**STERLING WATER STEWARDS**

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**STATEMENT FOR TOWN OF STERLING BOARD MEETING**

**February 22, 2024**

I am Joanne Hunt Piersma, a member of the Sterling Water Stewards and an attorney with long roots in this area, having been born and raised in the Town of Sterling.

Several of you know me because in December of 2022, I was here at the public hearing to speak in support of the passage of the Protective Overlay Districtamendment to your land use regulations.

Tonight, I am here with another purpose, namely to ask the Town Board to rescind the Memorandum of Understanding that it agreed to on November 20,2023.

The basis of this request is simple. The Memorandum of Understanding had the effect of rezoning two parcels of land and the Town Board does not have authority to rezone.

At its November 2023 meeting the Town Board went into executive session, under the guise of discussing litigation, and then unanimously approved a memorandum of understanding toallow CNY Scrap on Route 104 to expand their operations from 3.7 acres (consisting of 1 tax parcel) to 19.2 acres (now three tax parcels.)

In this photo, which is an arial photo of the CNY Scrap property, we have outlined the 3.7 acre tax parcel in blue. You can see that the scrap yard operations already spill out beyond the first tax parcel in every direction except the road. Let me also show you another arial photo which shows all three tax parcels located by GIS mapping. Once again you can see “junk” in every area.

This far exceeds the right of the landowner, CNY Scrap, to continue to operateits business as permitted by the existing zoning laws. The Sterling zoning laws don't even allow junkyards and scrapyards, but this business was grandfathered-in as a pre-existing, non-conforming use. When the owners, Kevin and Shelley Carrier, purchased Wilbur’s Junkyard in 2011, the Planning Board originally granted a *conditional*(and those conditions have never been met) “transfer license” to operate the junkyard on a 3.7 acre parcel.

This memorandum of Understanding was done as an addendum to a 2020 legal settlement between the Townand CNY Scrap which did not specify what land it was referring to.The 2020 legal agreement provided no discernable benefit to the town. It allowed CNY Scrap to continueto operate both a junk yard and a scrap yard in the Town and required the Town to pay them $22,500.The effect of the memorandum of understanding in 2023 was to now rezone the other two tax parcelsowned by CNY Scrap.

The whole history of this business and the Town’s various attempts to regulate it is convoluted beyond belief. I have chosen not to repeat what I have learned from all of the voluminous documents that I have reviewed, as the early history is just background for what happened in November.

But let me repeat myself. The Town Board has **no legal authority** over zoning or special usepermits, so its action was illegal.

Under the Town of Sterling’s Land Use Regulations only the Planning Board and the Zoning Board of appeals have authority overimplementation of zoning laws. In effect, what the Town Board did was bypass the boards that do have authority and re-zone the other two tax parcels owned by CNY Scrap. All without any application, any public notice, any public hearing,

The Town Board has **no authority** over these Boards and their decisions other than to appoint members.Only the courts can override their decisions.

I have attached to my presentation an opinion by the Attorney General of the State of New York in advising a Village board, back in 1990, that it was not authorized to settle litigation against it in a manner that would usurp the power of the village zoning board to determine matters involving zoning. (The opinion is based on Village Law, but that is almost identical to Town law in most respects.)

Why is this so important?

Permitting the expansion of this junk yard scrap yard business to more than quadruple its size is a threat to the safety of the Town’s drinking water. Contaminants from this business that leach into the ground have the potential to affect aquifers and wells miles away from the source of the contamination.CNY Scrap is located in an area of relatively higher groundwater elevations. Groundwater generally flows toward the north in the Town of Sterling. Surface water and groundwater both flow with gravity toward lower elevations, ultimately Lake Ontario in this case.

In other words, contaminants from the property will in all likelihood run straight north toward Lake Ontario with numerous underground aquifers, numerous private wells, Blind Sodus and Sterling Creeks, and the Village of Fair Haven public wells potentially in their path.

The NY State Department of Environmental Conservation (DEC) hasn’t set foot on the property since 2021, when the Carriers settled the last of their court battles with the DEC. The Carriers have kept up with their DEC report filings, but you are taking their word for conditions onsite, and they have a record of DEC violations. The last thing we need is a back-room, illegal, arbitrary expansion of this business.

We can’t do anything about the existing3.7-acrescrap and junk yard except to enforce our own laws concerning junk yards and scrap yards and to insist that state regulators do their jobs. But at least we should not make the situation worse.

Some of you may be worried that if you rescind this memorandum of understanding that CNY Scrap will sue. And they may. But if they do, you will win.

If you don’t rescind it, you may be sued for that. The Flynn family, whose land butts up against CNY Scrap to the north and east has already filed a complaint with the Sterling Town Board of Zoning Appeals. They have hired an experienced environmental lawyer to represent them.If you are sued because you choose not to rescind7, you will lose.

You can’t avoid being sued, but you can avoid losing. More important, by admitting the mistake and reversing this decision, you can uphold your responsibility to act in the best interests of the Town’s residents.