioners and Respondents-Defendants ("Respondents") in Cayuga County. Cayuga County is also where the subject real property is located and is where the subject decisions were made. Petitioner Morley Flynn is an individual who owns and resides at 14645 West Bay Road, Sterling, New York 13156, in Cayuga County. Petitioners Glenn Flynn and Leslie Flynn are individuals who own and reside at 14761 State Route 104, Sterling, New York 13156, in Cayuga County. Respondents Town and Town Board maintain offices at 1290 State Route 104A, Sterling, New York 13156, in Cayuga County. Respondents CNY and Carrier Salvage & Recycling, LLC maintain offices at 14725 State Route 104, in the Town of Sterling, New York 13156, in Cayuga County.

Dated: Rochester, New York
March 20, 2024



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SUPREME COURT
STATE OF NEW YORK COUNTY OF CAYUGA

MORLEY FLYNN, GLENN FLYNN, and LESLIE FLYNN,

Petitioners-Plaintiffs,

vs.

SUMMONS

Index No.: E2024-0246

TOWN OF STERLING, TOWN OF STERLING TOWN BOARD,
CNY SCRAP PROCESSING, LLC, and CARRIER SALVAGE &
RECYCLING, LLC,

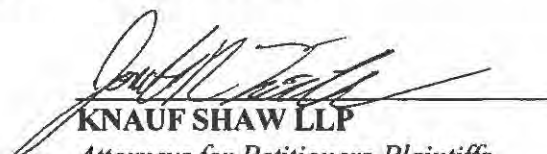
Respondents-Defendants.

To the above-named Respondent-Defendants (“Respondents”):

YOU ARE HEREBY SUMMONED to serve an answer to the Verified Petition and Complaint on the attorneys for Petitioners-Plaintiffs (“Petitioners”) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the Petition and Complaint.

Cayuga County is designated as the venue of this proceeding based on the location of Petitioners and Respondents in Cayuga County. Cayuga County is also where the subject real property is located and is where the subject decisions were made. Petitioner Morley Flynn is an individual who owns and resides at 14645 West Bay Road, Sterling, New York 13156, in Cayuga County. Petitioners Glenn Flynn and Leslie Flynn are individuals who own and reside at 14761 State Route 104, Sterling, New York 13156, in Cayuga County. Respondents Town and Town Board maintain offices at 1290 State Route 104A, Sterling, New York 13156, in Cayuga County. Respondents CNY and Carrier Salvage & Recycling, LLC maintain offices at 14725 State Route 104, in the Town of Sterling, New York 13156, in Cayuga County.

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SUPREME COURT
STATE OF NEW YORK COUNTY OF CAYUGA

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vs.

TOWN OF STERLING, TOWN OF STERLING TOWN BOARD,
CNY SCRAP PROCESSING, LLC, and CARRIER SALVAGE &
RECYCLING, LLC,

Respondents-Defendants.

**VERIFIED
PETITION AND
COMPLAINT**

Index No.: E2024-0246

Petitioners-Plaintiffs Morley Flynn, Glenn Flynn, and Leslie Flynn (“Petitioners”), for their Verified Petition and Complaint (“Petition”), by their attorneys **KNAUF SHAW LLP**, state as follows:

INTRODUCTION

1. Petitioners are the owners of various tax parcels (the “Flynn Properties”) which border 14725 and 14735 State Route 104 (the “CNY Property”) in the Town of Sterling (the “Town”).

2. The CNY Property is made up of three tax parcels (#19.00-1-33., #19.00-1-35.111 and #19.00-1-35.112) and is the site of an unpermitted scrap processing facility and junkyard (the “Scrapyard”).

3. Petitioner brings this hybrid CPLR Article 78 proceeding/declaratory judgment action pursuant to CPLR Article 78 and § 3001, the New York State Town Law, the Town of Sterling Land Use Regulations (the “Land Use Regulations”), the New York State Environmental Quality

Review Act (“SEQRA”), the New York State Open Meetings Law, the New York State General Municipal Law, and/or other legal authorities to, *inter alia*, challenge as illegal, arbitrary, and/or capricious the issuance of a resolution (the “Town Board Resolution”) and the entrance into a subsequent Memorandum of Understanding (the “MOU”) which purported to allow CNY Scrap Processing, LLC (“CNY”) to operate the Scrapyard at the entirety of the CNY Property without receipt of multiple necessary approvals and without the performance of multiple necessary reviews. The MOU is attached to this Petition as **Exhibit “A.”**

4. Petitioners also seek a declaratory judgment determining that CNY’s operation of the Scrapyard on some or all of the CNY Property is unlawful.

PARTIES

5. Petitioner Morley Flynn is an individual who owns and resides at 14645 West Bay Road, Sterling, New York 13156, in Cayuga County, and who is a part owner of property bearing the Tax Parcel No. 19.00-1-30.1 in the Town of Sterling, which borders the CNY Property to the west and north.

6. Petitioners Glenn Flynn and Leslie Flynn are individuals who own and reside at 14761 State Route 104, Sterling, New York 13156, in Cayuga County, which bears Tax Parcel No. 19.00-1-29, and which borders the CNY Property to the east. Glenn and Leslie Flynn are also part owners of the property bearing Tax Parcel No. 19.00-1-30.1 which borders the CNY Property to the west and north.

7. Respondent Town of Sterling is a municipal corporation with offices at 1290 State Route 104A, Sterling, New York 13156, in Cayuga County.

8. Respondent Town of Sterling Town Board is a town board existing pursuant to Article 4 of the New York State Town Law with offices at 1290 State Route 104A, Sterling, New York 13156, in Cayuga County.

9. Respondent CNY is a limited liability company organized under the laws of the State of Delaware authorized to do business in the State of New York with offices at 14725 State Route 104, in the Town of Sterling, New York 13156, in Cayuga County.

10. CNY is the owner and operator of the CNY Property, the unpermitted site of the Scrapyard that is the subject of this lawsuit.

11. Upon information and belief, Respondent Carrier Salvage & Recycling, LLC is a domestic limited liability company with offices at 14725 State Route 104, in the Town of Sterling, New York 13156, in Cayuga County.

THE CNY PROPERTY HISTORY AND THE LAND USE REGULATIONS

12. The CNY Property is zoned Agricultural Residential (“AR”).

13. The CNY Property is approximately 19.6 acres. Tax Parcel No. 19.00-1.33 is approximately 3.3 acres. Tax Parcel No. 19.00-1-35.112 is approximately 15.5 acres. Tax parcel No. 19.00-1-35.111 totals less than one acre.

14. The CNY Property is bordered to the east, north, and west by the Flynn Property, and to the south by State Route 104. Immediately south of State Route 104 from the CNY Property is the Town of Victory.

15. On March 3, 1969, the Town of Sterling adopted “Ordinance No. 2 of Town of Sterling for the Regulation of Automobile Junk Yards” (the “1969 Junkyard Ordinance”). The 1969 Junkyard Ordinance is attached to this Petition as **Exhibit “B.”**

16. The 1969 Junkyard Ordinance, *inter alia*, required operators of junkyards to obtain a license from the Town for the operation of a junk yard business and to obtain a certificate of approval for the location of such junkyard.

17. Section 12 of the 1969 Junkyard Ordinance stated:

Sec. 12. Established junk yards. For the purposes of this section the location of junk yards already established shall be considered approved by the governing board of the municipality where located and the owner thereof deemed suitable for the issuance of a license. Within sixty days from the passage of this section, however, the owner shall furnish the governing board the information as to location which is required in an application, together with the license fee, and the governing board shall issue him a license valid until the next April first, at which time such owner may apply for renewal as herein provided.

18. At no point after passage of the 1969 Junkyard Ordinance did any entity apply for a junkyard license under the 1969 Junkyard Ordinance related to the CNY Property.

19. At no point after passage of the 1969 Junkyard Ordinance did any entity apply for renewal of a junkyard license under the 1969 Junkyard Ordinance related to the CNY Property.

20. At no point after passage of the 1969 Junkyard Ordinance did any owner of any portion of the CNY Property challenge the 1969 Junkyard Ordinance as unlawful.

21. Tax Parcel No. 19.00-1.33 (14725 State Route 104) was transferred to an individual named John Wilbur in 1972.

22. Junkyard licenses were “personal to the applicant and not assignable” under Section 8 of the 1969 Junkyard Ordinance, so even if a prior owner had obtained a junkyard license, it would not have applied to Mr. Wilbur upon his taking title to the parcel.

23. At some point between taking title to Tax Parcel No. 19.00-1.33 in 1972 and 1994, John Wilbur began operating a junkyard at the CNY Property.

24. On September 26, 1994, the Town of Sterling issued a Violation Notice to John Wilbur for “operating a junkyard without obtaining a license.” This Notice of Violation is attached to this Petition as **Exhibit “C.”**

25. Neither John Wilbur, nor any entity acting on his behalf, appealed the 1994 Notice of Violation.

26. In 1997 the Town adopted a Zoning Law which affirmed the licensing process laid out in the 1969 Junkyard Ordinance at § 603(11)(c) stating “a commercial junkyard may be established in accordance with the town of sterling junkyard ordinance.” The 1997 Zoning Law is attached to this Petition as **Exhibit “D.”**

27. The 1997 Zoning Law additionally required that any junkyards be in Industrial Planned Development Districts, prohibiting them in the AR District. *Id* at § 506.

28. In 2005, The Town again undertook enforcement activities against Mr. Wilbur at Tax Parcel No. 19.00-1.33, issuing a Notice of Violation on February 10, 2005.

29. Mr. Wilbur responded to this notice of violation by stating that he was “no longer doing any business” and that he was taking steps to dismantle caved-in trailers and remove vehicles.

30. On September 29, 2005, the Town again issued a Notice of Violation, prompting Mr. Wilbur to apply for a building permit to operate a junkyard.

31. On October 17, 2005, the Town Code Enforcement Officer (“CEO”) denied that application because the property was “not zoned for a junkyard.”

32. Mr. Wilbur thereafter applied for a use variance from the Town of Sterling Zoning Board of Appeals (“ZBA”). The ZBA Application and Minutes are attached as **Exhibit “E.”**

33. Mr. Wilbur's application was limited to Tax Parcel No. 19.00-1.33. As the Application itself makes clear, at the time of his application, Tax Parcel No. 19.00-1-35.112 was owned by *Joseph Wilbur*, and Tax Parcel No. 19.00-1-35.111 was owned by G.I.C. Enterprises. *Id.*

34. Mr. Wilbur did not attend his ZBA hearing, and his application was therefore denied. *Id.*

35. Upon information and belief, Mr. Wilbur subsequently appealed the determination that he required a permit based on a claimed nonconforming use predating the 1997 Zoning Law. However, Mr. Wilbur did not address his failure to comply with the 1969 Junkyard Ordinance.

36. If Mr. Wilbur's use was not permitted under the 1969 Junkyard Ordinance, it could not have been a valid preexisting nonconforming use under the 1997 Zoning Law.

37. Despite this omission, the Town issued Mr. Wilbur his first junkyard permit for Tax Parcel No. 19.00-1.33 in approximately September 2006.

38. Mr. Wilbur took title to the remaining two parcels in 2008 and 2009, after the permit was issued.

39. The permit therefore could not have included the additional two parcels.

40. No permits were issued to Mr. Wilbur for either of the other two parcels.

CNY'S OWNERSHIP AND OPERATION OF THE CNY PROPERTY

41. In 2011, CNY purchased Tax Parcel No. 19.00-1.33 from John Wilbur. At that time, upon information and belief, CNY also purchased the other two parcels.

42. CNY thereafter sought approval from the Town Planning Board to continue Mr. Wilbur's use on Tax Parcel No. 19.00-1.33.

43. The minutes from the February 7, 2011 Planning Board meeting reflect this request, stating explicitly that the application pertained to Tax Parcel No. 19.00-1.33. These minutes are attached to this Petition as **Exhibit “F.”**

44. The Planning Board resolved to “recommend the continuation of the grandfathered, non-conforming use status of Wilbur’s junkyard in the applicant’s name for the purposes of addressing existing DEC and Sterling Town Violations before proceeding with the PDD process.”

45. No portion of the resolution pertained to Tax Parcel Nos. 19.00-1-35.111 and 19.00-1-35.112.

46. Even the portion of the resolution which pertained to Tax Parcel No. 19.00-1.33 was unlawful, as junkyard licenses were “personal to the applicant and not assignable” under Section 8 of the 1969 Junkyard Ordinance which was adopted in the 1997 Zoning Law.

47. Based on the February 2011 Planning Board resolution, the Town Board issued to CNY a “non-conforming use permit and transfer license” from Wilbur’s Junkyard to CNY Scrap Processing.”

48. At no point after this resolution did CNY undertake the PDD process.

49. Upon information and belief, CNY received renewals of this permit from 2012 to 2014.

THE CURRENT ZONING

50. On June 23, 2014, the Town adopted the current Land Use Regulations.¹

51. The Land Use Regulations provide numerous uses as permitted in the AR Zoning District either by right, with special conditions, with special use permit, or with site plan review. LUR § 8-7.

¹ Available at <https://www.cayugacounty.us/DocumentCenter/View/10889/Sterling-Land-Use-Regulations--PDF>

52. The LUR also provides that certain uses are “Not Permitted” in the AR District. *Id.*

53. Among those uses not permitted in the AR District is “Junkyard/Recycling Facility.” *See* LUR Table 3.

54. The LUR defines “Junkyard” as “Any place of open storage or deposit where two or more unused vehicles, trailers, equipment or the parts and materials thereof are held. Purpose may be for resale, reclaiming use, or salvage/disposal.”

55. The LUR states that a Junkyard/Recycling Facility is “allowable in an approved [Planned Development District (“PDD”)].

56. LUR § 14-1 states that “the lawful use of any structure or land existing at the effective time of these Land Use Regulations may be continued although such use does not conform with the provisions herein except as otherwise provided in this Article.”

57. LUR § 14-2 states:

A use of land or structure which does not conform to the Regulations herein shall not be altered, reconstructed, extended, or enlarged, except in accordance with the following provisions: A. Such alteration or extension shall be permitted only upon the same lot as in existence at the date the use became nonconforming.

58. LUR § 14-4 states:

Whenever a nonconforming use has been discontinued for two (2) continuous years, such use shall not thereafter be reestablished and any future use shall be in conformity with these Regulations.

THE CNY LAWSUITS

59. In February 2015, the CEO denied the renewal application and directed CNY to cease and desist from any further operation of its scrap processing facility until it was in compliance with the Land Use Regulations.

60. The CEO further revoked CNY’s permit and transfer license.

61. Upon information and belief, CNY did not appeal this determination to the ZBA.

62. Instead, CNY filed a lawsuit in Supreme Court Cayuga County captioned *CNY Scrap Processing, LLC, et al v. Town of Sterling, et al*, Index No. 2015-206 (the “CNY Lawsuit”).

The Complaint in the CNY Lawsuit is attached (with exhibits omitted) as **Exhibit “G.”**

63. The CNY Lawsuit sought injunctive relief and declaratory judgment with respect to the Town’s efforts to shut down CNY’s scrap processing business, which CNY represented as having an address of 14725 State Route 104.

64. The CNY Lawsuit represented that (1) Tax Parcel 19.00-1.33 possessed an address of 14725 State Route 104, (2) Tax Parcel No. 19.00-1-35.112 possessed an address of 14735 State Route 104, and (3) Tax Parcel No. 19.00-1-35.111 possessed an address of “Off State Route 104.”

65. The CNY Lawsuit remained pending from 2015 to 2020.

66. In October 2020, the parties to the CNY Lawsuit entered into a settlement agreement (the “Settlement Agreement”). The Settlement Agreement is attached to this Petition as **Exhibit “H.”**

67. The Settlement Agreement stated the following:

Permitted Property Uses. The Releasors are permitted to use the Property as a Junkyard as that term is defined in the Town of Sterling's 2014 Land Use Regulations, as amended. The Releasors are also permitted to use the Property for those activities, including scrap processing activities, described in the April 27, 2020 letter from Peter Rolph, Esq., attached hereto as Exhibit A. and incorporated as though fully set forth herein, in those areas of the Property historically used for such activities. The Releasors agree that they are not permitted to use the Property for any other use unless it conforms to the use regulations prescribed by the Town of Sterling's 2014 Land Use Regulations for the zoning district in which the Property is located.

68. The referenced April 27, 2020 letter described the CNY Scrap Processing business as being located at 14725 State Route 104.

69. The Town Board entered into the Settlement Agreement without requiring CNY to receive approval via the PDD process, in violation of the LUR.

70. In 2021, CNY requested and received a permit that purported to allow the Scrapyard to operate on all three parcels.

71. Petitioner Morley Flynn appealed the issuance of that permit to the ZBA.

72. On December 16, 2021, the ZBA held a public hearing on Morley Flynn's appeal, and after hearing CNY's opposition, resolved (Resolution attached as **Exhibit "I"**):

“that the Code Enforcement Officer was in error in including the two additional properties, tax map #19.00-1-35.112 and #19.00-1-35.111, for the 2021-2022 building operating permit# 2021-007, and that the Code Enforcement Officer shall provide a corrected building/operating permit to include only tax map #19.00-1-33.”

73. In support of the resolution, the ZBA noted, *inter alia*, “the settlement agreement is not in lieu of Town zoning regulations.”

74. CNY challenged this resolution via Article 78 Petition in Supreme Court, Cayuga County on January 20, 2022, bearing the caption *CNY Scrap Processing, LLC v. Morley Flynn, et al*, Index No. 2022-0042.

75. By Decision and Order dated May 3, 2023, Hon. Thomas G. Leone granted the Petition based solely on the ground that Morley Flynn lacked standing to file the underlying appeal to the ZBA, as at that time he did not own any of the Flynn Property, and Glenn and Leslie Flynn had not joined in the appeal.

SUBSEQUENT DEVELOPMENTS

76. On November 20, 2023, the Town Board issued a resolution authorizing the Town Supervisor to execute the MOU. The Minutes of the November 20, 2023 Town Board Meeting, including the Town Board Resolution, are attached to this Petition as **Exhibit "J."**

77. Petitioners appealed the resolution and the MOU to the ZBA on January 19, 2024.

78. Petitioners in their appeal recognized that an appeal to the ZBA from a decision of the Town Board may not lie, but filed the appeal out of an abundance of caution to preserve their rights.

79. Subsequent to the filing of their appeal, Petitioners were informed that a new permit for all three parcels had been issued to CNY on March 5, 2024.

80. Petitioners intend to appeal the issuance of that permit, and reserve their rights to amend this Petition to include causes of action related to that appeal.

PROCEDURAL ISSUES

81. Petitioners have exhausted available administrative remedies. Though Petitioners have also filed a ZBA appeal related to the Town Board's conduct, such appeal was filed out of an abundance of caution, and the instant Petition is the proper mechanism to review the Town Board's actions.

82. Petitioners have made no previous application for the relief sought in this Petition.

83. Petitioners have no adequate remedy at law.

AS AND FOR A FIRST CAUSE OF ACTION FOR ANNULMENT OF THE TOWN BOARD RESOLUTION AND MOU PURSUANT TO THE TOWN LAW AND THE LUR, PETITIONERS ALLEGE AS FOLLOWS:

84. Petitioners repeat and reallege the allegations of paragraphs "1" through "83" of this Petition, as if set forth in this paragraph at length.

85. The Town Board Resolution and the MOU do not comply with the LUR.

86. Pursuant to the LUR, Junkyards are not permitted in the AR District, and must be approved under the PDD Process.

87. No portion of the CNY Property has been reviewed under or received any approval under the PDD Process.

88. Nor do any portions of the CNY Property qualify as legal preexisting nonconforming junkyards, as based on the facts recited above, they were not lawfully being used as such at the time of the enactment of the LUR.

89. Even if Tax Parcel No. 19.00-1-33 was lawfully being used as a junkyard prior to passage of the LUR (which Petitioners maintain, it was not), such use could not be expanded to the other two lots, as they are not the “same lot as in existence at the date the use became nonconforming.”

90. Further, the Town Board was without authority to issue the Town Board Resolution or enter into the MOU, or the Town Board Resolution and MOU are of no legal effect, as the Town Board is without authority to interpret the LUR.

91. The ZBA, which is the proper entity to interpret the LUR, has already determined that CNY cannot lawfully operate the additional two parcels as part of its Scrapyard.

92. Pursuant to LUR § 12-4(C), Planning Board Review and Recommendation is required before PDD approval can be issued, but no such process occurred.

93. Based upon the above, the Town Board Resolution and MOU should be annulled.

**AS AND FOR A SECOND CAUSE OF ACTION FOR
ANNULMENT OF THE TOWN BOARD RESOLUTION AND MOU
PURSUANT TO SEQRA,
PETITIONERS ALLEGE AS FOLLOWS:**

94. Petitioners repeat and reallege the allegations of paragraphs “1” through “93” of this Petition, as if set forth in this paragraph at length.

95. The Town Board performed no review under SEQRA prior to adopting the Town Board Resolution or entering into the MOU.

96. The Town Board Resolution and MOU purported to approve use of the additional parcels as Junkyards, which obviously carries with it significant adverse environmental impacts.

97. The operation of the Scrapyard on these parcels is an Action which is subject to SEQRA and the Town Respondents are agencies which are subject to SEQRA.

98. Accordingly, before issuing an approval for the Scrapyard the Town Respondents are required to perform SEQRA review.

99. Under SEQRA, whether the Project is a Type I or unlisted action, a lead agency is required to review an Environmental Assessment Form and make a determination of significance, pursuant to 6 N.Y.C.R.R. § 617.7, and require an EIS if the Scrapyard might have at least one significant impact on the environment, prior to granting any Approvals. See 6 N.Y.C.R.R. § 617.3(a).

100. A coordinated SEQRA review should be conducted before any approvals can be given for the Scrapyard, including a determination of significance after submission of an Environmental Assessment Form for the Scrapyard and designation of a lead agency.

101. That SEQRA review should consider all potential environmental impacts of the Scrapyard, including but not limited to impacts related to environmental contamination, aesthetics, community character, stormwater drainage, traffic, noise, and construction.

102. Accordingly, this Court should annul any purported approvals due to the failure to comply with SEQRA.

**AS AND FOR A THIRD CAUSE OF ACTION FOR
VIOLATION OF THE OPEN MEETINGS LAW,
PETITIONERS ALLEGE AS FOLLOWS:**

103. Petitioners repeat and reallege the allegations of paragraphs “1” through “102” of this Petition, as if set forth in this paragraph at length.

104. Prior to issuing the Town Board Resolution and executing the MOU, the Town Board voted to enter into executive session to discuss “pending litigation.”

105. No reference to specific “pending litigation” was provided.

106. In fact, at the time the Town Board entered into executive session, there was no pending litigation related to the CNY matter.

107. Public Officers Law § 105(1)(d) permits a public body to enter into executive session to discuss “proposed, pending or current litigation.”

108. The minutes of the Town Board meeting do not reflect any further discussion that occurred outside of the Executive Session.

109. As a result, any approvals were adopted in violation of the Open Meetings Law and must be annulled and vacated.

110. Pursuant to Public Officers Law § 107(2), Petitioners are entitled to reasonable attorney fees.

**AS AND FOR A FOURTH CAUSE OF ACTION FOR
VIOLATION OF THE GENERAL MUNICIPAL LAW,
PETITIONERS ALLEGE AS FOLLOWS:**

111. Petitioners repeat and reallege the allegations of paragraphs “1” through “110” of this Petition, as if set forth in this paragraph at length.

112. The Town Board adopted the Town Board Resolution and resulting MOU without following the prescribed PDD process provided for in LUR Article XII.

113. Had the Town Board properly undertaken PDD review, the matter would have required review by the Cayuga County Planning Board pursuant to LUR § 12-4(C) and General Municipal Law § 239-m.

114. The Town Board did not refer the matter to the County Planning Board.

115. Therefore, any resulting approvals were arbitrary, capricious, and illegal, and must be annulled as they were issued in violation of the LUR and General Municipal Law § 239-m.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR
FOR A DECLARATORY JUDGMENT,
PETITIONERS ALLEGE AS FOLLOWS:**

116. Petitioners repeat and reallege the allegations of paragraphs “1” through “115” of this Petition, as if set forth in this paragraph at length.

117. Based on the above, this Court should issue a declaratory judgment, pursuant to CPLR § 3001, that the Town Respondents were without power to adopt the Town Board Resolution or the MOU, and that the Scrapyard lacks the necessary approvals to operate.

118. Based on the above, the Court should also issue a declaratory judgment, pursuant to CPLR § 3001, that (1) CNY’s use of any of the parcels that constitute the CNY Property is not a lawful nonconforming use, or alternatively, (2) CNY’s use of Tax Parcel Nos. 19.00-1-35.111 and 19.00-1-35.112 as part of its Scrapyard does not constitute a lawful nonconforming use.

**AS AND FOR A SIXTH CAUSE OF ACTION
PETITIONERS ALLEGE AS FOLLOWS:**

119. Petitioners repeat and reallege the allegations of paragraphs “1” through “118” of this Petition, as if set forth in this paragraph at length.

120. Upon information and belief, and/or as may be further determined upon filing of the record of proceedings, Respondents’ conduct may otherwise be in violation of other laws, regulations, and procedures, and/or arbitrary and capricious.

WHEREFORE, Petitioners respectfully request that this Court grant an Order and Judgment, pursuant to CPLR Article 78 and § 3001, the New York State Town Law, the Land Use Regulations, SEQRA, the Open Meetings Law, the New York State General Municipal Law, and/or other legal authorities as follows: (1) annulling as illegal, arbitrary, and/or capricious the Town Board Resolution and MOU; (2) declaring that the Town Respondents were without power to adopt the Town Board Resolution or the MOU and that the Scrapyard lacks the necessary approvals to

operate; (3) declaring that (i) CNY's use of any of the parcels that constitute the CNY Property is not a lawful nonconforming use, or alternatively, (ii) CNY's use of Tax Parcel Nos. 19.00-1-35.111 and 19.00-1-35.112 as part of its Scrapyard does not constitute a lawful nonconforming use; (4) awarding Petitioners their reasonable attorney fees under the Open Meetings Law; and (5) granting such other and further relief as the Court deems just and proper.

Dated: Rochester, New York
March 20, 2024


KNAUF SHAW LLP
Attorneys for Petitioners-Plaintiffs
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Eamon Danieu, Esq., of counsel
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VERIFICATION

JONATHAN R. TANTILLO, an attorney admitted to practice in the State of New York, affirms under penalty of perjury that he is the attorney for Petitioners-Plaintiffs, who are not in Monroe County where he maintains his office; that he has read the annexed Petition and Complaint; and that it is true to his knowledge, except for matters stated to be alleged upon information and belief, and as to those matters he believes them to be true.

Dated: March 20, 2024



JONATHAN R. TANTILLO

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made by and between The Town of Sterling, 1290 State Route 104A, Sterling, New York 13156 (“Town”), CNY Scrap Processing, LLC, 2411 Wetmore Road, Branchport, New York 14418 (“CNY Scrap”), and Carrier Salvage & Recycling, LLC, 2440 Wetmore Road, Branchport, New York 14418 (“Carrier”), each a party hereto and collectively the “Parties” to the Memorandum of Understanding, the terms of which are as follows:

WHEREAS, the Town is a municipal corporation located in the County of Cayuga, State of New York, and has its office for conducting business located at 1290 State Route 104A, Sterling, New York 13156; and

WHEREAS, since approximately May 25, 2011, CNY Scrap has owned property known as 14725 State Route 104, Martville, New York, 13111 (hereinafter “the Property”), and operates a scrap processing facility and junk yard on the Property; and

WHEREAS, the Property consists 19.62 acres in total, and contains three parcels identified by the tax identification numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112; and

WHEREAS, on or about February 24, 2015, CNY Scrap commenced a lawsuit against the Town in Cayuga County Supreme Court (Index #2015-206) wherein it challenged a Cease and Desist order issued by the Town’s Code Enforcement Officer with respect to scrap processing activities at the Property (“the Litigation”); and

WHEREAS, on or about October 14, 2020, the Parties agreed to discontinue the Litigation and executed a “Settlement Agreement and Release” (“Settlement Agreement”) a copy of which is attached hereto as Exhibit “A”, wherein the parties agreed, *inter alia*, that

CNY Scrap and Carrier would be permitted to use the property located at 14725-14735 State Route 104 as a Junkyard, as that term is defined in the Town's 2014 Land Use Regulations, as amended, and for those activities, including, and scrap processing activities, described in the April 27, 2020 letter from Peter Rolph, Esq. attached to the Settlement Agreement, in those areas of the property historically used for such activities, so long as they maintained compliance with the terms stated in the Settlement Agreement relative to hours of operation, scope of activities, maintenance of the property, etc.; and

WHEREAS, the Parties wish to clarify the terms of the Settlement Agreement to reflect the intention of the Parties when it was negotiated and executed that its terms and conditions apply to all three parcels (tax identification numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112) and to remove any ambiguity regarding its interpretation;

NOW, THEREFORE, the Parties have reached the following understanding:

1. In the interest of further amplifying and clarifying the terms and scope of the aforementioned Settlement Agreement, without adding or removing any of the terms or conditions stated in the Settlement Agreement, and without altering or amending any of the terms or conditions stated in the Settlement Agreement, the parties now state their agreement and affirmation that the Settlement Agreement and its various terms and conditions shall apply and do apply to the entire Property, consisting of the aforementioned three parcels identified by the following tax identification numbers: 19.00-1-33; 19.00-1-35.111; and 19.00-35.112.

2. More specifically, CNY and Carrier may continue to use the Property consisting of the aforementioned three parcels (tax ID numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112) in a manner consistent with its long historical use, for the purposes of operating a scrap processing facility and junkyard, subject to provisions of the Scrap Processing Law (New York

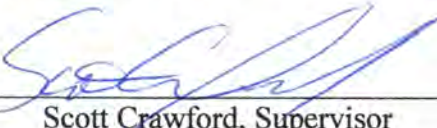
General Business Law Section 69), Junkyard Law (New York General Business Law Section 136), and such other rules and regulations of the Town of Sterling and/or the State of New York that may apply.

3. By Resolution dated 11/30/2023, 2023, a copy of which is attached hereto and incorporated by reference, the Sterling Town Board agreed to execute this Memorandum of Understanding and authorized the Town Supervisor to execute same on behalf of the Town.

Dated: 11/20/2023, 2023

TOWN OF STERLING

CNY SCRAP PROCESSING, LLC


By: Scott Crawford, Supervisor

By: _____

CARRIER SALVAGE &
RECYCLING, LLC

By: _____

EXHIBIT B

ORDINANCE No. 2

OF

TOWN OF STERLING

FOR THE REGULATION OF AUTOMOBILE JUNK YARDS.

BE IT RESOLVED AND ORDAINED by the Town Board of the Town of Sterling, Cayuga County, New York as follows:

Sec. 1. Definitions. For the purposes of this section, "junk yard" shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles provided, however, the term junk yard shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap and whose principal produce is scrap iron steel or nonferrous scrap for sale for remelting purposes only.

"Municipality" as used in this section shall mean a city of less than one million in population, town or village.

"Motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

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Sec. 2. Requirement for operation or maintenance. No person shall operate, establish or maintain a junk yard until he (1) has obtained a license to operate a junk yard business and (2) has obtained a certificate of approval for the location of such junk yard.

Sec. 3. Application for license and certificate of approval. Application for the license and the certificate of approved location shall be made in writing to the governing board of the municipality where it is proposed to locate the junk yard, and, in municipalities having a zoning ordinance and a zoning board, the application shall be accompanied by a certificate from the zoning board that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of such zoning ordinance. The application shall contain a description of the land to be included within the junk yard.

Sec. 4. Hearing. A hearing on the application shall be held within the municipality not less than two nor more than four weeks from the date of the receipt of the application by the legislative body. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in a newspaper having a circulation within the municipality, which publication shall be not less than seven days before the date of the hearing.

Sec. 5. License requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish or maintain the junk yard. In considering such application, it shall take into account the suitability of the applicant with reference to his ability to comply with the

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fencing requirements or other reasonable regulations concerning the proposed junk yard, to any record of convictions for any type of larceny or receiving of stolen goods, and to any other matter within the purposes of this section.

Sec. 6. Location requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the junk yard. In passing upon same, it shall take into account, after proof of legal ownership or right to such use of the property for the license period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

Sec. 7. Aesthetic considerations. At the hearing regarding location of the junk yard, the governing board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the governing board may consider collectively the type of road servicing the junk yard or from which the junk yard may be seen, the natural or artificial barriers protecting the junk yard from view, the proximity of the proposed junk yard to established residential and recreational areas or main access routes thereto, as well as the reasonable

availability of other ble sites for the junk yard.

Sec. 8. Grant or denial of application appeal. After hearing the governing board shall, within two weeks, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license, including the certificate of approved location, shall be forthwith issued to remain in effect until the following April first. Approval shall be personal to the applicant and not assignable. Licenses shall be renewed thereafter upon payment of the annual license fee without hearing, provided all provisions of this chapter are complied with during the license period, the junk yard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods. The determination of the governing board may be reviewed under article seventy-eight of the civil practice law and rules.

Sec. 9. License fees. The annual license fee shall be fifteen dollars to be paid at the time the application is made and annually thereafter in the event of renewal. In event the application is not granted, the fee shall be returned to the applicant. A municipality, in addition to the license fee, may assess the applicant with the costs of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and may make the license conditional upon payment of same.

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Sec.10. Fencing. Before use, a new junk yard shall be fenced facing the road with a fence of adequate height necessary to screen the same from view, and with a suitable gate which shall be closed and locked except during the working hours of such junk yard or when the applicant or his agent shall be within. Such fence shall be erected not nearer than fifty feet from a public highway. All motor vehicles and parts thereof stored or deposited by the applicant shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts and all burning of same within the vicinity of the junk yard shall be accomplished within the enclosure.

Where the topography, natural growth of timber or other considerations accomplish the purposes of this chapter in whole or in part, the fencing requirements hereunder may be reduced by the legislative body, upon granting the license, provided, however, that such natural barrier conforms with the purposes of this chapter.

Sec. 11. Effect of local ordinances. This section shall not be construed to affect or supercede zoning ordinances or any other ordinances for the control of junk yards now in effect or hereafter enacted in any municipality within the proper exercise of the police power of such a municipality and shall not be deemed to apply to any municipality which has any ordinance or regulation to license or regulate junk yards.

Sec. 12. Established junk yards. For the purposes of this section the location of junk yards already established shall be considered approved by the governing board of the municipality where located and the owner thereof deemed suitable for the is-

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suance of a license. Within sixty days from the passage of this section, however, the owner shall furnish the governing board the information as to location which is required in an application, together with the license fee, and the governing board shall issue him a license valid until the next April first, at which time such owner may apply for renewal as herein provided. Such owner shall comply with all other provisions of this section including the fencing requirements set forth in subdivision eleven of this section.

Sec. 13. Violations. Violators of any of the portions of this section shall be guilty of an offense punishable by a fine not exceeding one hundred dollars and each week that such violation is carried on or continues shall constitute a separate violation.

Sec. 14. This ordinance shall take effect ten days after the publication and posting of the adoption thereof.

Adopted March 3, 1969

EXHIBIT C

NY STATE FIRE & BUILDING UNIFORM CODE DIV. TOWN OF STERLING, NY

VIOLATION NOTICE

To: Wilkey, John J.
 LAST NAME FIRST INITIAL
1117 State Route 104
 STREET ADDRESS
Martville NY 13111
 CITY STATE ZIP

Ordinance #2 Automobile Junk Yards

You are hereby ordered to correct the violation

of Article _____ Part _____ Section 2
 Sub-Division _____ of the New York State Uniform Fire Prevention and
 Building Code and/or Administration and Enforcement Law to wit: the
 allegation of Operating a Junk Yard without
obtaining a license

**NOTICE: FAILURE TO CORRECT THIS
 VIOLATION WITHIN TIME LIMIT
 STATED MAY RESULT IN
 APPROPRIATE LEGAL ACTION
 AGAINST YOU OR YOUR
 ESTABLISHMENT AS DIRECTED
 BY LAW.**

on or before the 21st day of September 19 911
 Issued this _____ day of _____ 19 _____
 Enforcement Officer P. S. G. [Signature]

OK LSC KE

EXHIBIT D

EXHIBIT E

ZONING BOARD OF APPEALS CHECK LIST

NAME: John Wilbur

TAX MAP#: 19.00-1-33

1. 10/21/05 Building Permit Application Denied
2. 10/21/05 ZBA Application received and fee paid to Town Clerk
3. Schedule Hearing ~ Notify Town Clerk of date
4. Inform ZBA Members of Hearing Date
5. Publish legal notice in paper at least 5 days prior to hearing
6. Send legal notice to all adjacent and across the street neighbors
7. NA Notify Cayuga County Planning if Property is within 500 ft
8. Distribute info package to all ZBA Members
9. Have sign-in sheet at Hearing
10. 11/21/05 Resolution to all required parties
 - a. applicant
 - b. ZBA members
 - c. CEO
 - d. Supervisor
 - e. applicant's file
 - f. ZBA file
 - g. ZBA official minute book (Town Clerk)

Date of Application 10/21/05

Date of Public Hearing 11/17/05

- Denied -

not published in paper - **MUST Rehear**

October 17, 2005

Town of Sterling
Zoning Board of Appeals

Please find enclosed my application for a building permit and a zoning board of appeals application for a junkyard license for my property located at 14725 St. Rt. 104, Martville, tax # 19.00-1-33.

Per previous discussions and correspondence with Richard Green, I am trying to comply with the Town of Sterling Law for the Regulation of Automobile Junkyards as quickly as I can. To this end I have had removed by a commercial car crusher more than 200,000 lbs. of junk cars during the summer just past. I am continuing to dismantle cars and remove the steel and will do so throughout the upcoming fall and winter.

I am applying for a property use variance for a junkyard in order to continue the dismantling and removal of vehicles.

Accordingly, I will construct a fence to supplement the already-existing natural barriers (Sections 7 and 10) and all work will be done behind it. The building already on the property is 100' from the road, and the fence will also be that distance from Rt. 104. No unregistered automobiles will be left in front of the fence or visible from the road.

It is my intention to complete bringing the property into compliance with the town law, and I hope that you will allow me the time to do so.

John J. Wilbur
P.O. Box 78
Red Creek, NY 13143

Town of Sterling
1290 State Route 104A
Sterling, NY 13156
Joan Kelley, Supervisor

Zoning Board of Appeals
phone: (315)947-6245
Fax: (315)947-5119
email: szoning@twny.rr.com

ZONING BOARD OF APPEALS APPLICATION

1. Address of property: 14725 St. Rt. 104 Mantville NY 13111
2. Tax Map #: 19.00-1-33
3. Property Dimensions: _____ Lot Frontage _____ Lot Depth _____ Total Sq. Ft. 3.70 Acres
4. Owner of record is: John J. Wilbur Phone: 754-8894
PO Box 78 Red Creek NY 13143
(Address) (Village/Town) (State) (Zip)
5. Applicant's Name: John J. Wilbur Phone: 754-8894
PO Box 78 Red Creek NY 13143
(Address) (Village/Town) (State) (Zip)
6. Requesting Use Variance Area Variance _____ Other _____
7. All existing uses on the property are: vehicle storage
8. Proposed uses on the property, if application is approved are: junkyard to
dismantle above stored vehicles
9. Area Variance requested: Front _____ Rear _____ Side _____ Side _____
10. Date Building Permit was submitted: 10/21/2005 Date Denied: 10/21/2005

THE APPLICANT'S SIGNATURE BELOW INDICATES THE INFORMATION CONTAINED IN THIS APPLICATION AND ON ANY ACCOMPANYING DOCUMENTS IS TRUE AND ACCURATE.

John J. Wilbur
(Name of Applicant)

(Property Owner, if different)
John J. Wilbur Date: 10-21-05
(Signature of Applicant)

Date: _____
(Signature of Owner, if different)

Sterling ZONING BOARD OF APPEALS Public Hearing
November 21, 2005

A Public Hearing of the Town of Sterling Zoning Board of Appeals was held on Thursday, November 17, 2005 at the Sterling Town Hall at 7:00 PM with the following members present:

- Gene Schoonmaker-Franczek ~ Chairman
- Marco Maurizio ~ Member
- Josh Sanders ~ Member
- Bill Irwin ~ Member
- Ray Watts ~ Member

Also present: Lezli Parsons, Zoning Board of Appeals Clerk, Nicholas Melnick, neighbor, Allen & Sandra McDonald, applicant, and Paul Hicks.

Chairman Schoonmaker-Franczek called the meeting to order at 7:00 PM.

McDonald Use Variance Hearing

Chairman Schoonmaker-Franczek read the legal notice that was printed in the Post Herald. "Notice is hereby given that the Zoning Board of Appeals of the Town of Sterling will hold a Public Hearing on Thursday, November 17th at 7:00 p.m. at the Sterling Town Hall, 1290 State Route 104A, Sterling, NY 13156. An Application by Sandra McDonald of 16173 Ford Drive, Sterling, NY will be considered for a Use Variance from Section 402 of the Mobile Home Law in order to live in a travel trailer located at 16173 Ford Drive, Sterling, NY 13156 tax map # 2.06-1-19."

He then called the Public Hearing to order at 7:05.

The Town's position on the McDonald's Use Variance Application was presented by Richard J. Greene, Sterling Building and Fire Inspector. A historical timeline was compiled by Mr. Greene and presented to the Board. This outlined the Building Permit and Zoning Board of Appeals processes that the McDonalds have been through in the past. Mr. Greene stated that a mobile home and a travel trailer have two distinct definitions and that the McDonalds are living in a travel trailer that by the Zoning Law of the Town of Sterling is defined as temporary living quarters.

Nick Melnick, the McDonald's neighbor stated that he would not object to the McDonalds living on the Property seasonally on the condition that the said property would be cleaned up.

Chairman Schoonmaker-Franczek stated that the McDonalds had the burden to prove unnecessary hardship in order to be granted a use variance to live in a camping trailer on a yearly basis.

Member Ray Watts observed that even if the McDonalds could prove three of the four hardships, they could never demonstrate that the hardship was not self-created as they purchased the property knowing that it was a seasonal use property.

Mr. & Mrs. McDonald stated that if it was an issue with the size of the property, they could move the camping trailer across the road to the adjoining property which is larger.

Mr. Greene explained that the issue was not with the size of the property but with the Zoning Law that stated that travel trailers are by definition for temporary use.

Chairman Schoonmaker-Franczek stated that this was a Type II SEQRA action as there is no significant environmental impact, no other action is required. He also asked if any other persons wished to speak. There was no response from the audience. The Chairman then closed the Public Hearing at 7:55pm.

Member Watts made a motion to deny the use variance application due to self-created hardship. The motion was seconded by Member Sanders. A roll call vote was taken:

Chairman Schoonmaker-Franczek	Aye
Member Maurizio	Aye
Member Watts	Aye
Member Irwin	Abstain
Member Sanders	Aye

Upon facts presented the McDonald Use Variance Request is hereby **denied**. The criterion for the use variance was not met in that it was a self-created hardship.

RESOLUTION 2005-4

BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Sterling, upon the facts presented and the determination made, that the application for a use variance from Section 402 of the Mobile Home Law to live in a travel trailer located at 16173 Ford Drive, Sterling, NY 13156 tax map # 2.06-1-19 is hereby **DENIED**.

John Wilbur Use Variance Public Hearing

Chairman Schoonmaker-Franczek read the legal notice publicly.

“Notice is hereby given that the Zoning Board of Appeals of the Town of Sterling will hold a Public Hearing on Thursday, November 17th at 7:00 p.m. at the Sterling Town Hall, 1290 State Route 104A, Sterling, NY 13156. An Application by John J. Wilbur of PO Box 78, Red Creek, NY will be considered for a Use Variance from Section 506 of the Zoning Law in order to operate a junkyard located at 14725 State Route 104, Martville, NY 13111 tax map # 19.00-1-33”

Chairman Schoonmaker-Franczek then opened the Public Hearing at 8:05 pm.

The Town's position on the John Wilbur Use Variance Application was presented by Richard J. Greene. Mr. Greene presented the Board with a historical timeline of Mr. Wilbur's Property.

Chairman Schoonmaker-Franczek noted that Mr. Wilbur failed to appear at the Hearing and was therefore unable to demonstrate the required hardships used to determine the granting of a variance.

Chairman Schoonmaker-Franczek made a motion to deny Mr. Wilbur's use variance based on failure to prove the necessary hardship. The motion was seconded by Member Sanders. A roll call vote was taken:

Chairman Schoonmaker-Franczek	Aye
Member Maurizio	Aye
Member Watts	Aye
Member Irwin	Aye
Member Sanders	Aye

Upon facts presented the Wilbur Use Variance Request is hereby DENIED. The criterion for the use variance was not met in that Mr. Wilbur failed to prove hardship.

RESOLUTION 2005-5

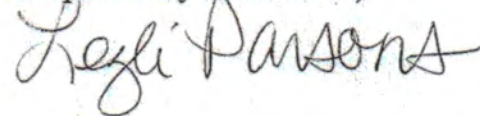
BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Sterling, upon the facts presented and the determination made, that the application for a use variance from Section 506 of the Town of Sterling Zoning Law to operate a junkyard in a Agriculture/Residential Zoning District located at 14725 State Route 104, Martville, NY 13111 tax map # 19.00-1-33 is hereby DENIED.

Marco Maurizio motioned to accept the October 11, 2005 minutes. Motion seconded by Bill Irwin.

Member Sanders moved to adjourn the meeting, the motion was seconded by Chairman Schoonmaker-Franczek

The ZBA meeting was adjourned at 8:35 PM.

Respectfully submitted,



Lezli Parsons
Zoning Board of Appeals Clerk

ZONING BOARD OF APPEALS
TOWN OF STERLING

IN THE MATTER OF THE APPLICATION OF
John Wilbur
FOR A USE VARIANCE RESOLUTION 2005-5

WHEREAS, the Applicant, John Wilbur has appealed to the Zoning Board of Appeals for a USE VARIANCE from Section 506 of the Zoning Law in order operate a junkyard located at 14725 State Route 104, Martville, NY 13111 tax map #19.00-1-33 and,

WHEREAS, notice of public hearing was duly published in the official newspaper of the Town of Sterling at least (5) days prior to the date of such public hearing, and all additional notices thereof having been made as required by law, and

WHEREAS, a public hearing was held on Thursday, November 17, 2005 upon the above referenced matter, and,

WHEREAS, at said hearing all those interested in said variance were heard either in favor of or in opposition there to, and,

The Board has relied on verbal representations made by the applicants during the course of this proceeding as noting in the applicable Board Minutes. The validity of these statements are expressly made a condition of this approval.

NOW THEREFORE, upon motion duly made by Chairman Schoonmaker-Franczek and seconded by Member Sanders,

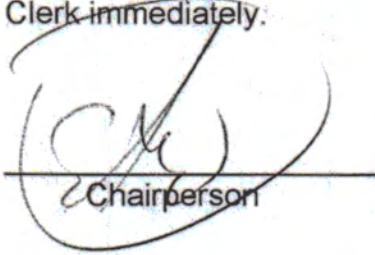
BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Sterling, upon the facts presented and the determination made, that the application for a use variance by John Wilbur from Section 506 of the Zoning Law to operate a junkyard located at 14725 State Route 104, Martville, NY 13156 tax map# 19.00-1-33 is hereby DENIED. The four hardship criteria for a use variance were not demonstrated by Mr. Wilbur.

A roll call vote was taken:

Gene Schoonmaker-Franczek, Chairman	Aye
Bill Irwin, Member	Aye
Marco Maurizo, Member	Aye
Raymond Watts, Member	Aye
Joshua Sanders, Member	Aye

ADOPTED 5 AYES 0 NAYS 0 ABSTENTIONS

The Board hereby authorizes and directs the Chairperson to execute a copy of this resolution to forward the copy to the applicant. The clerk is hereby authorized and directed to file an executed copy of this resolution with the Town Clerk immediately.



Chairperson

11/17/05
Date

- Cc: Applicant
Supervisor
Town Board
Zoning Board of Appeals
Code Enforcement Officer



1290 State Rte. 104A
Sterling, New York 13156

Clerk (315) 947-5666
Fax (315) 947-5119

Notice is hereby given that the Zoning Board of Appeals of the Town of Sterling will hold a Public Hearing on Thursday, November 17th at 7:00 p.m. at the Sterling Town Hall, 1290 State Route 104A, Sterling, NY 13156. An Application by John J. Wilbur of PO Box 78, Red Creek, NY will be considered for a Use Variance from Section 506 of the Zoning Law in order to operate a junkyard located at 14725 State Route 104, Martville, NY 13111 tax map # 19.00-1-33.

Any person or persons wishing to be heard in favor or opposition of said application may appear in person or by other representation at said time and place.

By the order of the Sterling Zoning Board of Appeals
Lezli Parsons, Clerk

John Wilbur
1290 State Route 104A
Tax Map #: 19.00-1-33

2/10/05 CEO issued a Notice of Violation that the Property at 1290 State Route 104A was being used as a junkyard. Although permitted to operate as a "Junk Yard", Mr. Wilbur had not enclosed the "Junk Yard" with a fence of adequate height and suitable gate. Upon further investigation, CEO determined that Mr. Wilbur had not paid an Annual License Fee for an unknown number of years.

3/12/2005 CEO received letter from Mr. Wilbur stating that he is "no longer doing any business" and that he is taking steps to dismantle caved-in trailers and remove vehicles.

9/29/2005 CEO sent Notice of Violation and appearance ticket for violations of Property Maintenance Code of New York State, Section 302.8, Motor Vehicles, Section 302.1, Sanitation and rubbish, and Section 305.1 Accumulation of Rubbish and Garbage. Also, he was cited for violation of Zoning law of April 14, 1997, Town of Sterling, Article VI, Section 603, Special Conditions.

10/17/2005 Mr. Wilbur applied for a Building Permit to operate a junkyard.

10/17/2005 CEO denied Application due to the fact that the Property is not zoned for a junkyard.

10/17/2005 Mr. Wilbur applied to the ZBA for a use variance that would apply him to operate a Junk Yard on the subject Property.

If you issue a Certificate to Operate a Junk Yard, the final approval to establish this Junk Yard would be with the Town Board. If you do not issue a Certificate to Operate a Junk Yard, does not proceed, and Mr. Wilbur would have to return to the Justice Court to answer the Notice of Violation dated 9/29/2005.

EXHIBIT F

TOWN OF STERLING PLANNING BOARD MEETING
February 7, 2011

A regular meeting of the Town of Sterling Planning Board was held on Monday February 7, 2011 at the Sterling Town Hall at 7:00 pm with the following members present:

- o June Ouellette ~ Chairman
 - o Sue Allen ~ Member
 - o Joshua Sanders ~ Member
 - o Grover Horn ~ Member
- Excused: Vern Bishop

Also Present: Robert Barber Jr., Kevin & Shelley Carrier with Pat DeAndre of CNY Scrap Processing LLC, Jean Goulet, Supervisor Lonnie Palmieri and Charles Hendricks. Chairman Ouellette called the meeting to order at 7:00 PM.

CORRESPONDENCE

- > Towns & Topics
- > Planning Commissioners Journal
- > Letter- Cayuga County Water & Sewer Authority regarding sewer district #2.

OLD BUSINESS

Cypris Inc. - Mark Podlesh - PDD (5.19-1-1.1)

The applicants were sent an example package of the Woodworth Subdivision to assist in completing the PDD application for their project on property between Ingersol Road and West Bay Road. Mr. Podlesh called the office after receiving the information and discussed the format as well as stated that he would not be at the February meeting but may be back to review the package before formally presenting to the Town Board.

NEW BUSINESS

Jean Goulet, Executor Bloomquist Estate - Minor Subdivision (18.00-1-39)

Mrs. Goulet appeared before the Board to review the survey map for a subdivision of property at 14328 Wilde Road. The property has a total of 171 acres with a 30 acre chunk on the east side of the road which is the parcel they want to subdivide and sell. A quick review of the map deemed it as unacceptable because the property in its entirety is not shown - only the 30 acre parcel is detailed. The applicant was told that she'll need to have the maps corrected and that a scale other than 1" = 100' will be acceptable due to the large size of the property. If the maps are correctly drawn with all the details on the survey checklist included, then possibly a waiver of review and approval would be in order at the next meeting on March 7th.

Robert Barber Jr. - Preliminary Meeting - Special Use Permit (19.00-1-18)

Mr. Barber presented his completed application to the Board. His questions on the short form EAF were addressed by the Board and the form was completed. The site plan map was reviewed and the existing building to be used has more than adequate setback from the road and is large enough to house the proposed auto welding, restoration and fabrication business completely inside. There are no physical changes to be made to the building, no signage, no new parking or lighting to be added - the site plan was acceptable and a Public Hearing was scheduled for March 7th at 7:00 pm. The applicants were told to file the application with the Town Clerk in the next 2 weeks for processing.

Kevin & Shelley Carrier - Wilbur Junkyard "Rehabilitation" (19.00-1-33)

The Carrier's have been before the Town Board with plans for purchasing the Wilbur Junkyard off of State Route 104 and filing a PDD to operate their expanding business - CNY Scrap Processing LLC. The Carriers stated that their research shows a need in this area for their

services, currently 20% of their business in Penn Yann is from this area for junk cars – the closest locations currently are Syracuse or Auburn. Supervisor Palmieri was also present and commented that the Town Board had met with the Carriers and were in favor of the project for Sterling and that a discussion with the Town Attorney suggested that a PDD be considered because of the size of the resulting purchase as well as the addition of services offered by CNY Scrap Processing. The property does have a grandfathered status for a junkyard but has several violations of the Town Code as well as DEC violations which will need to be addressed. The Carriers explain that they have been in contact with the DEC and requested that the property be researched for a complete and current status report so they can assess the clean-up process required. Their company has completed similar and larger cleanups and feel that they can adequately dispose of the many antique vehicles, boats, tires, fluids, construction debris and mobile home frames with little problem. Once the property is reclaimed, the applicants plan to combine the three properties as one, approximately 22 acres, and operate with little change to the existing structure. The sight distance for the driveway is ½ mile to the east and a mile to the west, some shrubs at the entrance are to be removed to increase these distances and mud/dirt issues with entering the roadway have already been addressed – they have removed approximately 180 tons from the site with no problems thus far and do not predict this volume in the future. Screened fencing (8 foot in height) with natural growth will be maintained and the potential noise level is no more than a farm excavator or other like equipment therefore no issues are expected to develop. They also plan on providing a new scale with placement outside of the fencing for local farmers to use. The applicants are at tonight's meeting to request a recommendation from the Planning Board to the Town Board to continue the grandfathered status operating permit for Wilbur's Junkyard in the applicants name to complete the clean-up process. Some discussion ensued amongst the Board Members regarding an Industrial PDD and its requirements which will be researched by the Board in preparation of an upcoming application.

Resolution 2011-02

A motion was moved by Chairman Ouellette to recommend the continuation of the grandfathered, non-conforming use status of Wilbur's junkyard in the applicants name for the purposes of addressing existing DEC and Sterling Town Violations before proceeding with the PDD process. The motion was seconded by Member Horn.

Roll call vote:

<i>Chairman Ouellette</i>	<i>aye</i>
<i>Member Allen</i>	<i>aye</i>
<i>Member Sanders</i>	<i>aye</i>
<i>Member Horn</i>	<i>aye</i>

4 Ayes, 0 Nays and 0 Abstentions – Motion Approved.

The clerk will draft a letter of the approved recommendation and submit to the Town Clerk for scheduling on the agenda for Town Board meeting on February 22nd.

Charles Hendricks – Sketch Plan Conference

Mr. Hendricks appeared before the Planning Board to discuss the process he will need to follow to subdivide 2 acres from his property on State Route 104A. The applicant would like to build a personal residence on his property, which is a Manufactured Home Park, and the bank will not approve financing unless the property is separated from the larger piece. He wishes to take 2 +/- acres from the southeast corner of the relatively square lot and extend the existing park road for access to this new lot. The septic system for the park (which is adequate for 1-30 sites, only 10 sites active) would be connected to as would the water line, both are approximately 200' from the lot he plans to create. The Board Members had several issues that need to be investigated such as: Is the road dedicated to the Town? Is it plowed, how maintained? Spec's current road built to and what would extension need to be built to? Landlocked or is a ROW along east property line possible? Variance needed? Are there any existing covenants, restrictions and easements? Member Sanders cautions the Board to move slowly because of the precedents that could be established. Mr. Hendricks is asked to supply a more detailed map

EXHIBIT G

STATE OF NEW YORK
SUPREME COURT CAYUGA COUNTY

CNY Scrap Processing, LLC and
Carrier Salvage & Recycling, LLC,

Plaintiffs,

vs.

TOWN OF STERLING,
BRUCE APPLEBEE, individually and
As purported Code Enforcement Officer of the
TOWN OF STERLING,

Defendants.

SUMMONS

INDEX NO.: 2015-206

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TOWN OF STERLING

To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designates Cayuga County as the place of trial. The basis of venue is that this is the judicial district in which the material events took place and plaintiff is doing business in Cayuga County.

Dated: February 19, 2015



BANSBACH ZOGHLIN P.C.
Mindy L. Zoghlin, of counsel
Attorneys for Plaintiff
Office and Post Office Address
31 Erie Canal Drive, Suite A
Rochester, New York 14626
Tel: (585) 227-2610

STATE OF NEW YORK
SUPREME COURT CAYUGA COUNTY

CNY Scrap Processing, LLC and
Carrier Salvage & Recycling, LLC,

Plaintiffs,

vs.

TOWN OF STERLING,
BRUCE APPLEBEE, individually and
As purported Code Enforcement Officer of the
TOWN OF STERLING,

Defendants.

VERIFIED COMPLAINT

INDEX NO.:

Plaintiffs CNY Scrap Processing LLC ("CNY") and Carrier Salvage & Recycling, LLC ("Carriage Salvage") by their attorneys Bansbach Zoghlin P.C., complain of defendants as follows:

INTRODUCTION

1. This action seeks injunctive relief and declaratory judgment with respect to defendants' efforts to shut down plaintiffs' scrap processing business at 14725 State Route 104 in the Town of Sterling.

2. The Town of Sterling issued plaintiff CNY a purported Cease and Desist Order dated February 5, 2015 which directed plaintiff to "cease and desist from any further operations of its scrap processing facility at [14725 State Route 1043 (sic) in the Town of Sterling]." A copy of the purported cease and desist letter is attached hereto as Exhibit "A."

3. In this action, plaintiffs seek:

- a. Declaratory judgment that the operation of a junkyard at the Property is a valid pre-existing non-conforming use;
- b. Declaratory judgment that the operation of a scrap processing facility at the Property is a valid and lawful use;
- c. Declaratory judgment that purported 2014 Town of Sterling Land Use Regulations are illegal, null and void;
- d. Declaratory judgment that the purported Cease and Desist Order dated February 5, 2015 is illegal, null and void;
- e. Awarding plaintiffs compensatory damages in an amount to be determined at trial, plus interest;
- f. Awarding plaintiffs actual and special damages;
- g. Awarding just compensation for the taking of plaintiffs' Property;
- h. Awarding actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees as set forth in the Eminent Domain Procedure Law; and
- i. Awarding plaintiffs reasonable attorneys' fees and costs as set forth in 42 USC 1983 and 1988;
- j. Awarding plaintiffs their attorneys' fees, costs and disbursements, together with such other and further relief as this Court deems just and proper.

PARTIES

4. Plaintiff CNY Scrap Processing LLC (“CNY”) is a limited liability company organized and existing under the laws of the state of Delaware and authorized to do business in New York.

5. Plaintiff Carrier Salvage & Recycling, LLC (“Carriage Salvage”) is a limited liability company organized and existing under the laws of the state of New York.

6. CNY purchased three parcels of land in the Town of Sterling (collectively, the “Property”) from John Wilbur on May 6, 2011:

Tax ID	Address	Size
19.00-1-35.112	Off state Rt. 104	15.5 acres
19.00-1-35.111	14735 State Rte. 104	246-75'
19.00-1-33	14725 State Rte. 104	1.70 acres

7. At all times since May 6, 2011 CNY leased the Property to Carrier Salvage for use as a scrap processing facility and junkyard.

8. At all times since May 6, 2011 Carrier Salvage operated a junk yard and scrap processing facility at the Property.

9. Upon information and belief, the Town of Sterling is a municipality incorporated under the laws of the State of New York.

10. Upon information and belief, Bruce Applebee is the Code Enforcement Officer (“CEO”) for the Town of Sterling.

FACTS

11. Upon information and belief, since before 1969, John Wilbur and/or one of his close family members (“Wilbur”) owned the Property.

12. Between 1969 and 2011, Wilbur operated a business commonly known as Wilbur Novelty Motors at the Property. Wilburn Novelty Motors collected vehicles and equipment for resale or junk.

13. Between 1969 and 2011, Wilbur operated a junk yard at the Property.

14. Between 1969 and 2011, Wilbur operated a scrap processing facility at the Property. Every year or two Wilbur hired a contractor to crush and process scrap vehicles at the Property.

15. In 2010 Kevin Carrier entered into discussions with Wilbur to purchase the Property in order to continue the existing junk yard and scrap processing business.

16. CNY was formed on September 17, 2010 to purchase the Property.

17. Before CNY purchased the Property, it contacted the Town to ensure the pre-existing uses were lawful and could continue.

18. Between February 2011 and December 2013 the Town represented to CNY that the junk yard and scrap processing facility uses at the Property were in full compliance as a pre-existing nonconforming use:

- a. On February 7, 2011, the Town of Sterling Planning Board stated that "The property does have a grandfathered status for a junkyard but has several violations of the Town Code as well as DEC regulations which will need to be addressed." A copy of Planning Board meeting minutes dated February 7, 2011 is attached hereto as Exhibit "C".

- b. On February 7, 2011, the Planning Board passed a resolution recommending that the Town Board continue “the grandfathered, nonconforming use status of Wilbur’s Junkyard in the applicants [CNY] name for the purposes of addressing existing DEC and Sterling Town violations before proceeding with the PDD process.” See Exhibit “C.”
- c. On February 22, 2011, the Sterling Town Board passed Resolution No. 2011-31 authorize [sic] the issue [sic] of a non-conforming use permit and transfer license from Wilbur’s Junkyard to CNY Scrap Processing. A copy of Resolution No. 2011-31 is attached hereto as Exhibit “D.”
- d. The Town Board resolution authorizing the issuance of a nonconforming use permit to CNY was not conditioned on CNY making any application for a PDD.
- e. On February 22, 2011, the CEO issued a “Building Permit” to CNY reciting that the Sterling Town Board passed Resolution No. 2011-31 authorize [sic] the issue [sic] of a non-conforming use permit and transfer license from Wilbur’s Junkyard to CNY Scrap Processing. A copy of the February 22, 2011 Building Permit is attached hereto as Exhibit “E.” The Permit was not subject to any conditions.
- f. On October 12, 2011 the CEO wrote a letter “To Whom it May Concern” stating that the Property “is zoned for the dismantling of

vehicles with no restriction on number of vehicles.” A copy of the CEO’s October 12, 2011 letter is attached hereto as Exhibit “F.”

- g. On October 28, 2011, the CEO issued a “Building Permit” to CNY which noted “Res. # 2011-31 non-conforming use permit for CNY Scrap Processing.” A copy of the October 28, 2011 Building Permit is attached hereto as Exhibit “G.”
- h. On November 2, 2012, the CEO issued a “Building Permit” to CNY which noted “Non conforming precedent [sic] use as scrap processing facility. Approved by Town Board T/Sterling.” A copy of the November 2, 2012 Building Permit is attached hereto as Exhibit “H.”
- i. On December 20, 2013, the CEO issued a “Building Permit” to CNY which noted “Non conforming use permit for CNY Scrap Processing.” A copy of the December 20, 2013 Building Permit is attached hereto as Exhibit “I.”

19. Before CNY purchased the Property, plaintiffs contacted the New York State Department of Environmental Conservation (“DEC”) to identify potential violations of the DEC’s solid waste regulations set forth at 6 NYCRR Part 360 (the “Solid Waste Regulations”) and develop a plan to remedy them.

20. Between January 2011 and January 2015 plaintiffs worked with the DEC to identify and remedy alleged violations of the Solid Waste Regulations at the Property:

- a. Plaintiffs met with the DEC at the Property on January 7, 2011. At that time the DEC notified CNY that (i) the presence of over 1,000

tires on the Property likely constituted a violation of the DEC Part 360 regulations; and (ii) the presence of C&D waste and fluids on the Property likely constituted a violation of the Solid Waste Regulations

- b. On June 17, 2011 the DEC issued a Notice of Violation (“NOV”) to Carrier Salvage for various violations of the Solid Waste Regulations including having more than 1,000 tires on site and the presence of C&D waste and fluids. The DEC did not assess any fines or undertake administrative action with respect to the NOV. Rather, the DEC, CNY and Carrier Salvage worked together to bring the Property into compliance with the Solid Waste Regulations.
- c. Between June 2011 and December 2014, plaintiffs removed approximately 10,000 tires from the property and spent over \$20,000 to bring the Property into compliance with the Solid Waste Regulations.
- d. On January 28, 2015, the DEC determined that all violations of the Solid Waste Regulations at the Property were remedied to its satisfaction.

BACKGROUND

The 1969 Junk Yard Law

21. On March 3, 1969 the Town of Sterling adopted Ordinance No. 2 For the Regulation of Automobile Junk Yards (the “1969 Junk Yard Law”). A copy of the 1969 Junk Yard Law is attached hereto as Exhibit “B.”

22. The 1969 Junk Yard Law defines “junk yard” as:

Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles provided, however, the term junk yard shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap for sale for remelting purposed only (emphasis supplied). 1969 Junk Yard Law, section 1.

23. The 1969 Junk Law does not regulate scrap processing facilities. 1969 Junk Yard Law, section 1. See Exhibit “B.”

24. The 1969 Junk Yard Law expressly permitted the continuation of pre-existing junk yards:

For purposes of this section the location of junk yards already established shall be considered approved by the governing board of the municipality where located and the owner thereof deemed suitable for the issuance of a license... 1969 Junk Yard Law, section 12. See Exhibit “B.”

25. The Town Board is the only entity that has authority to enforce the 1969 Junk Yard Law. See sections 3, 4, 5, 6, 7, 8, and 12 of the 1969 Junk Yard Law at Exhibit “B.”

26. The Town repealed the 1969 Junk Yard Law on June 23, 2014. See paragraph 44, *infra*.

The 1997 Zoning Law

27. On April 14, 1997 the Town of Sterling adopted the Town of Sterling Zoning Law.

28. The express terms of the 1997 Zoning Law made it lawful for plaintiffs to continue the pre-existing junk yard and scrap processing facility at the Property:

The lawful use of any structure or land existing at the effective time of this local law may be continued although such use does not conform with the provisions herein except as otherwise provided in this article. 1997 Zoning Law, section 1002.

29. The 1997 Zoning Law imposed a nondiscretionary duty on the CEO to issue nonconforming use permits for lawful nonconforming uses existing at the effective date of the 1997 Zoning Law:

Zoning and building permits shall be issued by the code enforcement officer for lawful nonconforming uses existing at the effective date of this enactment. The zoning/building permit shall include a statement that the use is nonconforming and shall list the specific conditions under which said use may continue. It shall be signed by both the Officer and the owner. 1997 Zoning Law, section 1009.

30. The 1997 Zoning Law did not authorize the CEO to condition issuance of a nonconforming use permit on a property inspection or any other criteria.

31. The 1997 Zoning Law did not incorporate the 1969 Junk Yard Law.

32. The 1997 Zoning Law did not authorize the CEO to issue a Cease and Desist Order for a violation of the 1969 Junk Yard Law:

The provisions herein shall be administered and enforced by the Code Enforcement officer who shall be appointed by the Town Board. It shall be the duty of the Officer and he shall have the power to ... issue stop, cease and desist orders, and order in writing the correction of all conditions found to be in violation of the provisions of this Law.... (emphasis supplied) 1997 Zoning Law, section 1201(f).

33. The 1997 Zoning Law did not give the Zoning Board of Appeals authority to hear and decide appeals from an erroneous decision made by the code enforcement officer with respect to enforcement of the 1969 Junk Yard Law:

Powers and Duties - Appeals from Alleged Error of Code Enforcement officer. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination, including any order requiring an alleged violator to stop, cease and desist, made by the Officer in the enforcement of this Law. (emphasis supplied) 1997 Zoning Law, section 1307.

34. The Town Board was required to refer every proposed amendment or change of the 1997 Zoning Law to the Planning Board for report before it conducts a public hearing on the proposed amendment. 1997 Zoning Law, section 1501.

35. The Town repealed the 1997 Zoning Law on June 23, 2014. See paragraph 44, *infra*.

2014 Land Use Regulations

36. On June 23, 2014 the Town of Sterling adopted the Town of Sterling Land Use Regulations.

37. The purported 2014 Land Use Regulations were void *ab initio* because, upon information and belief the Town Board failed to refer the amendment or change to the Planning Board for report before the public hearing was conducted, as required by the 1997 Zoning Law, section 1501.

38. Since the 2014 Land Use Regulations are void *ab initio*, the Code Enforcement Officer lacks legal authority to enforce them.

39. Since the 2014 Land Use Regulations are void *ab initio*, the Zoning Board of Appeals ("ZBA") lacks legal authority to hear appeals from the Code Enforcement Officer's determinations.

40. In the alternative, even if the 2014 Land Use Regulations were valid, it would be lawful to continue the pre-existing junk yard and scrap processing uses at the Property:

The lawful use of any structure or land existing at the effective time of these Land Use Regulations may be continued although such use does not conform with the provisions herein except as otherwise provided in this Article. 2014 Land Use Regulations, section 14-1. A copy of Article 14 of the 2014 Land Use Regulations is attached hereto as Exhibit "T."

41. The 2014 Land Use Regulations expressly permit expansion of a pre-existing nonconforming use so long as the expansion does not result in an "increase of cubic volume within a structure":

Any increase in volume, area or extent of the nonconforming use shall be allowed, so long as the expansion does not increase the degree of non-conformity. For purposes of this section "volume" does not mean the volume of business but rather an increase of cubic volume within a structure." 2014 Land Use Regulations, section 14-2(B), Exhibit "T."

42. The 2014 Land Use Regulations impose a nondiscretionary duty on the Code Enforcement Officer to issue Zoning and Zoning/Building Permits for lawful non-conforming uses existing at the effective date of its enactment:

Zoning and Zoning/Building Permits shall be issued by the Code Enforcement Officer for lawful non-conforming uses existing at the effective date of this enactment. The Zoning/ Building Permit shall include a statement that the use is non-conforming and shall list the specific conditions under which said use may continue. It shall be signed by

both the CEO and the owner (emphasis supplied). 2014 Land Use Regulations, section 14-8, Exhibit "T."

43. The 2014 Land Use Regulations require the CEO to grant or deny a Building or Zoning Permit within 15 days. 2014 Land Use Regulations, section 2.6. A copy of the 2014 Land Use Regulations, Article 2, is attached hereto as Exhibit "U."

44. The 2014 Land Use Regulations do not give the CEO authority to condition issuance of a Zoning Permit on a property inspection. See 2014 Land Use Regulations, Article 2, attached hereto as Exhibit "U."

45. The 2014 Land Use Regulations repeal the 1969 Junk Yard Law and the 1997 Zoning Law:

The Local Law # 1 adopted April 14, 1997 and entitled "*Town of Sterling Zoning Law*," Local Law #1 adopted July 16, 2007 entitled "*Minimum Requirements for Meeting Attendance for Members of the Town of Sterling Planning Board and Town of Sterling Zoning Board of Appeals*," "*Subdivision Law*" adopted March 15, 1999, Ordinance No. 2 of the Town of Sterling "*For the Regulation of Automobile Junk Yards*" adopted March 3, 1969, Local Law # 3 adopted December 28, 1989 entitled "*Town of Sterling Coastal Erosion Hazard Law*," Local Law #1 adopted July 17, 2007 entitled "*Residential Wind Power Facilities*," and "*Commercial Wind Power Facilities*," Local Law # 3 of 2005 entitled "*A Local Law to Provide for the Administration and Enforcement of the NYS Uniform Fire Prevention and Building Code*," Local Law entitled "*Town of Sterling Mobile Home Law*" adopted March 22, 1999, Local Law # 1 adopted 1977 entitled "*Town of Sterling Mass Gathering Local Law # 1*" and all supplements and amendments thereto, are hereby repealed. Provided, if the present Land Use Regulations are held to be ineffective or invalid by reason of some irregularity in or impediment to its passage, this repealer shall also be ineffective. It being the legislative intention that if the present enactment shall be ineffective as aforesaid, then and in that event the Law entitled "*Town of Sterling Zoning Law*" and et al together with its supplements and amendments would necessarily remain in full force and effect. 2014 Land Use Regulations,

section 5.4. A copy of 2014 Land Use Regulations, Article 5, is attached hereto as Exhibit "V."

46. Moreover, even if the 2014 Land Use Regulations were valid, they would not give the Code Enforcement Officer authority to issue a Cease and Desist Order for a violation of the 1969 Junk Yard Law:

The provisions herein shall be administered and enforced by the Code Enforcement (henceforth shall be referred to as CEO) who shall be appointed by the Town Board. The CEO shall have the power and duty to:

A. Administer and enforce all the provisions of the NYS Uniform Fire Prevention and Building Code and the provisions of these Regulations

B. Pursue administrative actions, with approval of the Town Supervisor and in consultation with the Town Attorney, legal action necessary to remedy conditions not in compliance with the NYS Uniform Fire Prevention and Building Code and the provisions of these Regulations

2014 Land Use Regulations, section 2-1. See Exhibit "U."

47. Upon information and belief, the Code Enforcement Officer failed to obtain the approval of the Town Supervisor before pursuing administrative action against plaintiffs.

48. Upon information and belief, the Code Enforcement Officer lacks authority to pursue any action against plaintiffs because he did not first obtain the Town Supervisor's approval.

**The Junk Yard and Scrap processing Uses Are
Valid Pre-Existing Uses Under the 1969 Junkyard Law**

49. The Property was operated as a junk yard and scrap processing facility before the Town of Sterling adopted any law regulating land use.

50. Upon information and belief, on September 18, 2006 the Sterling Town Board adopted resolution No. 2006-139, which recognized that the Wilbur Property was a “nonconforming, pre-existing lot provided it be maintained as per the original junkyard.” The grounds for this belief are Exhibit A, page 2.

**Code Enforcement Officer’s Actions to Discontinue Plaintiffs’ Legal Use
and Avoid Plaintiffs’ FOIL Requests**

51. On September 24, 2014 the Code Enforcement Officer sent CNY a letter, Violation Form and Notice of Violation/Order to Remedy (collectively, the NOV/Order”), copies of which are attached hereto as Exhibit “J.” The NOV/Order states that the Code Enforcement Officer observed “motor vehicles, scrap and junk” and ordered CNY to remedy the condition on or before October 24, 2014. The letter dated September 24, 2014 states that “there are vehicles and other items on the property that need to be moved so that they are behind the property fence.”

52. The observed conditions were remedied before October 24, 2014 and the Town did not undertake any code enforcement action with respect to the NOV/Order.

53. On December 21, 2014 the Town Code Enforcement Officer sent CNY a letter purporting to deny the junkyard permit renewal and requesting an appointment to inspect the premises. A copy of the December 21, 2014 denial letter is attached hereto as Exhibit “K.”

54. By letters dated December 29, 2014 and January 8, 2015 (copies of which are attached hereto as Exhibit “L”), plaintiffs invited the Code Enforcement Officer to inspect the Property. The Code Enforcement Officer did not respond to these requests.

55. On January 2, 2015, plaintiffs' attorney sent a Freedom of Information Law ("FOIL") request to the Town of Sterling requesting copies of documents related to the adoption of the 1969 Junk Yard Law, the 1997 Zoning Law and the 2014 Land Use Regulations. A copy of the January 2, 2015 FOIL request is attached hereto as Exhibit "M."

56. By letter dated January 8, 2015 (a copy of which is attached hereto as Exhibit "N") the Town advised plaintiffs that it needed additional time to produce the requested documents.

57. On January 8, 2015, plaintiffs' attorney sent a Freedom of Information Law ("FOIL") request to the Town of Sterling asking for copies of documents related to (1) a lawsuit involving John Wilbur regarding the use of 14725 State Road 104, Town of Sterling (the "Property"); and (2) the Town Board's 2011 recommendation regarding the "Wilbur Junkyard" located at the Property. A copy of the January 8, 2015 FOIL request is attached hereto as Exhibit "O."

58. On January 12, 2015, plaintiffs appealed the Code Enforcement Officer's determinations that:

(a) CNY must apply for and receive some type of permit to operate an automobile junkyard at the Property; and

(b) the CEO incorrectly denied CNY's attempt to apply for and receive a permit to operate an automobile junkyard at the Property.

Both of the CEO's determinations are incorrect because operation of the automobile junkyard is a pre-existing non-conforming use which must be allowed to continue until such time as the operation ceases for more than one year.

A copy of the ZBA appeal is attached hereto as Exhibit "P."

59. By letter dated January 14, 2015 (a copy of which is attached hereto as Exhibit “Q”) the Town advised that there were no documents related to any lawsuit involving John Wilbur and that plaintiffs would need to find the requested documents on the town website or in the town hall.

60. On January 21, 2015 the CEO made an unannounced visit to the Property and asked permission to inspect it. Plaintiffs complied.

61. After the CEO departed the Property, plaintiffs discovered a letter from him dated January 14, 2015 in an envelope in the mailbox. A copy of the January 14, 2015 letter is attached hereto as Exhibit “R.” The January 14th Letter Officer advised plaintiffs that his December 21st letter was not intended to be a denial, but was, instead, a request to inspect the premises. It also purported to set a site visit appointment for January 20, 2015 at 10:00 a.m.

62. By letter dated January 30, 2015 (a copy of which is attached hereto as Exhibit “S”), the Town advised plaintiffs that the ZBA “will not be processing this appeals application” because “the appeal is unfounded in light of the ... CEO letter ... which essentially rescinds an erroneous denial ...”

63. The ZBA failed and refused to hear that part of plaintiffs’ appeal challenging the Code Enforcement Officer’s determination that CNY must apply for and receive a Zoning Permit to operate an automobile junkyard at the Property. See Exhibit S.

64. On February 5, 2015 the Town of Sterling sent CNY letter dated February 5, 2015 which purported to revoke the previously issued Zoning Permits and directed plaintiff to “cease and desist from any further operations of its scrap processing

facility at [14725 State Route 1043 (sic) in the Town of Sterling]" until such time as it complies with the 2014 Land Use Regulations by applying for a PDD (the "Cease and Desist Letter"). See Exhibit "A."

65. The Cease and Desist Letter is wholly beyond the CEO and Zoning Board of Appeals' grant of power because:

- a. The CEO has a nondiscretionary duty to issue Zoning Permits for the pre-existing junk yard and scrap processing uses at the Property under the 2014 Land Use Regulations, section 14-8 (Exhibit "T").
- b. The CEO lacks authority to issue cease and desist orders under the 2014 Land Use Regulations, section 2-1 (Exhibit "U").
- c. The CEO did not obtain the Town Supervisor's approval prior to any administrative action as required by the 2014 Land Use Regulations, section 2-1 (Exhibit "U").

66. The Cease and Desist Letter is illegal, null and void because it is based on the following errors of law:

- a. It is based on the incorrect legal conclusion that the alleged Planning Board recommendation that the property owner apply for a PDD was automatically included in the 2011 Zoning Permit, even though the Town Board did not include it.

- b. The 1969 Junk Yard Law is misinterpreted as making it illegal to operate a scrap processing facility in a Junk Yard.
- c. The prohibition against expanding pre-existing non-conforming use is misinterpreted to include the alleged addition of a different non-conforming use.
- d. It purportedly relies on an alleged violation of the 1969 Junk Yard Law, even though that Law was repealed in 2014.
- e. The Cease and Desist Letter does not contain any factual allegations, is conclusory, and was not accompanied by any notice of violation or order to remedy.

LEGAL CLAIMS

67. Plaintiffs are not required to exhaust their administrative remedies because the challenged action was wholly beyond the Code Enforcement Officer's grant of power, resort to an administrative remedy would be futile and the action is challenged as unconstitutional.

68. Plaintiffs lack an adequate remedy at law.

69. No previous application has been made for the relief sought herein.

FIRST CAUSE OF ACTION DECLARATORY JUDGMENT THAT OPERATION OF JUNK YARD IS A VALID PRE-EXISTING NON-CONFORMING USE

70. Plaintiffs repeat and reallege paragraphs 1 through 69 as if set forth herein at length.

71. By reason of the foregoing, plaintiffs are entitled to declaratory judgment that the operation of a junkyard at the Property is a valid pre-existing non-conforming use.

**SECOND CAUSE OF ACTION
DECLARATORY JUDGMENT THAT OPERATION OF SCRAP PROCESSING FACILITY
IS A VALID PRE-EXISTING NON-CONFORMING USE**

72. Plaintiffs repeat and reallege paragraphs 1 through 71 as if set forth herein at length.

73. By reason of the foregoing, plaintiffs are entitled to declaratory judgment that the operation of a scrap processing facility at the Property is a valid and lawful use.

**THIRD CAUSE OF ACTION
AN ORDER OF MANDAMUS DIRECTING
THE CODE ENFORCEMENT OFFICER TO ISSUE ZONING PERMIT TO PLAINTIFFS
TO OPERATE THE JUNK YARD**

74. Plaintiffs repeat and reallege paragraphs 1 through 73 as if set forth herein at length.

75. By reason of the foregoing, plaintiffs are entitled to an order of mandamus directing the CEO to issue a Zoning Permit to plaintiffs to operate a Junk Yard at the Property.

**FOURTH CAUSE OF ACTION
AN ORDER OF MANDAMUS DIRECTING
THE CODE ENFORCEMENT OFFICER TO ISSUE ZONING PERMIT TO PLAINTIFFS
TO OPERATE THE SCRAP PROCESSING FACILITY**

76. Plaintiffs repeat and reallege paragraphs 1 through 75 as if set forth herein at length.

77. By reason of the foregoing, plaintiffs are entitled to an order of mandamus directing the CEO to issue a Zoning Permit to plaintiffs to operate a scrap processing facility at the Property.

**FIFTH CAUSE OF ACTION
DECLARATORY JUDGMENT THAT THE PURPORTED 2014 LAND USE
REGULATIONS ARE ILLEGAL, NULL AND VOID**

78. Plaintiffs repeat and reallege paragraphs 1 through 77 as if set forth herein at length.

79. By reason of the foregoing, plaintiffs are entitled to declaratory judgment that the purported 2014 Town of Sterling Land Use Regulations are illegal, null and void.

**SIXTH CAUSE OF ACTION
DECLARATORY JUDGMENT THAT THE PURPORTED
CEASE AND DESIST LETTER IS ILLEGAL, NULL AND VOID**

80. Plaintiffs repeat and reallege paragraphs 1 through 79 as if set forth herein at length.

81. By reason of the foregoing, plaintiffs are entitled to declaratory judgment that the purported Cease and Desist Letter dated February 5, 2015 is illegal, null and void.

**SEVENTH CAUSE OF ACTION
INVERSE CONDEMNATION**

82. Plaintiffs repeat and reallege paragraphs 1 through 81 as if set forth herein at length.

83. Through its acts and omissions, the Town has taken the Property, or

portions thereof, for public use as a matter of public necessity under a color of right.

84. The Town's acts or omissions have so interfered with plaintiffs' property rights that they amount to a compensable taking under the Eminent Domain Procedure Law.

85. As a result of the Town's inverse condemnation, plaintiffs are entitled to actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees as set forth in the Eminent Domain Procedure Law.

EIGHTH CAUSE OF ACTION FIFTH AND FOURTEENTH AMENDMENT TAKING

86. Plaintiffs repeat and reallege paragraphs 1 through 85 as if set forth herein at length.

87. Through its acts and omissions, the Town has intruded onto plaintiffs' Property and interfered with their property rights to such a degree that the conduct amounts to a taking requiring the Town to purchase the Property from plaintiffs.

88. The foregoing conduct constitutes a taking of private property for public use without just compensation, in violation of the Fifth and Fourteenth Amendments of the Federal Constitution.

89. By reason of the foregoing, plaintiffs are entitled to compensatory damages, attorneys' fees, costs and disbursements.

NINTH CAUSE OF ACTION ARTICLE I TAKING

90. Plaintiffs repeat and reallege paragraphs 1 through 89 as if set forth herein at length.

91. Through its acts and omissions, the Town has intruded onto plaintiffs' Property and interfered with their property rights to such a degree that the conduct amounts to a taking requiring the Town to purchase the Property from plaintiffs.

92. The foregoing conduct constitutes a taking of private property for public use without just compensation, in violation of Article I, Section 7 of the New York State Constitution.

93. By reason of the foregoing, plaintiffs are entitled to compensatory damages, attorneys' fees, costs and disbursements.

**TENTH CAUSE OF ACTION
SUBSTANTIVE DUE PROCESS**

94. Plaintiffs repeat and reallege paragraphs 1 through 93 as if set forth herein at length.

95. Through its acts and omissions, the Town has deprived plaintiffs of their interest in the Property.

96. The Town's acts and omission were arbitrary or irrational and wholly without legal justification.

97. By reason of the foregoing, plaintiffs are entitled to compensatory damages, attorneys' fees, costs and disbursements.

**ELEVENTH CAUSE OF ACTION
PROCEDURAL DUE PROCESS**

98. Plaintiffs repeat and reallege paragraphs 1 through 97 as if set forth herein at length.

99. Plaintiffs have a constitutionally protected interest in the Property.

100. Through its acts or omissions, the Town has deprived plaintiffs of their

interest in the Property.

101. The Town deprived plaintiffs of their interest in the Property without due process.

102. By reason of the foregoing, plaintiffs are entitled to compensatory damages, attorneys' fees, costs and disbursements.

**TWELFTH CAUSE OF ACTION
ABUSE OF PROCESS**

103. Plaintiffs repeat and reallege paragraphs 1 through 102 as if set forth herein at length.

104. Plaintiffs served a Notice of Claim on defendants prior to commencing this action.

105. By issuing the Cease and Desist order, defendants regularly issued process against plaintiffs.

106. By issuing the Cease and Desist Letter under the facts and circumstances herein, defendants intended to do harm to plaintiffs without excuse or justification.

107. By issuing the Cease and Desist Letter under the facts and circumstances herein, defendants used the process in a perverted manner to obtain a collateral objective.

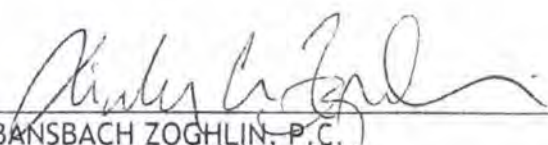
108. By reason of the foregoing, plaintiffs are entitled to actual and special damages, including attorneys' fees, costs and disbursements.

WHEREFORE, plaintiffs demands judgment against defendants as follows:

- a. Declaratory judgment that the operation of a junkyard at the Property is a valid pre-existing non-conforming use;

- b. Declaratory judgment that the operation of a scrap processing facility at the Property is a valid and lawful use;
- c. Declaratory judgment that purported 2014 Town of Sterling Land Use Regulations are illegal, null and void;
- d. Declaratory judgment that the purported Cease and Desist Order dated February 5, 2015 is illegal, null and void;
- e. Awarding plaintiffs compensatory damages in an amount to be determined at trial, plus interest;
- f. Awarding plaintiffs actual and special damages;
- g. Awarding just compensation for the taking of plaintiffs' Property;
- h. Awarding actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees as set forth in the Eminent Domain Procedure Law; and
- i. Awarding plaintiffs reasonable attorneys' fees and costs as set forth in 42 USC 1983 and 1988;
- j. Awarding plaintiffs their attorneys' fees, costs and disbursements, together with such other and further relief as this Court deems just and proper.

Dated: February __, 2015



 BANSBACH ZOGHLIN, P.C.
 Mindy L. Zoghlin, of counsel
 Attorneys for Plaintiffs
 Office and Post Office Address
 31 Erie Canal Drive, Suite A
 Rochester, New York 14626
 Tel: (585) 227-2610

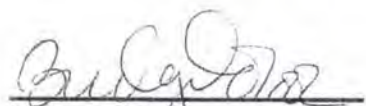
STATE OF NEW YORK)
COUNTY OF MONROE) SS.:

SHELLEY CARRIER, being duly sworn, deposes and says that deponent is a Managing Member of plaintiffs CNY Scrap Processing LLC and Carrier Salvage & recycling LLC in this action and that the foregoing complaint is true to her own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.



SHELLEY CARRIER

Sworn before me this 19th
Day of February, 2015.



Notary Public

BRIDGET A. O'TOOLE
NOTARY PUBLIC, State of New York
Qualified in Monroe County
Registration No. 02OT6264723
Commission Expires July 2, 20 16

Exhibits

- A. Purported cease and desist letter dated February 5, 2015.
- B. 1969 Junk Yard Law.
- C. Planning Board meeting minutes dated February 7, 2011.
- D. Town of Sterling Resolution No. 2011-31.
- E. February 22, 2011 Building Permit.
- F. Code Enforcement Officer's October 12, 2011 Letter.
- G. October 28, 2011 Building Permit.
- H. November 2, 2012 Building Permit.
- I. December 20, 2013 Building Permit.
- J. September 24, 2014 letter, Violation Form and Notice of Violation/Order to Remedy.
- K. December 21, 2014 denial letter.
- L. Letters from plaintiffs to Code Enforcement Officer dated December 29, 2014 and January 8, 2015.
- M. January 2, 2015 FOIL request.
- N. Town letter dated January 8, 2015 in response to FOIL request.
- O. January 8, 2015 FOIL request.
- P. Town letter dated January 14, 2015 responding to January 8, 2015 FOIL Request.
- Q. ZBA Appeal.
- R. Town letter dated January 14, 2015 reinterpreting denial.
- S. Town letter dated January 30, 2015.
- T. 2014 Land Use Regulations, Article 14.
- U. 2014 Land Use Regulations, Article 2.
- V. 2014 Land Use Regulations, Article 5.

EXHIBIT H

SETTLEMENT AGREEMENT AND RELEASE

For good and valuable consideration as hereinafter set forth, this SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into by CNY Scrap Processing, LLC and Carrier Salvage & Recycling, LLC (the "Releasers"), and the Town of Sterling and Bruce Applebee (the "Releasees", and, collectively with the Releasers, the "Parties", and each a "Party").

WHEREAS, there is pending in the New York State Supreme Court, Cayuga County, New York an action entitled *CNY Scrap Processing, LLC and Carrier Salvage & Recycling, LLC, Plaintiffs, versus Town of Sterling and Bruce Applebee, individually and as purported Code Enforcement Officer of the Town of Sterling, Defendants*, Index No. 2015-206 (the "Action") related to parcels of land owned and/or leased by the Releasers in the Town of Sterling, located at 14725-14735 State Route 104 (the "Property"); and

WHEREAS, these named Parties wish to resolve all claims, disputes, and differences between them that arise in any way out of the Action or out of the subject matter of the Complaint and other pleadings and motions filed in the Action; and

WHEREAS, the Releasers and the Town of Sterling wish to set forth and define the acceptable and approved uses of the Property;

NOW THEREFORE, in consideration of the following covenants, obligations, undertakings and consideration, the sufficiency of which is acknowledged, the Parties expressly, knowingly, voluntarily and mutually agree as follows:

1. **Settlement Payment.** Releasers agree to accept the sum of TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00), paid to CNY Scrap Processing, LLC and Hall and Karz as Attorneys and subject to a 1099 issuing, as full settlement, accord, and satisfaction of any and all claims, demands, rights, and liens that he has or may have, of any kind, directly or derivatively, accrued or contingent, past, present or future, against the Released Parties, as defined in Paragraph 2, that in any way arise out of or relate to the Action or the subject matter of the Complaint. Payment is to be made within thirty days of execution of this Agreement by all Parties.

2. **Permitted Property Uses.** The Releasers are permitted to use the Property as a Junkyard as that term is defined in the Town of Sterling's 2014 Land Use Regulations, as amended. The Releasers are also permitted to use the Property for those activities, including scrap processing activities, described in the April 27, 2020 letter from Peter Rolph, Esq., attached hereto as Exhibit A, and incorporated as though fully set forth herein, in those areas of the Property historically used for such activities. The Releasers agree that they are not permitted to use the Property for any other use unless it conforms to the use regulations prescribed by the

Town of Sterling's 2014 Land Use Regulations for the zoning district in which the Property is located.

3. **Hours of Operation.** The Parties agree that the Releasors are permitted to use the Property for those activities described in Paragraph 2 during the following days and times ONLY:

Monday – Friday: 8:00 a.m. – 6:00 p.m.
Saturday: 9:00 a.m. – 4:00 p.m.
Sunday: 10:00 a.m. – 2:00 p.m.

The Releasors are not permitted to perform the activities described in Paragraph 2 outside the hours set forth above.

4. **Noise.** The Releasors confirm that the permitted uses described in Paragraph 2 generate noise, at a maximum, similar to or less than the noise of traffic on Route 104. Therefore the Parties stipulate and agree that the activities performed by the Releasors on weekends will not exceed 90 decibels as measured from the parcels adjacent to the Property, or from Route 104.

5. **Maintenance / Landscaping / Aesthetics.**

- 5.1. The Releasors agree to plant blue spruce or arbor vitae 8-10 feet apart in front of the existing fence along Route 104.
- 5.2. The Releasors agree to require all vehicles to remain on the existing paved / cobblestone area when they are in front of the existing fence on the Property.
- 5.3. Whenever possible, the Releasors agree to perform the activities described in Paragraph 2 behind the existing fence on the Property.
- 5.4. The Releasors agree to maintain a substantial natural barrier of at least 100 feet of forested area along the north, east, and west Property lines wherever currently in existence.
 - 5.4.1. Releasors are currently performing remediation activities at the Property as required the New York Department of Environmental Conservation. These and other legally required remediation activities may necessitate that the Releasors disrupt the natural barrier described in Section 5.4 from time to time. In the event any such disruption occurs, the Releasors agree and warrant that they will reestablish, restore, and/or maintain any

such disrupted natural barrier as soon as possible and without undue delay.

6. **Release.** In exchange for the consideration set forth in Paragraph 1, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Releasors, on behalf of themselves, and their heirs, predecessors, successors, affiliates, parents, subsidiaries, related corporations, administrators, representatives, agents, insurers, subrogees, and assigns, does hereby forever release, acquit, and discharge each of the Releasees and their heirs, predecessors, successors, affiliates, parents, subsidiaries, related corporations, administrators, representatives, agents, insurers, subrogees, and assigns, and each of their respective past, present, and future officers, directors, subsidiaries, divisions or other associated companies, shareholders, members, managers, agents, attorneys, representatives, third-party administrators, servants, employees, distributors, and dealers (collectively the "Released Parties"), from any and all claims, demands, obligations, judgments, actions, causes of action, liens and liabilities for losses and damages, whether personal, property, or economic, whether now known or unknown that in any way arose or will arise out of the subject matter of the Complaint or the Action, that are or were the subject of the Action, or that in any way arose or will arise out of any occurrence, act, or omission that is, was, or could have been alleged in the Action (collectively the "Released Claims"). It is the Parties' intent to effect a general release of all of the Released Claims from the beginning of the world to the date of this Release.

7. **Miscellaneous Provisions.**

- 7.1. This Release is executed with Releasors' full understanding that the damages and events alleged in the Action may result in further damages or effects that may not now appear, that may not now be known or suspected by the Releasors, and that Releasors may have no reason to know or suspect; nevertheless, it is the Releasors' intent by this Release to fully compromise, settle, and release any and all claims, against any of the Released Parties, that they now have or may hereafter acquire in any manner by reason of or arising out of any of the events, acts, or omissions described in any of the pleadings in the Action.
- 7.2. Releasors agree to perform all acts necessary to dismiss the Action with prejudice. To that end, the Releasors hereby irrevocably authorize and directs their attorney of record in the Action to immediately execute and file with the appropriate court a fully executed Stipulation of Dismissal with Prejudice; each Party to bear its own attorneys' fees and costs.
- 7.3. Releasors represent and warrant that no portion of any claim, right, action, or cause of action against any Party or the Released Parties that he has or might have arising out of the events, acts, or omissions described in the pleadings in

the Action, or any portion of any recovery or settlement to which they might be entitled, has been or will be assigned or transferred by or for them in any manner whether expressly or by operation of law.

- 7.4. Releasors represent and warrant that all liens and/or subrogation claims with respect to the settlement proceeds will be satisfied by Releasor. If such a lien is asserted against the proceeds herein, or against the Released Parties, or any of them, then, in consideration of the payment made to the Releasors, the Releasors covenants to pay and satisfy any such asserted lien, or to satisfy the same on a compromise basis, and to obtain in any event a release of the Released Parties, and to indemnify and hold harmless said parties from any costs, expenses, attorney fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien by any entity having such lien.
- 7.5. Releasors understand that the Released Parties will in no way be responsible for the allocation of the settlement proceeds at issue, and Releasors agrees that the allocation will be determined by Releasors and their counsel, and they hereby release and forever discharge the Released Parties, jointly and severally, from any claim or liability relating to the division of settlement proceeds and agrees to defend, indemnify and hold harmless the Released Parties, jointly and severally, against any and all such claims or liabilities.
- 7.6. Releasors hereby acknowledge that they have not relied on any statement, representation, omission, inducement, or promise of any other Party (or any other officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or making the settlement provided for herein, except as expressly stated in this Agreement.
- 7.7. Releasors agree that the exchange of consideration described herein and the underlying settlement are the compromise of disputed claims and are not to be construed as an admission of any liability, fault, or responsibility on the part of any of the other Released Parties, by whom liability and fault is, and has always been, expressly denied.
- 7.8. This Agreement shall be interpreted in accord with the laws of the State of New York.
- 7.9. The Parties acknowledges that this Agreement is the product of negotiations between counsel, and that if there is ever a dispute concerning the meaning of any of its terms, each Party shall take the position that its own counsel prepared this Agreement such that ambiguities within its terms are not to be construed in favor of anyone.

7.10. This Agreement integrates all understandings, promises and representations between the Releasors and the other Parties of every kind and nature. Any promise, undertaking or representation not contained within the terms of this Agreement was intentionally omitted, because the Parties intend this Agreement to supersede all such prior and concurrent promises, representations and undertakings. This Agreement may not be amended or modified without the prior express written consent of all the Parties.

7.11. Releasors acknowledge and represent that they has had the opportunity to consult with counsel concerning the terms of this Agreement, that their counsel has reviewed this Agreement, and that they execute this Agreement after and as a result of having received advice of counsel on its meaning and implications.

7.12. If a provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall:

7.12.1. be reduced to the minimum extent necessary to be legal and valid, as long as the revised provision remains consistent with the intent of the parties expressed herein; or

7.12.2. if the foregoing is not possible, deemed to be severed and deleted. Neither such revision nor such severance and deletion shall affect the validity of the remaining provisions of this Release.

8. **Effective Date of Agreement.** This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

IN WITNESS WHEREOF, the Parties execute this Agreement on the date hereunder:

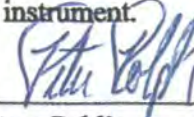
CNY Scrap Processing, LLC
Carrier Salvage & Recycling, LLC

By: Shelly Cairns

Date: 10/14/2020

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

On this 14 day of October, 2020, before me personally came Shelley Corrier personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the persons upon behalf of which the individual acted, executed the instrument.



Notary Public

PETER ROLPH
NOTARY PUBLIC, STATE OF NEW YORK
ONTARIO COUNTY REG. #0210610973
COMMISSION EXPIRES MARCH 15, 2020

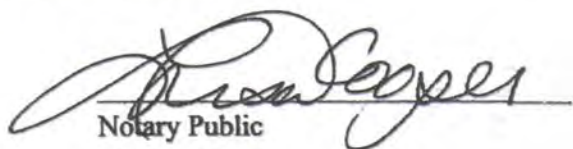
The Town of Sterling

By: Joan Kelley
Joan Kelley, Town Supervisor

Date: 10/8/20

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

On this 8 day of October, 2020, before me personally came Joan Kelley, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the persons upon behalf of which the individual acted, executed the instrument.



Notary Public

LISA COOPER
NOTARY PUBLIC, State of New York
No. 01CO5067933
Qualified in Cayuga County
Commission Expires October 28, 2022

0800 5/11/20 Board members -

please review for
Executive Session on 5/11
June

HALL AND KARZ
ATTORNEYS AT LAW
6 GORHAM ST.
CANANDAIGUA, NEW YORK 14424

(585) 394-5755
FAX: (585) 394-5758
www.hallandkarz.com

SAMUEL M. HALL
LAURENCE M. KARZ (1948-2014)
PETER ROLPH

April 27, 2020

Nicholas Pontzer, Esq.
Goldberg Segalla
1200 Crossroads Building, 2 State Street
Rochester, NY 14614

RE: CNY Scrap Processing, LLC & Carrier Salvage & Recycling, LLC
vs. Town of Sterling and Bruce Applebee

Dear Mr. Pontzer:

Please consider this narrative statement regarding activities and noise at the Central New York Scrap Processing (hereinafter "CNY") business at 14725 State Route 104, in Sterling, New York. I believe the information here is generally responsive to your request for a description of activities the Carriers would expect to engage in on a typical Saturday at the facility.

The Carriers believe the CNY property is zoned for agricultural use, and they understand their activities are generally in line, in terms of noise, with activities that would typically occur around a farm. In terms of adjoining residences, Google Earth indicates the nearest house to the west is around 750 feet away. The nearest house to the east is at least 1000 feet away, on the south side of Route 104. And, there may be another residence around 450 feet through some woods to the north.

As Google Earth confirms, there are not many residences in the immediate vicinity of the facility, and the Carriers report that they have never directly received any complaints from any of the neighbors about noise. The Carriers are aware, of course, that there seems to be one adjoining property owner who has made various complaints about their activities. However this person or these people seem to have some personal animosity toward the Carriers as opposed to legitimate complaints shared by other nearby landowners.

On a typical Saturday, three employees will be working at CNY. This is down from the pre-lawsuit days, when five or six employees would have been working at CNY. On a typical Saturday, these employees spend most of their time engaging in the following activities: answering phones, book keeping or other administrative tasks, interacting with customers (i.e. discussing sales), unloading trucks/vehicles with various items containing scrap metal, weighing vehicles with the scrap metal and or scrap metal itself

-2-

Every customer that sells items to CNY must be verified and every transaction must be documented. Per New York State law, any time a piece of scrap is sold to or purchased by a facility like CNY, the purchaser/recipient must present some form of identification – usually a driver's license. The licenses or other forms of identification are then scanned and the transaction is recorded in a database maintained by CNY.

Saturdays are a big day for sales/purchases of scrap metal items brought in by "residential" customers – people who ordinarily work during the week, but take advantage of off-work hours to dispose of old vehicles and household items like washing machines, hot water heaters, or children's toys. In addition to customers who bring their items to the CNY facility, the Carriers will also go out on the road and pick up items for customers who lack the means to move/deliver these items to the Carrier. When that happens, the customers will typically follow the Carriers to the CNY facility. Customers who sell items to the Carriers are paid based on the weight and composition of an item, so when the Carriers pick something up, it is necessary for customers to come in and be present when the item is weighed.

Items typically delivered or acquired from residential customers are generally referred to in the metal recycling industry as "tin," which is understood to mean items that contain materials other than (recyclable) metal. These items are received on practically any day, but on Saturdays more customers seem to bring "tin" to CNY. All of it is ultimately received and accumulates in piles behind the fence, which is located approximately 116 feet from Route 104.

On occasion, the piles of tin are moved or pushed by the Carrier staff using a front end loader or a crane to make room for other customers to bring in their tin. The Carriers advise that pushing piles of tin around the facility is one of the activities that produces the most noise at their facility, on Saturday or any other day. On the busiest days, the Carriers estimate that they will typically push or move a pile of tin around once an hour.

Recently, in order to gauge for himself how noise generated at CNY facility might affect their neighbors, Kevin instructed his sons to move a pile of "tin" while walked west along Route 104. About halfway to the nearest house to the west of the facility, Kevin reports he could only faintly hear any noise emanating from the facility, a noise he likens to "a car running in your driveway." Kevin also relates that he has spoken to both of the closest neighbors (to the east and west) and they have "no issues" with noise on the Carrier property. He would invite anyone interested in assessing noise generated at CNY to conduct a similar "test."

By way of comparison or putting any noise generated at CNY in proper context, Kevin also relates that on occasion he will carry on conversations with CNY customers while they are in the parking area in front of the fence. He can do this without any difficulty even while other CNY employees are behind the fence moving scrap around, cutting metal or engaging in other activities. However, when tractor trailers go by on route 104, some 75 - 100 feet away, he has to stop talking and wait for traffic to pass. The obvious point is that within anywhere up to or beyond 50-100 feet from Route 104, the traffic on the road generates at least as much or more

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noise than typical activities at CNY.

Receiving moving scrap received from customers is only one aspect of the operation at CNY. Once the scrap comes on site, it must be "processed" and made ready for sale by the Carriers. This entails cutting up items into smaller, more manageable pieces so the metal can be taken off site and sold by the Carriers to facilities at the "end" of the recycling chain.

In addition to cutting larger items into more manageable pieces, the Carriers also "clean" and separate items. Cleaning may entail removing all fluids from vehicles as well as other potentially hazardous items, such as a shock absorber, which contains compressed gas.

In order to cut larger items down to a manageable size, the Carriers use either a shear or a torch. Some items, such as a set of aluminum bleachers, may require disassembly (removing nuts and bolts) "by hand." All processing typically occurs behind the fence, at least 240 feet from the roadway, and at least 500 feet from any adjoining residences.

As noted previously, the Carriers believe the actual scrap processing they do generates less noise than simply moving around the piles of scrap brought to the facility by their customers. Employees do not wear earplugs or other protective devices because the noise involved simply doesn't warrant them.

A shear is a hydraulically powered cutting device, like an oversized pair of scissors, mounted behind an excavator. Kevin states that the noise generated by a shear is "probably a bit louder than a push mower." The Carriers currently have one shear of their own, and they will occasionally rent larger shears for large, off-site jobs such as cutting down old bridges or demolishing old buildings.

Torches used by the Carriers to process scrap are gas-powered, and Kevin states that the noise generated by a torch is "very minimal, probably less than a push mower." These torches are powered by propane and oxygen, and quite commonly seen at auto repair shops, farms, maintenance garages, and construction sites.

Once the scrap metal is "processed," it is then loaded onto the Carrier vehicles and delivered to facilities where it is "milled" or melted down for reuse. In terms of noise generation, this aspect of the Carrier's business is somewhat similar to the receipt of items at CNY.

The Carriers would like to point out that theirs is a heavily regulated industry. They have frequent interactions with DEC officials to ensure that their operation is clean, safe, and fully-compliant with any regulations. As you are probably aware, when the Carriers purchased the facility it had been cited for multiple violations of DEC and other rules/regulations, and the Carriers worked closely with the DEC to bring the facility into compliance. On prior occasions, the Carriers have worked with the DEC to clean up other junkyards/scrap processing facilities. While the Carriers may have been cited or advised by the DEC of problems that continued after

-4-

they purchased the facility, they did not create those problems and, in reality, the DEC was probably happy to have been able to work with the Carriers.

The Carriers are committed to running the cleanest and safest facility they possibly can. For example, many scrap metal processors will require their customers to drain all fluids from any items they intend to sell for recycling. The Carriers, however, have noticed that customers who drain fluids from scrap don't do a very good job, and they often saw drip trails of oil from cars that were brought in or other items covered in oil and other hazardous fluids after careless or inexperienced customers had "drained" them. In order to ensure that fluids are leaked or spilled in appropriately, the Carriers allow their customers to bring items that have not been drained so the Carriers can properly and safely drain these items themselves.

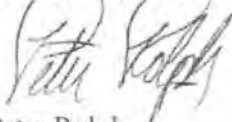
The Carriers also have regular interactions with law enforcement officials. State Police and local Sheriff's departments depend on the Carriers to help them reduce the amount of theft of valuable scrap metal and catch those responsible for theft of scrap metal items (batteries, copper, etc.). While every scrap processor, as noted previously, is required to document all purchases/sales, the Carriers are extra vigilant and will call law enforcement if they have any concerns or doubts about items that come into their facility.

While the Carrier's good working relationship with law enforcement and the DEC is not directly relevant to any discussion of noise generated at CNY on Saturdays (or any other day), they do want to stress the simple fact that they are committed to being good neighbors who can and do play an important role in the region.

Please share this information with your clients and let me know if there is anything else we can provide.

Sincerely,

HALL AND KARZ



Peter Rolph

pc: Shelley and Kevin Carrier

Exhibit I

DEC 29 2021

ZONING BOARD OF APPEALS
TOWN OF STERLING

IN THE MATTER OF THE APPLICATION OF
Morley Flynn
FOR AN INTERPRETATION

RESOLUTION 2021-06

WHEREAS, the Applicant, **Morley Flynn**, has appealed to the Zoning Board of Appeals for an Interpretation of the allowable land uses regarding business operation of CNY Scrap Processing, LLC on property located at 14725 State Route 104, Martville, NY 13111; Tax Map #19.00-1-35.111 and #19.00-1-35.112, and,

WHEREAS, notice of public hearing was duly published in the official newspaper of the Town of Sterling at least (5) days prior to the date of such public hearing, and all additional notices thereof having been made as required by law, and,

WHEREAS, a public hearing was held on Thursday December 16, 2021 upon the above referenced matter, and,

WHEREAS, at said hearing all those interested in said appeal were heard either in favor of or in opposition there to, and,

The Board has relied on verbal representations made by the applicant during the course of these proceedings as noted in the applicable Board Minutes.

NOW THEREFORE, the Zoning Board of Appeals does hereby express the following Opinion in support of their Determination:

An Appeal was heard by the ZBA to interpret the allowable land uses for specific properties in which the Code Enforcement Officer of the Town had issued a permit, which is alleged to be incorrect because the permit had been issued for uses that were prohibited by the Land Use Regulations within that Zoning District. The applicant provided substantive evidence of the history of land use and associated permits and actions by the Town, court proceedings documentation, settlement agreement through mediation, and supporting sections of the Town's Land Use Regulations. He asserted that the Town Board, by accepting the settlement agreement with CNY Scrap Processing LLC, usurped the legislative intent of the Land Use Regulations and exceeded their authority by giving interpretive relief which is an appellate jurisdiction assigned expressly to the ZBA. Specifically, Article 8-7, Table 3 Activity # 35 Junkyard/Recycling facility not permitted in any district, allowable in an approved PDD; and Article 14-2, Non-conforming use of land shall not be extended or enlarged; regulations of the Town that were disregarded in totality by the settlement agreement between CNY Scrap Processing and the Town of Sterling and therefore considered unlawful.

The owners of CNY Scrap Processing LLC also made statements for the Board to consider attesting to the history of usage for junk and salvage purposes encompassing all three properties that they had purchased, the involvement of the DEC in monitoring the clean-up activity of a multitude of pre-existing violations, discussions with Town Board and Planning Board (meeting minutes of 2/7/11) which encompassed the

entirety of 22 acres +/-, and the determinations made within the settlement agreement dated 10/8/20 which they allege is binding upon both parties.

The Board Members considered the evidence presented and deliberated the following findings of fact:

- ~ Focus of a single parcel versus three parcels. The abundance of documents pertaining to the parcels by either address, tax map number or other reference is consistent throughout the documentation as having been separate, non-conforming, in violation of use for specific zoning district, and requiring a PDD approval for future use a junkyard.
- ~ Cayuga County Real Property information and transactions (RPTR-5217) contradicts the purported property classifications that suggests an elevation in property use/value without process through the Town.
- ~ Successive 10+ year history of building permits issued by the Town for property identified as #19.00-1-33 only; the addition of properties # 19.00-1-35.111 and # 19.00-1-35.112 was recently added informally by hand writing.
- ~ Notification of settlement agreement determination and issuance of Town building permit to the public is unknown, the subsequent time of appeal does not begin until an aggrieved party receives actual notice of the decision, therefore the statute of limitations appears to be flawed and insufficient in this appeal.
- ~ The settlement agreement is not in lieu of Town zoning regulations.
- ~ CEO letter to John Wilbur, dated 5/8/06, regarding a signed Court Stipulation and Consent Order supports the belief that the two additional parcels were not part of the junkyard, ever, in that he was ordered to remove everything from those properties.
- ~ The discussions between the property owners, Kevin and Shelly Carrier, and the Planning Board via meeting minutes of 2/7/11 states that they "have been before the Town board with plans for purchasing the Wilbur Junkyard (19.00-1-33) off of State Route 104 and filing a PDD to operate their expanding business – CNY Scrap Processing LLC." A recommendation by the Planning Board was proffered by resolution #2011-02 as follows "recommend the continuation of the grandfathered, non-conforming use status of Wilbur's Junkyard in the applicants name for the purposes of addressing the DEC and Sterling Town Violations before proceeding with the PDD process."
- ~ Town of Sterling Resolution #2011-031 Non-Conforming Use Permit & Transfer License, dated March 30, 2011, "RESOLVED, that this Board authorize the issue of a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing." This resolution #2011-031 did not include mention of a PDD, and was only for parcel #19.00-1-33.
- ~ The settlement agreement refers to the "Property" without a clear and definitive description. Possible oversight an assumption by the parties involved with the mediation.

In deference to the afore mentioned reasons, the Members of the ZBA were in unanimous agreement that the issuance of a building permit for the three parcels was incorrect, noncompliant, and incongruous with the intentions of the Town's Land Use Regulations for property development and zoning.

NOW THEREFORE, upon a motion duly made by Member Dates and seconded by Member Itzin,

BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Sterling, upon the facts presented and the determination made, that the Code Enforcement Officer was in error in including the two additional properties, tax map #19.00-1-35.112 and #19.00-1-35.111, for the 2021-2022 building operating permit # 2021-007, and that the Code Enforcement Officer shall provide a corrected building/operating permit to include only tax map #19.00-1-33.

Roll call vote was taken:

Richard Palmieri, Chairman		Abstained
Charles Itzin, Member	Aye	
Brad Dates, Member		Aye
Carolyn Waterman, Member		Aye
Brian Sturges, Member	Aye	
4 AYES 0 NAYES 1 ABSTENTIONS		

Exhibit J

TOWN OF STERLING
REGULAR MEETING
NOVEMBER 20, 2023

A regular meeting of the Sterling Town Board, County of Cayuga and State of New York was held on the 20th day of November, 2023 at the Sterling Town Hall, 1290 State Rt. 104A, Sterling, NY 13156 at 7:00 pm.

PRESENT:	Scott Crawford	Supervisor
	Caren Thompson	Councilperson
	Leigh Shortslef	Councilperson
	Charlie Krul	Councilperson
	Joan Kelley	Councilperson
	Lisa Cooper	Town Clerk
	Susie Parsons	Historian
	Curt Cooper	Highway Superintendent
	Pat Shortslef	President of SHS
	Andrew Joyce	Planning Board Member
	Jonathan Anna	CEO
	Judy Dunaway	Village of Fair Haven Trustee

AUDIENCE MEMBERS: 4 People

Supervisor Crawford opened the meeting. Vouchers were reviewed and signed by the Board members.

Privilege of the Floor

None.

Highway Report

Curt Cooper, Highway Superintendent reported the new plow is on the new highway superintendent's truck. He stated that once the holidays are over, he will put the old highway superintendent's truck on Auctions International. He stated they had one truck down. It has been repaired and all trucks are up and running ready for winter. He stated the Town received the 2/3 payment from Fair Haven and are waiting for the County to pay their base pay. The Town should be receiving that check soon. Curt also stated the ridge caps on the salt shed needed to be replaced. He stated the department rented a lift and Eric Otis from Fair Haven made the repairs on the salt shed. Supervisor Crawford asked if the debris was removed from Christopher Drive from Carlton Lyon. Curt stated the attorney sent Carlton and his children a letter but as of today, the debris was still in the road.

Historian Report

Susie Parsons, Historian stated she had a request to research the Stevens property, and Methodist Church. She has also been researching families and Underground Railroad. Susie stated she, Charlie Itzin and Susan Gateley have been working on a book

TOWN OF STERLING
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NOVEMBER 20, 2023

regarding the RG&E property and Nature Center. They are hoping to have it completed by the dedication of the Nature Center.

Historical Society Report

Pat Shortslef, President of the SHS, stated there are calendars and ornaments available for purchase at various locations. The SHS has 1 more meeting date at the end of November. She stated she will be stepping down as President of the SHS at the end of the year but will continue being on the Board. She stated Leigh Shortslef will be the President effective January 1, 2024.

CEO Report

Jonathan Anna, CEO stated three new homes have broken ground in the last few weeks. He stated his office is making progress in closing old files. He stated some are from the 1990's. He stated the fee schedule needs to be revised and updated.

Water Districts

Supervisor Crawford stated he is waiting to hear from C2AE.

Senior Citizen

Frank Perkins, President of Sterling Silver Seniors, reported their last meeting was November 16. There will be a Christmas party on December 7. They have discontinued Bunko until the spring. Frank reported that on December 5, Tops Supermarket in Hannibal will hand out a lunch box for seniors at the deli department. Meals on Wheels is looking for a new facility to prepare meals. Onondaga Coach is looking at a 5% increase for their service.

Zoning Commission

Councilperson Kelley stated they meet once a month. This last month, they met with two ZBA members. She stated they reviewed items that have been questioned since May of 2021.

Personnel Committee

Supervisor Crawford stated he and Councilperson Krul met with two candidates for the Planning Board position. He stated that there is one seat open but another will be open come January 1 (Andrew Joyce will be stepping down and will be the Town Supervisor). He stated the committee chose both candidates for the 2 seats.

Accept Minutes

On motion made by Councilperson Kelley, seconded by Councilperson Krul, to accept the minutes from the October 23, 2023 regular meeting/public hearing. Carried.

Supervisor's Report

TOWN OF STERLING
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NOVEMBER 20, 2023

On motion made by Councilperson Thompson, seconded by Councilperson Shortslef, to accept the Supervisor's report for October, 2023. Carried.

Correspondence

1. CEO report
2. Highway report
3. CCWSA report
4. CBRS 5 year review boundaries
5. Sterling Silver Seniors report
6. Annual letter from the court regarding the books are available to be audited
7. Planning Board minutes October 5, 2023
8. Planning Board minutes September 7, 2023
9. Letter of interest for Planning Board member from Jeff Sawyer
10. Letter of interest for Planning Board member from Kent Engelmann

Old Business

1. U Dig Safely New York flagging of W. Bay Road Storm Sewers waiting for agreement with CCWSA.
2. Dog control. Councilperson Kelley reported that she has called the person who was interested in being Sterling's dog control officer multiple times but she has not returned her calls.
3. Long-term agreement with Water District #3: Supervisor Crawford stated Town Attorney Kevin Cox, Mayor Jim Basile and Village Attorney Norm Chirco are working out an agreement.
4. Connecting fee and requirements for W. Bay Rd. Storm Sewer Project
5. Two applied for Planning Board member position. Jeff Sawyer will replace Lezli Parsons' position, Kent Engelmann will start January 1 once Andy Joyce moves to the Supervisor position.

New Business

1. Lighting in Sterling Valley (special district should be formed if expanded). Councilperson Kelley stated the light in Sterling Valley does not shine very brightly. The Town Clerk stated she would contact RG&E to have a crew to replace the light.

RESOLUTION #2023-144

ENTER INTO EXECUTIVE SESSION

On motion made by Councilperson Shortslef, seconded by Councilperson Krul, the following resolution was

ADOPTED AYES 5
NAYS 0

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RESOLVED, that this Board enter into executive session to discuss pending litigation.
(CNY Scrap) Time: 7:49 pm.

RESOLUTION #2023-145
EXIT EXECUTIVE SESSION

On motion made by Councilperson Thompson, seconded by Councilperson Krul, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, that this Board exit executive session. Time: 8:03 pm.

RESOLUTION #2023-146
MEMORANDUM OF UNDERSTANDING WITH CNY SCRAP

On motion made by Councilperson Shortslef, seconded by Councilperson Thompson, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, authorizing the Supervisor to sign the following Memorandum of Understanding with CNY Scrap:

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made by and between The Town of Sterling, 1290 State Route 104A, Sterling, New York 13156 ("Town"), CNY Scrap Processing, LLC, 2411 Wetmore Road, Branchport, New York 14418 ("CNY Scrap"), and Carrier Salvage & Recycling, LLC, 2440 Wetmore Road, Branchport, New York 14418 ("Carrier"), each a party hereto and collectively the "Parties" to the Memorandum of Understanding, the terms of which are as follows:

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WHEREAS, the Town is a municipal corporation located in the County of Cayuga, State of New York, and has its office for conducting business located at 1290 State Route 104A, Sterling, New York 13156; and

WHEREAS, since approximately May 25, 2011, CNY Scrap has owned property known as 14725 State Route 104, Martville, New York, 13111 (hereinafter "the Property"), and operates a scrap processing facility and junk yard on the Property; and

WHEREAS, the Property consists 19.62 acres in total, and contains three parcels identified by the tax identification numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112; and

WHEREAS, on or about February 24, 2015, CNY Scrap commenced a lawsuit against the Town in Cayuga County Supreme Court (Index #2015-206) wherein it challenged a Cease and Desist order issued by the Town's Code Enforcement Officer with respect to scrap processing activities at the Property ("the Litigation"); and

WHEREAS, on or about October 14, 2020, the Parties agreed to discontinue the Litigation and executed a "Settlement Agreement and Release" ("Settlement Agreement") a copy of which is attached hereto as Exhibit "A", wherein the parties agreed, *inter alia*, that CNY Scrap and Carrier would be permitted to use the property located at 14725-14735 State Route 104 as a Junkyard, as that term is defined in the Town's 2014 Land Use Regulations, as amended, and for those activities, including, and scrap processing activities, described in the April 27, 2020 letter from Peter Rolph, Esq. attached to the Settlement Agreement, in those areas of the property historically used for such activities, so long as they maintained compliance with the terms stated in the Settlement Agreement relative to hours of operation, scope of activities, maintenance of the property, etc.; and

WHEREAS, the Parties wish to clarify the terms of the Settlement Agreement to reflect the intention of the Parties when it was negotiated and executed that its terms and conditions apply to all three parcels (tax identification numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112) and to remove any ambiguity regarding its interpretation;

NOW, THEREFORE, the Parties have reached the following understanding:

1. In the interest of further amplifying and clarifying the terms and scope of the aforementioned Settlement Agreement, without adding or removing any of the terms or conditions stated in the Settlement Agreement, and without altering or amending any of the terms or conditions stated in the Settlement Agreement, the parties now state their agreement and affirmation that the Settlement Agreement and its various terms and conditions shall apply and do apply to the entire Property, consisting

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of the aforementioned three parcels identified by the following tax identification numbers: 19.00-1-33; 19.00-1-35.111; and 19.00-35.112.

2. More specifically, CNY and Carrier may continue to use the Property consisting of the aforementioned three parcels (tax ID numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112) in a manner consistent with its long historical use, for the purposes of operating a scrap processing facility and junkyard, subject to provisions of the Scrap Processing Law (New York General Business Law Section 69), Junkyard Law (New York General Business Law Section 136), and such other rules and regulations of the Town of Sterling and/or the State of New York that may apply.

3. By Resolution dated November 20, 2023, a copy of which is attached hereto and incorporated by reference, the Sterling Town Board agreed to execute this Memorandum of Understanding and authorized the Town Supervisor to execute same on behalf of the Town.

RESOLUTION #2023-147
PAY THE AUDITED VOUCHERS

On motion made by Councilperson Krul, seconded by Councilperson Thompson, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, authorizing the Supervisor to pay the following audited vouchers:

Voucher numbers

General A, B, Highway A, Highway B, Fire Districts 1-2-3, Lighting Districts	399-432
Trust and Agency	7
Water District #3	12

Vouchers total

General A	\$15,814.04
General B	\$383.38
Highway A	\$17,826.10
Highway B	\$2,941.24
Lighting District Sterling	\$123.37
Lighting District Martville	\$163.68
Trust & Agency	\$230.00
Water Project #2	\$630.00

TOWN OF STERLING
REGULAR MEETING
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RESOLUTION #2023-148

AUDITED JUSTICE BOOKS

On motion made by Councilperson Shortslef, seconded by Councilperson Krul, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, pursuant to Town Law Section 123 the that the records of the Supervisor for January to June 2023 having been duly examined and found all the fees have been turned over to the proper officials.

RESOLUTION #2023-149

RECORD OF ACTIVITY

On motion made by Councilperson Thompson, seconded by Councilperson Shortslef, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, Town Board of the Town of Sterling hereby establishes the following as standard work day for elected and appointed officials for the purpose of determining days worked reportable to the New York State and Local Employee’s Retirement System based on the record of activities maintained and submitted by these officials to the Clerk of this body:

Appointed Officials:

Assessor	6 hours	Rebecca Hendricks	1/1/23-12/31/23	19.88
Bookkeeper	6 hours	Patricia Craine	1/1/23-12/31/23	2.93

RESOLUTION #2023-150

YEAR END MEETING

On motion made by Councilperson Shortslef, seconded by Councilperson Krul, the following resolution was

ADOPTED AYES 5

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NAYS 0

RESOLVED, that this Board schedule a year end meeting on December 28, 2023 at 7 pm and authorize the Town Clerk to advertise for such.

RESOLUTION #2023-151
ORGANIZATIONAL MEETING

On motion made by Councilperson Thompson, seconded by Councilperson Krul, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, that this Board schedule an organizational meeting on January 2, 2024 at 7 pm and authorize the Town Clerk to advertise for such.

RESOLUTION #2023-152
BOARD OF ASSESSMENT REVIEW MEMBER

On motion made by Councilperson Kelley, seconded by Councilperson Thompson, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, that this Board appoint Alexander (Charles) VonHoltz as a Board of Assessment Review member.

RESOLUTION #2023-153
APPOINT A PLANNING BOARD MEMBER

On motion made by Councilperson Krul, seconded by Councilperson Thompson, the following resolution was

ADOPTED AYES 5
NAYS 0

RESOLVED, that this Board appoint Jeff Sawyer as a Planning Board member effective immediately.

RESOLUTION #2023-154
APPOINT A PLANNING BOARD MEMBER

On motion made by Councilperson Krul, seconded by Councilperson Kelley, the following resolution was

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ADOPTED AYES 5
NAYS 0

RESOLVED, that this Board appoint Kent Engelmann as a Planning Board member effective January 1, 2024.

Privilege of the Floor

Dan Larson-Main St. questioned a couple of line items of the budget. The Board explained the purpose of the two line items he questioned.

Karen Haas-Main St. asked the Board if they re-zoned the parcels for CNY Scrap. She also asked how the resolution that was just passed relates to the ZBA decisions. Supervisor Crawford stated the document that was just passed was to clarify the memorandum of understanding. He stated this memorandum of understanding does not have anything to do with the ZBA decision. There was much discussion between Ms. Haas and Supervisor Crawford regarding CNY Scrap.

There being no further business, on motion made by Councilperson Thompson, seconded by Councilperson Krul, the meeting adjourned. Time 8:20 pm. Carried.

Lisa Cooper, MMC
Sterling Town Clerk