

STATE OF NEW YORK
SUPREME COURT CAYUGA COUNTY

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

SUMMONS

Plaintiffs,

INDEX NO.:

vs.

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

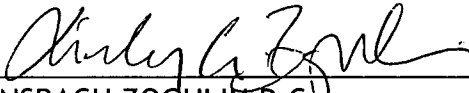
Defendants.

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.
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Susan H Dwyer

STATE OF NEW YORK
SUPREME COURT CAYUGA COUNTY

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

VERIFIED COMPLAINT

Plaintiffs,

INDEX NO.:

vs.

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

Defendants.

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:

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- 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

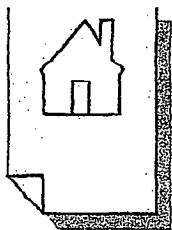
BRIDGET A. O'TOOLE
NOTARY PUBLIC, State of New York
Qualified in Monroe County
Registration No. 02OT6264723
Commission Expires July 2, 20 14

FILED
Feb 24 2015 11:39:37A
Index# 2015-00000206
Receipt # 116428
CAYUGA COUNTY CLERK
Susan M Dwyer

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 A



TOWN OF STERLING
Office of Code Enforcement

Postal Service
CERTIFIED MAIL RECEIPT
 Domestic Mail Only (No Insurance Coverage Provided)
 For Delivery Information Visit our website at www.usps.com

Postage	\$.48
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	—
Postage & Fees	\$ 6.48

STERLING NY 13156
 FEB 05 2015
 Here
 USPS

Scrap Processing Attn: Shelly Carrier
 14725 State Route 104
 Martville NY 13111

7010
 7010
 AUGUST 2006

Via Certified Mail

February 5, 2015

CNY Scrap Processing LLC
 Attn: Shelly Carrier
 14725 State Route 104
 Martville, New York 13111

Re: **Non-Conforming Use Permit**
14725 State Route 104

Dear Ms. Carrier:

I am in receipt of CNY Scrap Processing LLC ("CNY Scrap")'s application for renewal of a Non-Conforming Use Permit for operation of a "junkyard" at the property located at 14725 State Route 1043 in the Town of Sterling. For the reasons set forth herein, CNY Scrap's application for Non-Conforming Use permit is denied, and CNY Scrap is hereby directed to cease and desist from any further operation of its scrap processing facility at the subject property until it has complied with the conditions herein.

Background

The following provides a summary of the history of the subject property as it relates to CNY Scrap's application for renewal of its Non-Conforming Use Permit:

March 3, 1969 – Town of Sterling adopts "Ordinance No. 2 of the Town of Sterling for the Regulation of Automobile Junk Yards."

February 10, 2005 – Town cites John Wilbur for the following violations: failure to apply for or be granted a junkyard license; failure to pay annual junkyard license fee; failure to install proper fence or gate; vehicles not stored/work not being performed within enclosure; and keeping 2+ vehicles in state of disrepair on the premises.

September 29, 2005 – Town issues Appearance Ticket to John Wilbur for Property Maintenance Code and Zoning Law violations.

January 4, 2006 – Stipulation and Consent Order between Town and John Wilbur signed by Justice Peter Blauvelt requiring John Wilbur to remove all junk

from his property, and giving the Town Code Enforcement Officer the right to enter the premises, upon notice, to inspect and ensure compliance.

September 18, 2006 – Sterling Town Board adopts Resolution #2006-139 recognizing the John Wilbur property as a “nonconforming, pre-existing lot *provided it be maintained as per the original junkyard law*” (emphasis added).

January 12, 2011 – DEC letter to Kevin Carrier regarding violations of 6 NYCRR 360 (“Solid Waste Management Facilities Regulations”). “At a minimum, all the waste tires and construction and demolition debris must be removed from the site. In addition, all drums containing fluids must be properly characterized and managed accordingly and sent to an authorized facility for disposal.”

February 7, 2011 – Town of Sterling Planning Board adopts Resolution 2011-12 recommending the “continuation of the grandfathered, non-conforming use status of Wilbur’s Junkyard in the applicants [sic] name for the purposes of addressing existing DEC and Sterling Town Violations before proceeding with the PDD process.”

February 22, 2011 – Town Board adopts Planning Board’s February 7, 2011 recommendation and passes Resolution #2011-031 authorizing the issuance of a non-conforming use permit and transfer license from Wilbur’s Junkyard to CNY Scrap Processing for purposes of addressing DEC violations and proceeding with the PDD process.

June 17, 2011 – DEC Notice of Violation to Kevin Carrier regarding the following violations: 1,000+ waste tires without a permit (ECL 27-2303(9)); fluid spillage and spoil contamination (ECL-2303(10)); fluids not stored in proper containers (ECL 27-2303(6)); improperly stored lead acid batteries (ECL 27-2303(7)). “Schedule of Compliance” attached requiring violations be addressed by September 1, 2011.

January 30, 2014 – DEC letter to Kevin Carrier regarding Notice of Violation of ECL Section 27-2303 and 6 NYCRR Part 360 for failure to submit a Vehicle Facility Dismantling Facility mandatory Annual Report including self-certification for 2012, along with proposed Consent Order and \$1,000 fine.

June 2, 2014 – DEC Notice of Violation to Kevin Carrier regarding following violations: failure to submit annual reports (ECL 27-2303(1)); failure to properly store fluids (ECL 27-2303(6)); illegal storage of 1,000+ waste tires without permit (ECL 27-2303(9)); failure to prevent fluids from entering ground and/or waters (ECL 27-2303(10)); failure to prepare and implement contingency plan (ECL 27-2303(17)). DEC attached a “Schedule of Compliance” requiring that the violations be corrected by August 30, 2014.

June 23, 2014 - Town of Sterling adopts “Town of Sterling Land Use Regulations.”

October 1, 2014 – DEC Notice of Violation to Kevin Carrier regarding the following violations: no annual reports for 2012 or 2013; illegal storage and disposal of 1,000+ waste tires; and stained soils have not been removed.

January 28, 2015 – DEC inspects and reports that the facility is compliant for all of the items observed and with its schedule of compliance. DEC also reports that CNY Scrap submitted its 2012 and 2013 annual reports, and removed tires to under 1,000 on-site.

Findings

As you know, I conducted a consensual inspection of the property on January 21, 2015. During my inspection, I observed that you have expanded your use of the property beyond that of a “junk yard,” as the term is defined in Ordinance No. 2 of Town of Sterling For the Regulation of Automobile Junk Yards (1969) (“1969 Junk Yard Law”), for which you were given a transfer license to operate by Town Board Resolution dated February 22, 2011. Your use of the property has expanded beyond a “junk yard” to a scrap processing facility. Section 1 of the 1969 Junk Yard Law specifically provides that “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.” As such, your use of the property violates the 1969 Junk Yard Law and your transfer license, and you are hereby directed to cease and desist operation of a scrap processing facility until such time as you are in compliance with the Town of Sterling Land Use Regulations adopted by the Town Board on June 23, 2014 (“Land Use Regulations”).

With respect to your use of the subject property as a junk yard, you are in violation of the terms of your non-conforming use permit and transfer license granted by the Town Board due to your failure to apply for a PDD. On February 22, 2011, the Town Board adopted the Planning Board’s February 7, 2011 recommendation and passed Resolution #2011-031 authorizing the issuance of a non-conforming use permit and transfer license from Wilbur’s Junkyard to CNY Scrap for purposes of addressing DEC violations and proceeding with the PDD process. As noted above, CNY Scrap has addressed the DEC violations to the satisfaction of the DEC at this time. However, you have failed to apply for a PDD which was a condition imposed by the Town Board when the non-conforming use permit and transfer license were granted. Due to your failure to apply for the PDD, your permit and transfer license are hereby revoked, and you are hereby ordered to cease and desist from any further operation of a junk yard at the subject property until you are in compliance with the Land Use Regulations.

The Town of Sterling reserves all rights to pursue any and all enforcement action allowed by law. In this regard, please be advised that pursuant to Section 2-8 (“Violations”) of the Land Use Regulations, “[i]n case...land is used in violation of this article or of any other local law, ordinance or other regulation made under authority conferred thereby, the proper local authorities of the town, in addition to other remedies, may institute an appropriate action or proceedings to prevent such...use to restrain, correct or abate such violation, to prevent the occupancy of said...land or to prevent any illegal act, conduct, business or use in or about such premises...”

Please be further advised that pursuant to Section 2-9 (“Fines and Penalties”) of the Land Use Regulations:

For any and every violation of the provisions of these Regulations:

- A. The owner, general agent, or contractor of a building or premises where such violation has been committed or shall exist;

- B. The owner, general agent, contractor, lessee, or tenant of any part of a building or premises in which part such violations have been committed or shall exist; and
- C. The general agent, architect, building contractor, or any other person who knowingly commits, takes part, or assists in any such violation, or who maintains any building or premises in which any such violation shall exist, shall be liable, upon conviction thereof, to a fine or penalty not to exceed (two hundred fifty dollars) \$250.00 or by imprisonment for a period not to exceed six (6) months or by both such fine and imprisonment. Each week's continued violation shall constitute a separate, additional violation.

Thank you for your cooperation in this matter. Please contact me if you have any questions regarding the foregoing.

Sincerely,



Bruce Applebee
Code Enforcement Officer
Town of Sterling

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.

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

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 suitable 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.

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-

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

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:

- June Ouellette ~ Chairman
- Sue Allen ~ Member
- Joshua Sanders ~ Member
- 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 (13.00-1-39)

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

with dimensions for placement of the new lot and house as well as the location of all buildings and easements on the property at the next meeting in March.

MINUTES

A motion to approve meeting minutes with minor corrections for January 3, 2011 was moved by Chairman Ouellette and seconded by Member Horn. All were in favor, motion carried. A motion to approve work session minutes for January 10, 2011 was moved by Chairman Ouellette and seconded by Member Allen. All were in favor, motion carried.

ADJOURN

On a motion by Member Horn and seconded by Member Sanders, the meeting was adjourned at 9:30 PM.

Approved Minutes
Respectfully submitted,

Lisa Somers, Planning Board Clerk

Exhibit D

RESOLUTION #2011-031
NON CONFORMING USE PERMIT & TRANSFER LICENSE

On motion made by Councilperson Taft, seconded by Councilperson Keeling, the following resolution was

ADOPTED Ayes 4 Palmieri, Taft, Schneider, Keeling
Nays 0

RESOLVED, that this Board authorize the issue of a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing.

Need for State Property is zoned to dismantle vehicles. Add CDV + Address

Letter on Town letter head is fine for DMV. (standing)

STATE OF NEW YORK
COUNTY OF CAYUGA
TOWN OF STERLING

*PT 104
14725
marquette, NY*

I, Lisa Cooper, MMC, Town Clerk of the Town of Sterling, Cayuga County, New York,

DO HEREBY CERTIFY, that I have compared the foregoing with the original resolution adopted by the Town Board of the Town of Sterling at a meeting of said Board held on the 22nd day of February 2011, and that the foregoing is a true and correct transcript of said original resolution and of the whole thereof, and that said original resolution is on file in my office.

I DO FURTHER CERTIFY, that each of the members of said Town Board had due notice of said meeting and that Ilona Palmieri Supervisor, Gus Taft, Walter Schneider, Steven Keeling, Councilpersons, were present at such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Sterling, this 30th day of March 2011.

Lisa Cooper, MMC, Town Clerk

RESOLUTION #2011-031

NON CONFORMING USE PERMIT & TRANSFER LICENSE

On motion made by Councilperson Taft, seconded by Councilperson Keeling, the following resolution was

ADOPTED Ayes 4 Palmieri, Taft, Schneider, Keeling
Nays 0

RESOLVED, that this Board authorize the issue of a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing.

STATE OF NEW YORK
COUNTY OF CAYUGA
TOWN OF STERLING

I, Lisa Cooper, MMC, Town Clerk of the Town of Sterling, Cayuga County, New York,

DO HEREBY CERTIFY, that I have compared the foregoing with the original resolution adopted by the Town Board of the Town of Sterling at a meeting of said Board held on the 22nd day of February 2011, and that the foregoing is a true and correct transcript of said original resolution and of the whole thereof, and that said original resolution is on file in my office.

I DO FURTHER CERTIFY, that each of the members of said Town Board had due notice of said meeting and that Ilona Palmieri Supervisor, Gus Taft, Walter Schneider, Steven Keeling, Councilpersons, were present at such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Sterling, this 30th day of March 2011.



Lisa Cooper, MMC, Town Clerk

Exhibit E

NEW YORK STATE
BUILDING PERMIT
Town of Sterling

Tax Map # 19.00-1-33

Permit #

Date Issued 2/22/2011

Issued to

ENVY Scrap

Expires On 9/20/2011

Address

14725 5th. RT. 104

Resolution # 2011-031

NY State Fire & Building Insp.

*Non-conforming use
Permit and transfer
license from Wilbur's
Junkyard to ENVY Scrap
Processing.*



Bruce Applegate

Exhibit F

ATTENTION April

**TOWN OF STERLING
OFFICE OF CODE ENFORCEMENT**

State Route 104A
Sterling, New York 13156
Ilona Palmieri, Supervisor
Bruce Applebee, Code Enforcement Officer
Telephone: (315) 947-6245
Fax: (315) 947-5119
Email: szoning@twcny.rr.com

October 12, 2011

CNY Scrap Processing, LLC
Kevin and Shelley Carrier
2411 Wetmore Road
Branchport, NY 14418

Re: Property at 14725 State Route 104
Sterling, NY 13156

To Whom It May Concern:

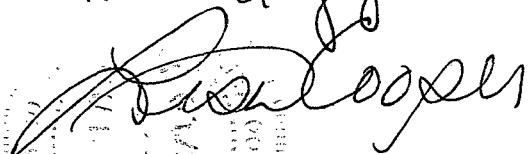
The above referenced property in the Town of Sterling is zoned for the dismantling of vehicles with no restriction on number of vehicles.

Sincerely,



Bruce Applebee
Code Enforcement Officer

Sworn to me this
12th day of October 2011



LISA COOPER
NOTARY-PUBLIC, State of New York
No. 01C05067933
Qualified in Cayuga County, 2014
Commission Expires October 28, 2014

Exhibit G

NEW YORK STATE
BUILDING PERMIT

Town of Sterling

Tax Map # 1900-1-33

Permit #

Date Issued 10/28/11

Issued to City of Sterling

Expires On 10/28/12

Address 1775 S. 21st

Res. # 201-091

*For conforming use
permit for any
Scrap Processing.*

NY State Fire & Building Insp.

[Signature]

Eric Applebee

Exhibit H

NEW YORK STATE
BUILDING PERMIT

Town of Sterling

Tax Map # 19:00-1-33

Permit # 12-0051

Date Issued 11-02-2012

Issued to CNY Scrap processing

Expires On 11-02-2013

14725 ST RT 104

Address MANTVILLE NY 13441

Non Conforming precedent use

AS Scrap processing Facility

APPROVED BY Town Board

T/Sterling

NY State Fire & Building Insp.



Exhibit I

NEW YORK STATE
BUILDING PERMIT

Town of Sterling

Tax Map # 19.00-1-33

Permit # DOB-0071

Date Issued 12-20-13

Issued to CSU Scrap
Processing

Expires On 12-20-14

Address 14225 St. Rd. 104

Nonlean farming

Marble

Use permit
for CSU Scrap

Processing

NY State Fire & Building Insp.



Sterling, NY 13156
(315) 947-6245

BUILDING PERMIT

(Please Post in a Conspicuous Place)

Issued : 12/20/2013
Expires : 12/20/2014

Permit # : 0013-0071
Fee : \$15.00

Project Description: Special Permit-Junkyard

Location: 14725 State Rt 104

Property Information:

Tax Map#: 19.00-1-33 Front: 0.00 Lot:
Class: 475 Depth: 0.00 Subdivision:
Acres: 3.70 Zone:

Owner:

CNY Scrap
14725 st rt 104
Martville, NY, 13111

Applicant : CNY Scrap
14725 st rt 104
Martville, NY 13111

Constr. Type: V
Est. Project Cost : \$0.00

Occupancy : U
Material :
Square Feet : 0

Contractor :

Permission is hereby granted to proceed with the work as set forth in the plans, specifications or statements now on file in the Code Enforcement Office. Any changes made to the original plans must first be submitted for approval.

The applicant shall notify Town of Sterling Code Enforcement Officer for the following inspections:

It is the responsibility of the owner and/or contractor to comply will all applicable Town ordinances. All inspections require a 24-hour minimum advance notice.

12/20/2013

Date

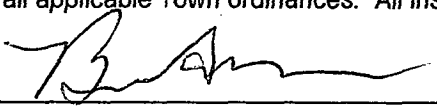
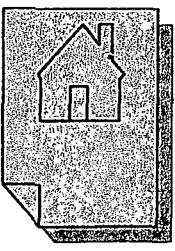

Bruce Applebee, Code Enforcement Officer

Exhibit J



TOWN OF STERLING
OFFICE OF CODE ENFORCEMENT

129 State Route 104A
Sterling, New York 13156
Randall Lawrence, Supervisor
Bruce Applebee, Code Enforcement Officer
Telephone: (315) 947-6245
Fax: (315) 947-5119
Email: szoning@twcny.rr.com

September 24, 2014

CNY Scrap Processing
14725 State Route 104
Martville, NY 13111

To Whom It May Concern:

It has come to my attention that there are vehicles and other items on the property that need to be moved so that they are behind the property fence. This is so that they are not visible from the highway. This would include any unregistered vehicles, tires, scrap metal, or other items that may cause the premises to look undesirable to the general public. This is mandatory in the Town and is stated so in section 302, of the Property Maintenance Code of New York State and Ordinance No. 2, section 10 of the Town of Sterling Regulations of Automobile Junk Yards. Please call our office if you have any questions or concerns at 315-947-6245

Sincerely,


Bruce Applebee,
Code Enforcement Officer

Town of Sterling Building Department

1290 State Rt 104A
Sterling, NY 13156
(315)947-6245

Violation Form

Property:

Location: 14725 State Rt 104
Tax Map#: 19.00-1-33
Class: 475

Front: 0.00 Lot:
Depth: 0.00 Subdivision:
Acres: 3.70 Zone:

Owner:

CNY Scrap
14725 st rt 104
Martville, NY 13111

Violation# : 0014-0041

Violation Date: 09/24/2014

Violator: CNY Scrap
14725 st rt 104
Martville, NY 13111

Uniform Code Violation?

Complainant Bruce Applebee, Code Enforcement Officer
Information :

Violation : Motor Vehicles
Authority : Property Maintenance Code of New York State
Section : 302
Title : Exterior Property Areas
Page : 7

Order to remedy printed: 09/24/2014
Comply by Date: 10 #1 2014
Appearance Date&Time // :: AM
Appearance Ticket Printed: //
Correction Notice Printed: //

Inspector : Bruce Applebee

Observed :
Motor vehicles, scrap, and junk

Violation Notice:

Any person, firm, corporation or other violating any provision of this ordinance shall be deemed guilty of an offense and upon conviction thereof shall be subject to a fine not exceeding \$250, or to imprisonment not exceeding 50 days, or to both such fine and imprisonment, for each and every violation and for each week and every week that such violation continues.

In addition to other penalties, the Town may institute any appropriate action or proceeding to prevent the unlawful erection, construction, alteration, or use of any building or land in violation of the requirements of this ordinance.

Stop Work Order Printed: //

Offense :

Town of Sterling Building Department

1290 State Rt 104A

Sterling, NY 13156

(315)947-6245

Notice of Violation/Order to Remedy

09/24/2014

To: CNY Scrap
14725 st rt 104
Martville, NY 13111

Property Location: 14725 State Rt 104

Tax Map#: 19.00-1-33

Violation# : 0014-0041

Violation Date: 09/24/2014

Offense: Motor Vehicles

An apparent violation of the Zoning/Building Laws exists on the above property. I observed :

Motor vehicles, scrap, and junk

This is in violation of the law/ordinance specified below and detailed at the end of this notice:

Authority : Property Maintenance Code of New York State

Section : 302

Title : Exterior Property Areas

Page : 7

YOU ARE THEREFORE DIRECTED AND ORDERED to comply with the law and to remedy the condition above on or before ~~10/24/2014~~ 10/24/14

Failure to remedy these conditions and to comply with the applicable provisions of the law may constitute an offense punishable by fine or imprisonment, or both.

Any person, firm, corporation or other violating any provision of this ordinance shall be deemed guilty of an offense and upon conviction thereof shall be subject to a fine not exceeding \$250, or to imprisonment not exceeding 50 days, or to both such fine and imprisonment, for each and every violation and for each week and every week that such violation continues.

In addition to other penalties, the Town may institute any appropriate action or proceeding to prevent the unlawful erection, construction, alteration, or use of any building or land in violation of the requirements of this ordinance.

9-24-2014

Date

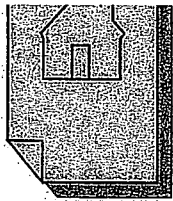


Bruce Applebee, Code Enforcement Officer

Violation Detail :

Except as otherwise provided for in statute or other regulations, two or more inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exhibit K



**TOWN OF STERLING
OFFICE OF CODE
ENFORCEMENT**

1290 State Route 104A
Sterling, New York 13156
Randall Lawrence, Supervisor
Bruce Applebee, Code Enforcement Officer
Telephone: (315) 947-6245
Fax: (315) 947-5119
Email: szoning@twcny.rr.com

December 21, 2014

CNY Scrap Processing
14725 State Route 104
Martville, NY 13111

Dear Mr. Carrier,

Last week your request for the renewal of your junkyard permit was denied. The denial was based on the grounds that the Code Enforcement Officer reserves the right to perform an inspection of the property before issuing the renewal.

Please contact our office at 315-947-6245 to set up an appointment.
Our hours are Monday 10-2 and Wednesday 10-4.

*The office will be closed Wednesday December 24th due to the holiday.

Thank You,



Bruce Applebee
Code Enforcement Officer

Exhibit L

CNY SCRAP PROCESSING
14725 State Route 104
Martville NY 13111

December 29, 2014

Dear Mr. Applebee,

I write in response to your letter dated December 21, 2014. Thank you for telling us the reason for your decision to deny our permit renewal request on December 15, 2014.

After leaving your office we consulted with legal counsel and were advised that since our business pre-dated the Town Zoning Code and Junkyard Ordinance, it is a pre-existing nonconforming use that may legally continue until the business operations[™] cease. We understand that we do not need to apply for and receive a nonconforming use permit every year to operate our business. If you disagree, please provide us with an explanation for the basis of your opinion.

The Junkyard Licence under the applicable law should be renewed upon receiving the annual License fee with out hearing.

In the spirit of cooperation we are happy to let you inspect our property. Please just let us know the purpose of your inspection and provide me a copy of any inspection report that results from it.

Sincerely



Shelley Carrier

Copy to Bruce Applebee
1-8-15

CNY Scrap Processing
14725 State Route 104
Martville NY 13111

January 8, 2015

Town of Sterling
Office of Code Enforcement
1290 State Route 104A 13156
Bruce Applebee

Dear Mr. Applebee

I am checking in with you regarding a letter I sent to you on December 29 th 2014. I have not heard anything from you and was wondering what your intentions were regarding an inspection.

My contact information is as follows

564-6800 104 Yard
315-521-8016 Shelley Carrier cell
315-573-4132 Kevin Carrier cell
315-564-3133 Home Office
Sscar3@bluefrog.com E-mail

Thank-you


Shelley Carrier

Exhibit M

14-245



Bansbach Zoghlin P.C.

Attorneys at Law

Bansbach Zoghlin P.C.

31 Erie Canal Drive, Suite A
Rochester, NY 14626-4604

25 Years
1990-2015

(585) 227-2610 • (585) 227-2629 fax

www.BansZog.Com

January 2, 2015

Records Access Officer
Town of Sterling
1290 State Route 104A
Sterling, NY 13156

RE: FOIL REQUEST

Dear Records Access Officer:

Under the provisions of the New York Freedom of Information law, I hereby request copies of documents related to the adoption of: the 1997 Town of Sterling Zoning Law; The 2014 Town of Sterling Land Use Regulations; and Ordinance number 2 of the Town of Sterling for the Regulation of Automobile Junkyards, collectively the "Local Laws."

The requested documents include, but are not limited to: minutes of meetings or hearings where creation, drafting and or adoption of the Local Laws was discussed; letters and other writings concerning the creation, drafting and or adoption of the Local Laws; public notice of hearings published regarding creation, drafting and or adoption of the Local Laws; and copies of the Local Laws.

Please supply the records without informing me of the fees if the fees are less than fifty dollars (\$50). Please provide these documents to me by mail or e-mail (baotoole@banszog.com) at your earliest convenience.

As I am sure you are aware, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible. If for any reason any portion of my request is denied, please inform me of the reason for the denial in writing and provide the name and address of the person or body to whom an appeal may be directed. Your prompt response this request would be greatly appreciated.

Thank you for your continued courtesy and cooperation in this matter

Sincerely,

Bridget O'Toole

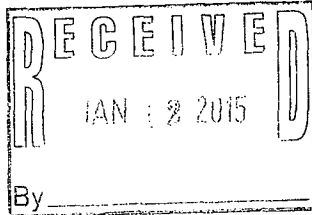
Cc: Mr. & Mrs. Kevin Carrier
Mindy L. Zoghlin, Esq. ✓

Exhibit N



1290 State Rte. 104A
Sterling, New York 13156

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



January 8, 2015

Bansbach Zoghlin PC
Attention: Bridget O'Toole
31 Erie Canal Drive Suite A
Rochester, NY 14626-4604

Dear Ms. O'Toole,

I received your FOIL request on January 5, 2015 the request copies of documents related to the adoption of the 1997 Town of Sterling Zoning Law; The 2014 Town of Sterling Land Use Regulations; and Ordinance number 2 of the Town of Sterling for the Regulation of Automobile Junkyards, collectively the "Local Laws."

I am unable to process your request within the 5 days but I do anticipate processing some of the requested records within a two week period. (See Freedom of Information Law Section 89 3 (a).) However, some of the minutes you are requesting are available on the Town of Sterling website. I am able to process additional minutes (that are not on the web but indexed) but those that are not indexed, are available here at the Town Clerks office for your viewing during regular business hours.

If you have any questions, please give me a call at the above number.

Sincerely,

Lisa Cooper, MMC
Sterling Town Clerk

Exhibit 0



Bansbach Zoghlin P.C.
25 Years
1990-2015

14-245
Bansbach Zoghlin P.C.

Attorneys at Law

31 Erie Canal Drive, Suite A
Rochester, NY 14626-4604

(585) 227-2610 • (585) 227-2629 fax
www.BansZog.Com

January 8, 2015

Records Access Officer
Town of Sterling
1290 State Route 104A
Sterling, NY 13156

RE: FOIL REQUEST

Dear Records Access Officer:

Under the provisions of the New York Freedom of Information law, I hereby request 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.

Please supply the records without informing me of the fees if the fees are less than fifty dollars (\$50). Please provide these documents to me by mail or e-mail (baotoole@banszog.com) at your earliest convenience.

As I am sure you are aware, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible. If for any reason any portion of my request is denied, please inform me of the reason for the denial in writing and provide the name and address of the person or body to whom an appeal may be directed. Your prompt response this request would be greatly appreciated.

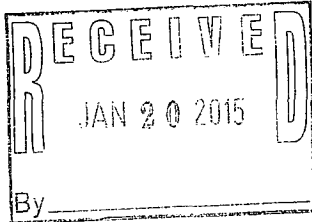
Thank you for your continued courtesy and cooperation in this matter

Sincerely,

Bridget O'Toole

Cc: Mr. & Mrs. Kevin Carrier
Mindy L. Zoghlin, Esq.

Exhibit P



January 14, 2015

Bansbach Zoghlin PC
Attention: Bridget O'Toole
31 Erie Canal Drive Suite A
Rochester, NY 14626-4604

Dear Ms. O'Toole,

i received your FOIL request on January 12, 2015 the request copies of documents related to the lawsuit involving John Wilbur and the Town Board's 2011 recommendation regarding the "Wilbur Junkyard".

Your first request regarding the lawsuit involving John Wilbur, there are no records of such lawsuit.

You second request for the minutes of 2011 regular meetings are on the Town's website. Special meetings are not on the web. Those minutes are not indexed. Those minutes are available here at the Town Clerks office for your viewing during regular business hours.

If you have any questions, please give me a call at the above number.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa Cooper".

Lisa Cooper, MMC
Sterling Town Clerk

Exhibit Q



Bansbach Zoghlin P.C.
25 Years
1990-2015

Bansbach Zoghlin P.C.

Attorneys at Law

31 Erie Canal Drive, Suite A
Rochester, NY 14626-4604

(585) 227-2610 • (585) 227-2629 fax

www.BansZog.Com

January 12, 2015

Zoning Board of Appeals
Town of Sterling
1290 State Route 104A
Sterling, NY 13156

**RE: APPEAL OF DENIAL OF NONCONFORMING USE PERMIT FOR CNY SCRAP
PROCESSING LLC**

Dear Sir or Madam:

We serve as counsel for CNY Scrap Processing LLC ("CNY"), which owns property located at 14725 State Route 104, Town of Sterling, Tax Map Nos. 19.00-1-33, 19.00-1-35 112 and 19.00-1-35 111 (the "Property"). We write to appeal errors made by the Code Enforcement Officer ("CEO") pursuant to section 4-9 of the Town's Land Use Regulations. The CEO made the following errors:

- (1) The CEO incorrectly determined that CNY must apply for and receive some type of permit to operate an automobile junkyard at the Property; and
- (2) 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.

CNY appeals the CEO's decision because the Property is a pre-existing, nonconforming use that has been used continuously as a junkyard since before the adoption of the Town of Sterling Zoning Code and Land Use Regulations. Therefore, CNY is entitled to a Nonconforming Use Permit as of right.

Under New York Law, a nonconforming use is a use of land which lawfully existed prior to the enactment of a zoning ordinance and which is maintained after the effective date of the ordinance although it does not comply with use restrictions applicable to the area in which it is situated. See, *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511 (1st Dep't 1986). A use which is otherwise lawfully maintained may be continued as a nonconforming use although the user failed to procure or renew a license, certificate or other permit required by law. See, *Braun v. McGillian*,

180 Misc. 711 (Sup. Ct. 1943); *Kennedy v. Zoning Bd. of Appeals of Town of North Salem*, 205 A.D.2d 629 (2d Dep't 1994); *Rubin v. Wallace*, 63 A.D.2d 763 (3d Dep't 1978).

Nonconforming uses are permitted to continue in the Town of Sterling. The Town of Sterling Land Use Regulations provide 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.

Sterling Land Use Regulations, Art. XIV §14-1 (adopted 2014).

The use of the Property as an automobile junkyard is a pre-existing nonconforming use as recognized by Town of Sterling Resolution #2011-031. Resolution #2011-031 is attached hereto as Exhibit "A".

CNY has applied for and been granted a Nonconforming Use Permit for the Property annually since it purchased the Property in 2011. Copies of CNY's Nonconforming Use Permits are attached hereto as Exhibit "B".

On December 18, 2014 Code Enforcement Officer Bruce Applebee denied CNY Scrap Processing LLC's application for renewal of its Nonconforming Use Permit. A copy of Applebee's letter confirming denial of the application is attached hereto as Exhibit "C".

For the foregoing reasons, CNY appeals the CEO's determination that a non-conforming use permit is required and denying CNY's application for a Nonconforming Use Permit. Please find enclosed appellant's Zoning Board of Appeals Application and application fee of \$100. This notice may be amended to include additional bases for appeal.

Sincerely,



Bridget O'Toole

Encl. as stated

cc: Mr. & Mrs. Kevin Carrier
Mindy L. Zoghlin, Esq.

Exhibit A

RESOLUTION #2011-031

NON CONFORMING USE PERMIT & TRANSFER LICENSE

On motion made by Councilperson Taft, seconded by Councilperson Keeling, the following resolution was

ADOPTED Ayes 4 Palmieri, Taft, Schneider, Keeling
Nays 0

RESOLVED, that this Board authorize the issue of a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing.

Need for STATE Property is zoned to dismantle vehicles. Add CNY + Address

Letter on Town Letter head in File for D.M.V. Standing

STATE OF NEW YORK
COUNTY OF CAYUGA
TOWN OF STERLING


*14725 RT 104
marquette, NY*

I, Lisa Cooper, MMC, Town Clerk of the Town of Sterling, Cayuga County, New York,

DO HEREBY CERTIFY, that I have compared the foregoing with the original resolution adopted by the Town Board of the Town of Sterling at a meeting of said Board held on the 22nd day of February 2011, and that the foregoing is a true and correct transcript of said original resolution and of the whole thereof, and that said original resolution is on file in my office.

I DO FURTHER CERTIFY, that each of the members of said Town Board had due notice of said meeting and that Ilona Palmieri Supervisor, Gus Taft, Walter Schneider, Steven Keeling, Councilpersons, were present at such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Sterling, this 30th day of March 2011.


Lisa Cooper, MMC, Town Clerk



1290 State Rte. 104A
Sterling, New York 13156

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

RESOLUTION #2011-031
NON CONFORMING USE PERMIT & TRANSFER LICENSE

On motion made by Councilperson Taft, seconded by Councilperson Keeling, the following resolution was

ADOPTED Ayes 4 Palmieri, Taft, Schneider, Keeling
Nays 0

RESOLVED, that this Board authorize the issue of a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing.


STATE OF NEW YORK
COUNTY OF CAYUGA
TOWN OF STERLING

I, Lisa Cooper, MMC, Town Clerk of the Town of Sterling, Cayuga County, New York,

DO HEREBY CERTIFY, that I have compared the foregoing with the original resolution adopted by the Town Board of the Town of Sterling at a meeting of said Board held on the 22nd day of February 2011, and that the foregoing is a true and correct transcript of said original resolution and of the whole thereof, and that said original resolution is on file in my office.

I DO FURTHER CERTIFY, that each of the members of said Town Board had due notice of said meeting and that Ilona Palmieri Supervisor, Gus Taft, Walter Schneider, Steven Keeling, Councilpersons, were present at such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Sterling, this 30th day of March 2011.



Lisa Cooper, MMC, Town Clerk

ATTENTION April

**TOWN OF STERLING
OFFICE OF CODE ENFORCEMENT**

1290 State Route 104A
Sterling, New York 13156
Ilona Palmieri, Supervisor
Bruce Applebee, Code Enforcement Officer
Telephone: (315) 947-6245
Fax: (315) 947-5119
Email: szoning@twcny.ny.com

October 12, 2011

CNY Scrap Processing, LLC
Kevin and Shelley Carrier
2411 Wetmore Road
Branchport, NY 14418

Re: Property at 14725 State Route 104
Sterling, NY 13156

To Whom It May Concern:

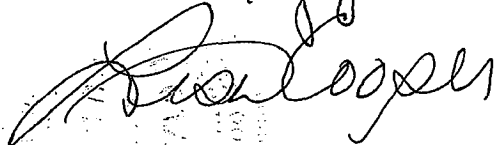
The above referenced property in the Town of Sterling is zoned for the dismantling of vehicles with no restriction on number of vehicles.

Sincerely,



Bruce Applebee
Code Enforcement Officer

Sworn to me this
12th day of October 2011



LISA COOPER
NOTARY PUBLIC, State of New York
No. 01605067933
Qualified in Cayuga County 2014
Commission Expires October 28, 2014

Exhibit B

NEW YORK STATE
BUILDING PERMIT
Town of Sterling

Tax Map # 19.00-1-33 Permit #

Date Issued 3/22/2011 Issued to CNY Scrap Processing

Expires On 9/20/2011 Address 14725 st. Rt. 104

Resolution # 2011-031

*Non-conforming use
Permit and transfer
license from Wilbur's
Junkyard to cny scrap
Processing.*

NY State Fire & Building Insp.

[Signature]
Bruce Appabre

NEW YORK STATE
BUILDING PERMIT
Town of Sterling

Tax Map # 19-00-1-33 Permit # 12-0051

Date Issued 11-02-2012 Issued to CNY Soap Processing
14725 ST RT 104

Expires On 11-02-2015 Address MARTINVILLE NY 1344

NY State Fire & Building Insp.



Now conforming processing use

As Soap Processing Facility

Approved by Town Board

T/Sterling

NEW YORK STATE
BUILDING PERMIT

Town of Sterling

Tax Map # 19.00-1-33

Permit # 0013-0071

Date Issued 12-20-13

Issued to ONY Scrap
Processing

Expires On 12-20-14

Address 1425 St. Rd. 104
Marble

Nonconforming
Use Permit
For ONY Scrap
Processing

NY State Fire & Building Insp.



1200
Sterling, NY 13156
(315) 947-6245

BUILDING PERMIT

(Please Post in a Conspicuous Place)

Issued : 12/20/2013

Expires : 12/20/2014

Permit # : 0013-0071

Fee : \$15.00

Project Description: Special Permit-Junkyard

Location: 14725 State Rt 104

Property Information:

Tax Map#: 19.00-1-33 Front: 0.00 Lot:
Class: 475 Depth: 0.00 Subdivision:
Acres: 3.70 Zone:

Owner:

CNY Scrap
14725 st rt 104
Martville, NY, 13111

Applicant : CNY Scrap
14725 st rt 104
Martville, NY 13111

Constr. Type: V
Est. Project Cost : \$0.00

Occupancy : U
Material :
Square Feet : 0

Contractor :

Permission is hereby granted to proceed with the work as set forth in the plans, specifications or statements now on file in the Code Enforcement Office. Any changes made to the original plans must first be submitted for approval.

The applicant shall notify Town of Sterling Code Enforcement Officer for the following inspections:

It is the responsibility of the owner and/or contractor to comply will all applicable Town ordinances. All inspections require a 24-hour minimum advance notice.

12/20/2013

Date

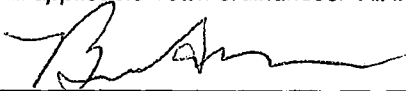
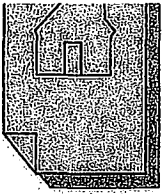

Bruce Applebee, Code Enforcement Officer

Exhibit C



**TOWN OF STERLING
OFFICE OF CODE
ENFORCEMENT**

1290 State Route 104A
Sterling, New York 13156
Randall Lawrence, Supervisor
Bruce Applebee, Code Enforcement Officer
Telephone: (315) 947-6245
Fax: (315) 947-5119
Email: szoning@twcny.rr.com

December 21, 2014

CNY Scrap Processing
14725 State Route 104
Martville, NY 13111

Dear Mr. Carrier,

Last week your request for the renewal of your junkyard permit was denied. The denial was based on the grounds that the Code Enforcement Officer reserves the right to perform an inspection of the property before issuing the renewal.

Please contact our office at 315-947-6245 to set up an appointment.

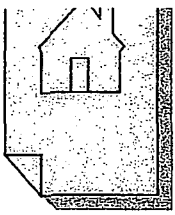
Our hours are Monday 10-2 and Wednesday 10-4.

*The office will be closed Wednesday December 24th due to the holiday.

Thank You,


Bruce Applebee
Code Enforcement Officer

Exhibit R



TOWN OF STERLING
Office of Code Enforcement

1290 State Route 104A
Sterling, New York 13156
Randall Lawrence, Supervisor
Bruce Applebee, Code Enforcement Officer
Telephone: (315) 947-6245
Fax: (315) 947-5119
Email: szoning@twcny.ny.com

January 14, 2015

CNY Scrap
14725 State Rt. 104
Martville, NY 13111

Dear Mr. Carrier,

I would like to set up a time with you to inspect the property known as CNY Scrap Processing, located at 14725 State Rt. 104. A letter was sent December 21, 2014 whereas you were told the permit was "denied". In that letter the term "denied" was used in error, and I would like to correct this by stating your permit was not denied at this time, but rather I was not able to re-issue the permit without first inspecting the premises. I also stated in that letter that it was imperative that you call our office to set up an appointment for the inspection. Since I have not heard back from you in regard to setting up an appointment, I will take the initiative and schedule Wednesday, January 21st at 10 am to do my inspection.

If this is a problem or you need to reschedule please call the office at 315-947-6245.

Thank You,

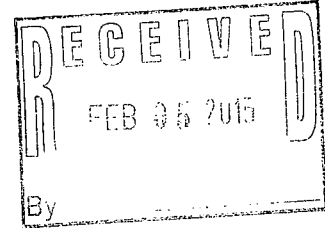
Bruce Applebee
Code Enforcement Officer

Exhibit S

TOWN OF STERLING ZONING BOARD OF APPEALS

125 State Route 104A
Sterling, New York 13156
Randall Lawrence, Supervisor
Laurence Lemon, Chairman
Telephone: (315) 947-6245
Fax: (315) 947-5119
Email: szoning@twcny.rr.com

January 30, 2015



CNY Scrap Processing, LLC
Shelley Carrier
2411 Westmore Road
Branchport, NY 14418

Re: ZBA Appeal; Denial of Non-conforming Use Permit
Owner: CNY Scrap Processing, LL
Property: 14725 State Route 104, Martville
Tax map # 19.00-1-33

Dear Shelley Carrier,

The Zoning Board of Appeals is in receipt of an application dated 1/12/14 to appeal the decision of the Code Enforcement Officer in regards to the denial of a requested permit to operate the above referenced business. The appeal is unfounded in light of the letter dated 1/14/15 from the Sterling CEO which essentially rescinds an erroneous denial while asserting that an inspection of the premises is required before re-issuance of permit. For these reasons the ZBA will not be processing this appeals application.

Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Somers".

Lisa Somers
ZBA clerk

Cc: ~~Bansbach Zoghlin, P.C.~~
T. Sterling Supervisor R. Lawrence
file

Exhibit T

dwelling units permissible on the parcel prior to the acceptance of an application for a cluster development.

E. Approval of Cluster Open Space

The area, configuration, location, ownership, use and maintenance of residual open spaces created by clustering shall be subject to review and approval of the PB.

F. Use of Cluster Open Space

Cluster open space may be made accessible to all residents of the subdivision or available for the use of the general public unless the PB finds that the size, location, type of development, or cost of the development or maintenance of such cluster open space, or the availability of public use undesirable or unnecessary

G. Undedicated Cluster Open Space

If cluster open space is not dedicated to public use, it shall be protected by legal arrangements, satisfactory to the PB, sufficient to assure its maintenance and preservation for whatever purpose it is intended. Covenants or other legal arrangements shall specify ownership of the cluster open space; method of maintenance; responsibility for maintenance; maintenance taxes and insurance; compulsory membership and compulsory assessment provisions; guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the PB; and any other specification deemed necessary by the Planning Board.

13-12 Fees

Fees for subdivision reviews shall be established in the Town of Sterling Fee Schedule and are nonrefundable.

ARTICLE XIV NON CONFORMITIES

14-1 Continuation

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.

14-2 Alteration or Extension

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.
- B.** Any increase in volume, area, or extent of the nonconforming use or structure 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 volume of business but rather an increase of cubic volume within a structure.

14-3 Restoration

No structure damaged by fire or other causes to the extent of more than seventy-five (75) percent of its fair market value shall be repaired or reconstructed except in conformity with these Regulations. Structures with damage to the extent of seventy-five (75) percent or less of the fair market value may be reconstructed, repaired or used for the same nonconforming use subject to the following provisions:

- A. The reconstructed structure shall not exceed the height, area, or volume of the damaged structure; and
- B. Reconstruction shall begin within six (6) months from the date of damage and shall be carried on without interruption.

14-4 Discontinuance of Non-Conformity

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.

14-5 Changes

Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use. A non-conforming use may be changed to another non-conforming use only under the following conditions:

- A. Such changes shall be permitted only by Special Use Permit, under the provisions of Article X. The applicant shall show that the non-conforming use cannot reasonably be changed to a permitted use in the district where such non-conforming use is located;
- B. The applicant shall show that the proposed change will be less objectionable in external effects than the existing non-conforming use with respect to:
 - 1. Traffic generation and congestion including truck, passenger car, and pedestrian traffic;
 - 2. Noise, smoke, dust, noxious matter, heat, glare, vibration;
 - 3. Storage and waste disposal; and
 - 4. Appearance.

14-6 Displacement

No non-conforming use shall be extended to displace a conforming use.

14-7 District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification the foregoing provisions shall also apply to any non-conforming uses or structures existing therein.

14-8 Zoning/Building Permit Required

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

Exhibit U

ARTICLE II

ADMINISTRATION

2-1 Code Enforcement Officer-Duties and Powers

The provisions herein shall be administered and enforced by the Code Enforcement Officer (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, including receiving Zoning/Building Permit applications, reviewing plans and specifications, conducting inspections, issuing permits for the erection, alteration, relocation, addition, repair and/or demolition of buildings and structures, issuing Certificates of Occupancy/Compliance, and maintaining and filing all records necessary or the administration of the office to the satisfaction of the Town Board.

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, these Regulations of the Town of Sterling and the State of New York. In the absence of the CEO or in case of his inability to act for any reason, the Town Supervisor shall have the power, with the consent of the Town Board, to designate a person to act on behalf of the Office of Code Enforcement and to exercise all the power conferred upon him or her by the ordinance.

2-2 Zoning/Building Permits

A. No structure shall be erected, constructed, reconstructed, extended or moved; and there shall be no change in land or building usage, until a Zoning/Building Permit has been secured from the CEO.

B. Upon completion of permitted action(s), the applicant shall notify the CEO of such completion. No permit shall be considered completed or permanently effective until the CEO has inspected the work, occupancy or use and has approved such as being in compliance with the provisions of these Regulations and any applicable county, state, and federal codes.

C. Permits shall be issued with a one (1) year life, renewable for two (2) consecutive years, however, if the work has not commenced within six (6) months after the issuance of the original Zoning/Building Permit, the permit shall automatically expire and a new permit shall be required before such work or change in uses commences.

D. No permit shall be required for general maintenance work, painting, clearing woodlands, landscaping, tilling the soil, raising animals, constructing fences, terraces, steps, small storage sheds or other similar features less than 144 square feet. All such activities, however, shall conform to the requirements of these Regulations.

2-3 Special Provisions for Issuance of Zoning/Building Permits in Areas Designated as Flood Hazard Areas (FHA)

A. The CEO, when reviewing applications for Zoning/Building Permits in a FHA of any district (See **Appendix A5**), shall determine if the proposed construction is consistent with the need to minimize flood damage and make recommendations for construction in all locations which have flood hazards.

B. In reviewing all applications for construction in FHA within the Town, the CEO shall require that any such proposed construction shall:

1. Be designed and anchored to prevent the flotation, collapse, or lateral movement of the structure or portions of the structure due to flooding;
2. Use construction materials and utility equipment that are resistant to flood damage;
3. Use construction methods and practices that will minimize flood damage;
4. Provide adequate drainage in order to reduce exposure to flood hazard; and
5. Locate public utilities and facilities on the site in such a manner as to be elevated and constructed to minimize or eliminate flood damage, such utilities and facilities including sewer, gas, electrical and water systems.

2-4 Certification of Occupancy/Compliance

No building hereafter erected, altered or extended shall be used until a Certificate of Occupancy/Compliance has been issued by the CEO stating that the buildings or proposed use thereof complies with the provisions of these Land Use Regulations. No building hereafter erected, altered or extended shall have a change of use until a Certificate of Occupancy/Compliance has been issued by the CEO stating that the buildings or proposed use thereof complies with the provisions of these Land Use Regulations.

2-5 Application Requirements for Zoning/Building Permits

A. All applications for Zoning/Building Permits shall be made in writing by the owner; tenant, vendee under contract of sale, or authorized agent, on a form supplied by the Town, and shall be filed with the CEO. The application shall:

1. Include a statement as to the proposed use of the building or land;
2. Include a site layout drawn to scale showing the location, dimensions, and height of proposed buildings, structure or land uses and any existing buildings in relation to property and street lines;
3. Include the number, location and design of parking spaces, if applicable;
4. Include the size, dimensions, location and methods of illumination for signs, if applicable; and
5. Include any additional plans and information reasonably necessary for the CEO to ascertain whether the proposed use, change in use, erection, alteration, or addition complies with provisions of these Regulations.

B. A permit for any new use or construction which will involve the on-site disposal of sewage or waste, or a change in use or alteration which will result in an increased volume of sewage or waste to be disposed of on the site, or which will require a new or modified water supply, shall not be issued until a certificate of approval has been issued by the Cayuga County Health Department.

2-6 Issuances of Zoning/Building Permits

Zoning/Building Permits shall be granted or refused within fifteen (15) days after the written application has been filed with the CEO, except as provided elsewhere therein. Upon completion of the activity authorized by any Zoning/Building Permit, the holder of such permit shall notify the CEO of such completion. All applications with accompanying plans and documents shall become, and be preserved, as public record, subject to the disposition of the Town Board.

2-7 Fees

The applicant, at the time of application for a Zoning/Building Permit, shall pay to the Town Clerk, the fee for said permit as established by the Town Board. The Town Board may, from time to time, amend the fee schedule. Fees shall be established by the Town Board by resolution.

2-8 Violations

In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of this article or of any other local law, ordinance or other regulation made under authority conferred thereby, the proper local authorities of the town, in addition to other remedies, may institute an appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction alteration, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, or land or to prevent any illegal act, conduct, business or use in or about such premises; and upon the failure or refusal of the proper local officer, board or body of the town to institute any such appropriate action or proceeding for a period of ten (10) days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district herein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do.

2-9 Fines and Penalties

For any and every violation of the provisions of these Regulations:

- A.** The owner, general agent, or contractor of a building or premises where such violation has been committed or shall exist;
- B.** The owner, general agent, contractor, lessee, or tenant of any part of a building or premises in which part such violations have been committed or shall exist; and

- C. The general agent, architect, building contractor, or any other person who knowingly commits, takes part, or assists in any such violation, or who maintains any building or premises in which any such violation shall exist, shall be liable, upon conviction thereof, to a fine or penalty not to exceed (two hundred fifty dollars) \$250.00 or by imprisonment for a period not to exceed six (6) months or by both such fine and imprisonment. Each week's continued violation shall constitute a separate, additional violation.

Whenever a violation occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer who shall record such complaint and investigate and report thereon to the Town Board.

ARTICLE III PLANNING BOARD

3-1 Establishment of a Planning Board

A Planning Board is established for the Town of Sterling.

3-2 Membership, Terms of Office

The Planning Board shall consist of five (5) members appointed by the Town Board for overlapping five (5) year terms.

3-3 Removal of Members

The Town Board shall have the power to remove, after public hearing, any member of the Planning Board for cause. Any Planning Board member may be removed for noncompliance with minimum requirements relating to attendance and training. The Town Board finds that appropriate attendance of Planning Board members is essential.

3-4 Minimum Attendance at Meetings

All members of the Planning Board shall be required to attend a minimum of seventy-five percent (75%) of their scheduled board meetings within a calendar year. Noncompliance with minimum requirements relating to attendance at meetings shall be deemed a proper cause for removal from office.

3-5 Procedure for Removal of Members

The Chairperson or Clerk of the Planning Board shall notify the Town Board in writing by December 1st in any year of any member who fails to comply with the minimum requirements for meeting attendance in any calendar year.

If a member has failed to comply the Town Board may remove such member for cause as herein provided.

Exhibit V

4-15 Fees

Appeals before the Zoning Board of Appeals shall be accompanied by a payment to the Town in accordance with a fee schedule adopted by resolution of the Town.

4-16 Review by Cayuga County Planning Board

The Zoning Board of Appeals shall refer any variance appeals to the County Planning Board when required by Section 239-m of NYS General Municipal Law.

ARTICLE V

AMENDMENT OF LAND USE REGULATIONS

5-1 Amendments

The Town Board may from time to time on its own motion, or on petition, or on recommendation of the Planning Board or the Zoning Board of Appeals amend, supplement or repeal the regulations and provisions of The Town of Sterling Land Use Regulations after public notice and hearing.

Every such proposed amendment or change, whether initiated by the Town Board or by petition shall be referred to the Planning Board for report thereon before the public hearing hereinafter provided for. The Town Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendments and cause notices to be given as follows:

A. By publishing a notice of the time and place of the hearing at least ten (10) days prior to the date of such hearing in a paper of general circulation in the Town;

B. A written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the Public Housing Law, as such area is show on an approved zoning map filed with the CEO, shall be given to the housing authority erecting or owning the project and of the government providing financial aid of assistance thereto at least ten (10) days prior to the date of such hearing;

C. A written notice of any proposed change or amendment affecting property within five hundred (500) feet of the boundaries of any state park or parkway shall be given in the regional State Park Commission having jurisdiction over such state park or parkway at least ten (10) days prior to the date of such public hearing;

D. A written notice of any proposed change of amendment affecting property within five hundred (500) feet of the boundaries of any city, village, town or county, shall be given to the clerk of such municipality and to the clerk of the County Legislature at least ten (10) days prior to the date of such hearing; and

E. In cases, however, of a protest against such change signed by the owners of twenty percent (20%) or more of the area of land included in such proposed change or of that immediately adjacent extending one hundred (100) feet there from or of that directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not become

effective except by favorable vote of at least four (4) members of the Town Board.

5-2 Zoning Referral to Cayuga County Planning Board

As required under New York State General Municipal Law, certain variances, Special Use Permits and amendments shall be referred to the County Planning Board for review and recommendations.

5-3 Severability

It is hereby declared to be the legislative intent that:

A. Should the courts declare any provision herein to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Local Law shall continue to be separately and fully effective.

B. Should the courts find the application of any provision or provisions herein to any lot, building or other structure, or tract of land, to be invalid or ineffective, in whole or in part, the effect of such decision shall be limited to the person, property, or situation immediately involved in the controversy, and the application of any such provision to other persons, property, or situation shall not be affected.

5-4 Repealed

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 16, 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 or 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.

5-5 Effective Date

The effective date of these Regulations shall be ten (10) days after publication pursuant to NYS Town Law.