

My original code enforcement complaint, and subsequent request for a hearing before the ZBA is centered around a scrap processors license issued to CNY Scrap Processing LLC on January 1st of this year (2021). While I plan on focusing on that I'd like to take a moment to bring some historical context to the situation.

Arguably- the history of this issue begins with the 1969 passage of Ordinance No. 2 of the Town of Sterling for the Regulation of Automobile Junkyards, but I'll skip ahead a little for the sake of time.

Prior to CNY Scrap purchasing the property at 14725 State route 104 it was owned by John Wilbur. The Property was littered with Junk cars, and was clearly out of compliance with Town Laws. In 2003 The Town of Sterling began a concerted effort to bring Wilbur's property into compliance with town land use regulations. Numerous actions were taken, including Code enforcement citations, the issuance of an Appearance Ticket to John Wilbur for violating town code, and the issuance of a signed consent order requiring John Wilbur to remove the Junk from his property. In 2006 the town board changes course and adopts resolution 2006-139 recognizing the John Wilbur property as a nonconforming, pre-existing lot. As a result of this resolution a junkyard permit was issued to John Wilbur for parcel 19.00-1-33. (Exhibit A). This is the permit that the rest of this story rests on. At the time of the issuance of this permit John Wilbur did not own any of the surrounding property and no

permits covering the surrounding properties were issued. In fact, John Wilbur came to own parcel 19.00-1-35.112 in 2008 (Exhibit B), and parcel 19.00-1-35.111 in 2009 (Exhibit C). Given that Wilbur did not own the additional parcels at the time of the original permit it's clear that the permit was solely intended to cover parcel 19.00-1-33.

Let's fast forward to 2011 and take a look at the minutes from the Planning board meeting held on February 7th (Exhibit D).

- Under new business we see Kevin & Shelly Carrier – Wilbur Junkyard Rehabilitation, and the parcel Number 19.00-1-33.
- The Carriers had met with The Town board expressing interest in purchasing John Wilbur's Properties, cleaning them up, and combining them into a single parcel to be operated as a Junk Yard/ Scrap Processing Facility
- They are requesting that the Planning Board Recommend to the Town Board that they continue the grandfathered operating permit in the Carrier's name to complete the cleanup process.

We see that the Planning Board passes 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 applicant's name for the purpose of addressing existing DEC and Sterling Town Violations before proceeding with the PDD process.*

This results in the Town Board passing resolution 2011-031 (Exhibit E), and the issuance of a Non-conforming Use Permit Dated 2/22/2011 (Exhibit F). As you can see this permit is only for Parcel Number 19.00-1-33.

On May 6th 2011 CNY Scrap Processing LLC purchases 3 parcels of land from John Wilbur and commenced operations.

From 2011 to 2014 this Non-Conforming Use permit is renewed annually only for parcel #19.00-1-33 (Exhibit G). Remember that this permit was issued to allow CNY Scrap to bring the site into DEC and Town of Sterling compliance while they went through the PDD Process. **During this period no attempt was made to complete a PDD Process, and there were numerous ongoing DEC violations.**

DEC violations are a whole other realm that do not directly relate to my argument here so I did not include supporting documentation on this. If you would like more information in regards to DEC issues I would be happy to supply it.

As we move forward into 2015 the Town Code Enforcement officer issues a Cease and Desist letter Dated February 5th to CNY Scrap. (Exhibit H). It's worth taking a moment to

look through this letter because it does a great job of providing a clear background on the issue at hand, and providing a rationale of why the order was issued.

Shortly after being issued the cease and desist, CNY Scrap Processing files a lawsuit against the Town of Sterling, Bruce Applebee individually, and as Code Enforcement Officer of the Town of Sterling on February 19, 2015.

On November 3rd of this year I requested all of the files pertaining to this case from the Cayuga County Clerk. While the case files are not included in the exhibits I have made them available to the board via Lisa Somers, ZBA Clerk.

From the point of that lawsuit being filed until present day little was made available to the public as litigation was ongoing. From what I can tell based on documents filed with Cayuga County Supreme Court:

- The suit was filed in February 2015
- In 2016 the plaintiff's lawyer informed the court that the name of their law firm had change, although legal representation remained the same
- In 2018 the Plaintiffs' lawyer request that the court relieve them due to non-payment by CNY Scrap
- On April 27th 2018 the plaintiffs officially lose representation

- There is no indication in the court filings that the plaintiffs retained another lawyer for the case
- On November 25th 2019 Judge Fandrich submits and order recommending mediation
- And on December 12, 2020 the case is discontinued
- The Courts never ruled on this case

In the mediation process CNY Scrap, and The Town of Sterling developed a Settlement Agreement (Exhibit I). On June 22, 2020 the Town Board passed Resolution #2020-092 accepting the settlement agreement (Exhibit J). On October 8th 2020 Town Supervisor Kelly executes the settlement. And finally, the CEO issues a Junkyard Permit to CNY Scrap on January 1st 2021 for parcels 19.00-1-33, 19.00-1-35.112, and 19.00-1-35.111 (Exhibit K). It must be noted that at no point in this process was the public made aware. There were no public notices, neighboring property owners were not notified, and all discussion among Town Board members was held in executive session.

I became aware of the issuance of this permit because it was posted on Facebook by CNY Scrap. In response I filed a code enforcement complaint on May 11, 2021 (Exhibit N).

Following the submission of this complaint I was in contact with the Town Supervisor, but received no official response. Due to the lack of action 6 months later I requested a hearing before the ZBA, and you have graciously accepted.

Now let's discuss the current situation. In the past ten years CNY scraps presence on these properties has morphed from a 3.5-acre non-conforming use permit to allow cleanup on one parcel, into a 19.62-acre junkyard and scrap processing facility on three parcels in complete contradiction to the provisions laid out in the Town of Sterling Land Use Regulations. Let me read a few key sections of the regulations to you.

The initial permits issued to CNY Scrap prior to 2021 were non-conforming use permits so let me define a non-conforming use. From Article 1 Section 4:

- A non-conforming use is: *A use of a building or lot that does not conform to the use regulations prescribed by these Regulations for the district in which it is located but which was in existence at the effective date of these regulations **and was lawful at the time it was established***

I repeat and was lawful at the time it was established. Unless CNY Scrap had established its junkyard on these parcels prior to 1969 any junkyard operation on those properties would not be lawful because from 1969 to present there have been town laws preventing the establishment of a junkyard without following specific permitting procedures and those procedures have not been followed.

Now let's take a look at article 14 "Non-Conformities," Section 2 Alteration or extension.

- *14-2: 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 alterations or extension shall be permitted only upon the same lot as in existence at the date the use became non-conforming*

Based on this we can see that CNY Scrap's permit cannot be expanded onto an additional two parcels of land.

So if the non-conforming use cannot be expanded outside of the original parcel what are the other avenues to establish a junkyard or scrap yard. Let's take a look at Article 8 "Use Regulations"

- Article 8, Section 1 Applicability of Regulations: *Except as provided by law or in these regulations, in each district, no building, structure, or land shall be used or occupied except for the purposes permitted in article 8-7 Table 3 and for the zoning districts so indicated*
- In Article 8, sections 7, usage table 3, line 35 we see that Junkyard/ Recycling Facilities are only allowed in an approved PDD. Not in the Agricultural/ Residential zone that these properties lie in, or in any other zone for that matter.

So, there are two legal ways to operate a junkyard/ scrap yard in the town of sterling.

1. Complete the PDD process, and have the PDD approved
2. Have a non-conforming use permit because the junkyard was established prior to the 1969 adoption of Ordinance No.2 of the Town of Sterling for the Regulation of Automobile Junkyards.

Neither of these apply to Parcels 19.00-1-35.112, and 19.00-1-35.111

The board may be wondering what about the settlement agreement between CNY Scrap, and the Town of Sterling. **First let me be clear: The settlement is not a court judgment. This is an agreement made voluntarily between two parties.**

It is clear this settlement attempts to define the permitted uses on CNY Scrap's property.

- The introduction States: *"Whereas, the Releasors and the Town of Sterling wish to set forth and define the acceptable and approved uses of the property"*
- Paragraph 2 Permitted Property Uses States: *The releasors (CNY Scrap) are permitted to use the property as a Junkyard as that term is defined in the town of Sterling's 2014 Land Use Regulations, as amended. The Releasors are also permitted to use the property for those activities, described in the April 27, 2020 letter from Peter Rolph esq., attached hereto as Exhibit A, and incorporated as though fully set forth herein, in those areas of the property historically used for such activities. The Releasors agree that they are not permitted to use the property for any other use*

unless it conforms to the use regulations prescribed by the Town of Sterling's 2014 Land Use Regulations for the zoning district in which the property is located

But remember according to the 2014 Land Use Regulations there are only two legal ways to operate a junkyard in the town of Sterling. By entering into this settlement and allowing CNY Scrap to expand their operation onto two additional parcels the town is attempting to create a third way of establishing a Junk Yard/ Scrap yard thereby changing the Land Use Regulations. Now the town board does have the ability to change Sterling Land Use Regulations, but a settlement agreement is not a legal method of accomplishing this, and is in violation of Article 5 *Amendment of land use regulations* in its entirety. In addition, if the Town Board is attempting to provide Zoning Relief with this settlement it is exercising an authority that it does not have. The power to grant Zoning relief lies solely with the Zoning Board of Appeals.

There is precedent for this view:

The National Law Review reported on a very similar case in July of 2020. The case is Stevens VS Zoning Board of appeals of Bourne. In that case the municipality issued a cease and desist order to a property owner conducting commercial business in a residential zone. The Property Owner Files action against the municipality, and ultimately the parties enter into a settlement agreement allowing commercial activity to continue. Neighboring property owners appealed the settlement to the

ZBA which decided that the property use was in fact unlawful and the cease and desist order should be reinstated. The ZBA's decision was appealed to the superior court. In the Appeals Court's view, the Town administrators had the authority to bring and resolve the first case. However, they had no authority to change the zoning laws without following statutory procedures or to grant zoning relief as part of a settlement agreement. Only the ZBA has the power to grant zoning relief and interpret the zoning laws, and its authority is limited by the zoning laws themselves.

With the permit issued on January 1st, 2021 the Town of Sterling Land Use Regulations have been bypassed.

- The permit is in violation of *Article 1, Section 4, and Article 14, Section 2*, of the Sterling Land use Regulations if it presumes CNY Scrap is a pre-existing non-conformity
- The permit is in violation of *Article 8, Section 7, usage table 3* of the Sterling Land use Regulation, because the permitted parcels are not in a PDD
- The Town's entry into the settlement agreement, specifically paragraph 2, that attempts to change land use regulations, and resulted in the issuance of this permit is in violation of Sterling Land Use Regulation *Article 5 in its entirety*. It is also an unlawful assumption of the powers granted to the ZBA. These powers are granted to the ZBA alone directly from the State, *in NYS Town Law Section 267*, and reaffirmed in Sterling Land Use Regulation *Article 4 Section 10*

Based on this I am asking this board to rule that the permit issued January 1st, 2021 to CNY Scrap Processing LLC is unlawful. In addition, because none of the circumstances that led to the 2015 Cease and desist order have changed I ask this board to reaffirm the validity of the Cease and Desist Order. This is not only within the bounds of the ZBA's authority, it is the ZBA's responsibility. Remember;

- no court has ruled that the settlement between the Town and CNY scrap is lawful,**
- No Court has ruled that the permit covering all three parcels is lawful.**
- And In addition, no court has ruled that The Cease and Desist order was unlawful.**

The Town Board, and Town supervisor have done that outside their authority.

Only this board has the authority to make these determinations.

Thank you

- **Note photograph with property lines, parcel numbers, and date of photograph**
- **Note that the settlement agreement in the exhibit booklet is not signed. Received copy of signed agreement yesterday and provide to board members**
- **Note that Town Land Use regulations referred to in presentation are also backed up by State Laws**

What I'm seeking from this board is interpretive relief in regards to the Scrap processing permit issued to CNY Scrap Processing on January 1st 2021. The permit was issued in contradiction to our municipal zoning regulations, and must be revoked. In addition, the ZBA should require the Code Enforcement Officer uphold our Land Use Regulations by reinstating the Cease and Desist Order to CNY Scrap Processing LLC. This is not only within the bounds of the ZBA's authority, it is the ZBA's responsibility. Remember no court has ruled that The Cease and Desist order was unlawful, or that the permit covering

all three parcels is lawful. The Town Board, and Town supervisor have done that outside their authority. Only this board has the authority to make these determinations.

I would also like to add that the PDD process is a process of actually emending the Land Use Regulations. It is intended to allow flexibility in zoning for future development outside the scope of the Land Use regulations. That development should be undertaken with a partner acting in good faith. In 2011 The Planning board and the Town board thought that the Carriers were acting in good faith. The Town was told that the Carriers would clean up the site, and go through the PDD Process with the intention of operating a junk yard/ scrap processing facility. Over the intervening decade It has become clear that CNY is not acting in good faith with the Town of Sterling, and their acceptability as a developer is highly questionable.

Notes on Settlement

- The Scope of the settlement is ambiguous, and may apply only to parcel 19.00-1-33
- If the Town entered into this settlement with the understanding that the settlement covered all of the parcels of land owned by CNY Scrap the Town violated land use regulations, and the settlement is illegal, null & void. There is precedent for this view.

The National Law Review reported on a very similar case in July of 2020. The case is Stevens VS Zoning Board of appeals of Bourne. In that case The municipality issued a cease and desist order to a property owner conducting commercial business in a residential zone. Litigation ensued and the municipality ultimately entered into a settlement agreement allowing commercial activity to continue. Neighboring property owners appealed the settlement to the ZBA which decided that the property use was in fact unlawful and the cease and desist order should be reinstated. The ZBA's decision was appealed to the superior court by the property owner who initially sued the town. In the Appeals Court's view, the Town administrators had the authority to bring and resolve the first case. However, they had no authority to change the zoning laws without following statutory procedures

or to grant zoning relief as part of a settlement agreement. Only the ZBA has the power to grant zoning relief and interpret the zoning laws, and its authority is limited by the zoning laws themselves.

- In order for these additional 2 parcels to be candidates for non-conforming use permits they would have had to be non-conforming at the passage of the 1969 junkyard law. At that point any preexisting junk yards were required to register within 60 days of passage of the law. From 1969 onward there have been land use laws of some form or another on the books that would have prevented the establishment of a junkyard without following certain procedures. The existence of CNY Scrap's operation on the property in 2011, or 2014, or now does not constitute a pre-existing non-conformity it is a breach of land use regulations.
- CNY Scrap has failed to hold up their portion of the settlement agreement. 1 year in there are no trees planted in front of the fence, there are constantly cars and junk outside of the fenced area, and the 100 foot buffer on the east and west property lines have not been maintained.
 - I will also note that there are a number of State, DMV, and DEC regulations that these settlement agreements may not be in compliance with. For example, you should not be able to see into the property at all. The fence currently in existence is wildly inadequate.

So for clarities sake my request to this board is to revoke the permit Issued on January 1st 2021, and require that the Code Enforcement officer uphold our Land Use Regulations.

I apologize for the lengthy reading of this law but my point is none of this has been done, and there is a lot here. This process by design takes into consideration a number of parties including the Town Board, The Town Planning Board, The Cayuga County Planning Board, and the Town's Citizens. It is intended to be a thorough, and open planning process, because the Development of a PDD has the potential to impact the character and future of the Town.