ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
AUGUST 7, 2019
1:00 p.m. Committee Room #2
Appeal #19-001

Chair Harland Lee called the meeting to order at approximately 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Chair Lee stated that several months ago he made the decision to recuse himself from today's hearing. He has served on the Board for 15 + years and has no doubt he made the right decision in recusing himself. He passed the gavel to Vice-Chair, Guy Hansen.

Vice-Chair Hansen stated that the meeting has been properly posted in accordance with Wisconsin open meeting law and the meeting is handicapped accessible.

Roll call of Board members present: Mr. Pazdernik, "here"; Mr. Hammer, "here"; Mr. Albert, "here"; Mr. Ross, "here"; Mr. Bloom, "here"; Mr. Hansen, "here"; and Mr. Lee, "here. Also in attendance is Attorney John Houlihan, representative for the Oneida County Board of Adjustment.

Members absent: None

County staff members present: Karl Jennrich, Zoning Director and Julie Petraitis, Program Assistant.

Other individuals present: See Sign in Sheet.

Vice-chair Hansen stated that the Board of Adjustment is made up of five (5) regular members and two (2) alternates who will take part in the hearing until the hearing is closed, except for Harland, who has recused himself. One of the alternates will take part in the hearing until it is closed and he will not take part in the deliberation. Vice-chair Hansen stated that this is a certiorari review, which means it is simply a review that is based on original findings, filings and decisions based on the existing record. There have been additional letters received recently that will be placed in the record. There will be no new evidence accepted and no new witnesses except for the Attorney's for the opposing sides.

Attorney Houlihan stated that there may be a few other witnesses that each side will call, but the witnesses will not testify and produce any new evidence.

Vice-chair asked those who wished to testify to stand and be sworn in. Mr. Hansen swore in Attorney Cincotta, Attorney Stadler, Attorney Vander Waal, Karl Jennrich, Jim Small, and John Thiesen.

Secretary Phil Albert read the notice of public hearing for Appeal No.19-001 of Jack Thiesen and Lakeland Area Property Owners Association (LAPOA), requesting an interpretation of Section 42, Chapter 9, of the Oneida County Code of Ordinances and reversal of order, requirement, decision, or determination of administrative official. The property is described as part Government Lot 1, and NE NW, Section 10, T38N, R6E, PIN HA 113-9, Town of Hazelhurst, Oneida County, Wisconsin.

The Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause imminent peril to life or property.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 am prior to the hearing. Pertinent property boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public.

Following adjournment of the public hearing the Board will vote, in open session, for a decision on this appeal. Information on the decision can be had by calling or visiting the Planning and Zoning Office during normal business hours on or after the next day or later day set by the Board at the hearing. The appellant will be notified of the decision by certified mail.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning and Shoreland Protection Ordinance is available on the Internet at http://ww.co.oneida.wi.gov/.

Secretary Albert stated that all media outlets were notified of the public hearing and the onsite inspection was conducted for appeal 19-001 on August 7, 2019 at approximately 9:50 and 10:20 a.m. at HA 113-9. Owner of the property, County Materials Corporation, and the appellants, as documented on the sign in sheet, Jack Thiesen and members of LAPOA were present. A guided walking tour was conducted by Jim Small of County Materials Corporation. Board of Adjustment members and alternates were present in addition to Diann Koshuta, Planning and Zoning staff member.
In terms of property boundaries, they were adequately marked by both ribbons and available maps. The highway road right-of way did not come into play because there was a 90' barrier that was provided from Highway 51. In terms of outline of the proposed construction was adequately marked by the colored flags, which are still present at the site. In terms of topography: it is a rolling topography that is wooded and the walk that was conducted was along the snowmobile path. In terms of erosion:

there was none noticeable through the walk. In terms of existing structures: none were there other than the existing County Materials Plant to the south of the site visit. Other observations, other than a walking path in the woods with flag markings, none were to be documented.

Vice-Chair Hansen stated that the procedure for the hearing would be as follows: the hearing will proceed with the appellant's side followed by the opposition's side. The appellant will then be allowed a brief rebuttal followed by the opposition's rebuttal and the appellant may follow with a closing statement, if desired and the testimony portion will be closed and the meeting will be closed from further testimony at that time. The Board will then deliberate the matter. As stated before, this will be based strictly on the original filings and decisions that are in the record. The Board's decision today is to determine if the Planning and Development Committee followed the proper procedure in granting the Conditional Use Permit. In other words, did they consider each of the nine (9) elements appropriately per the law? Were each of the nine (9) standards in Oneida County Ordinance 9.42 complied with and do we agree with their decisions. In order to document that, the Board will go through each of the nine (9) elements and vote on them individually and that will be part of the public record.
As we said, there will be no new evidence. Board members, however, can ask clarification questions as necessary. Responses to the questions of the Board shall be confined to the questions. All parties may stay for the deliberation and disposition of the appeal. Upon conclusion of the deliberation a motion and a second will be made and a roll call vote will be taken for the decision of the Board.

Attorney Houlihan stated that Vice-chair Hansen should begin with reading any of the additional correspondence that was received.
Vice-chair read into the record who the correspondence was from and when it was received.

Attorney Houlihan stated that in addition to the correspondence that has been made part of the record that was submitted, it is noted that Attorney Cincotta, on behalf of the appellant's, has filed a memorandum in support of appeal to the Board of Adjustment, which is part of the record. All of the Board members have had an opportunity to review the memorandum.

SWORN TESTIMONY-APPELLANT.

Attorney Cincotta began his testimony by introducing himself. Attorney Cincotta stated that he represents Jack Thiesen and the Lakeland Area Property Owners Association (LAPOA), which Mr. Thiesen is a member. He stated that their case is based on the record and his memorandum of law and his argument.

Attorney Cincotta stated that landowners that apply for Conditional Use Permits have no right to them. They must meet the ordinance. Attorney Cincotta stated that Act 67

is relevant to this proceeding, but it is not a rubber stamp. If someone applies for a Conditional Use Permit, it does not have to be approved. The pertinent details of Act 67: there is a written ordinance, it is not guidance. It states in the ordinance the requirements. The applicant, for the conditional use, must meet the requirements. The State Law and Act 67 requires that the applicant provide substantial evidence that meets those requirements. The appellant's first claim to the Board is that did not occur with the Planning Committee. The scope of the Board's review should be whether the Planning Committee did their job in how they applied the ordinance and the law. The committee had two hearings; one on January 22 and one on April 3, 2019. It was clear that the Planning Committee, in looking at the ordinance requirements, shifted the burden of proof. They said that basically the objecting people did not prove that it would harm their property values or the enjoyment of their property.

Attorney Cincotta stated that the appeal focuses on two (2) points. First, that there is an error of law. The Board should send the matter back to the Planning Committee so they can properly apply the ordinance. That would be a very consistent remedy if the Board follows through on what it said and conducts a certiorari review. It is very clear on the record that members of the Planning Committee said the objectors have not supplied substantial evidence that they haven't hurt the property values or haven't met these conditions. That may sound good on the record, but that changes the ordinance and the State Law. The people that are here to object, that have objected to the process, they do not have to prove that the conditional use should not be granted. The applicant has to prove that it should be granted.

The State Law and Act 67 requires that the applicant provide substantial evidence that they should meet and be granted the permit. We focused on two requirements. The first is that '9.42 (2) the uses, values, and enjoyment of neighboring property shall not be substantially impaired or diminished by the establishment, maintenance or operation of the Conditional Use'. Attorney Cincotta's argument on that is the applicant needs to prove that with substantial evidence. The Planning Committee and this body are not permitted to look generally at the submissions of the filings and records and say they don't think it is going to affect property values. He does not feel that is the proper role for this body. This body should be looking at what the applicant put forward, determining whether it is qualified evidence, whether it is substantial and whether it outweighs other evidence. That is what Judge's do and that is what this body is doing. The record is full of comments and testimony and statements from objecting neighbors, directly adjacent neighbors and others. Those statements put forward that the expansion of the existing operation, which will include a seven (7) acre gravel mine, be constructed and operated over many years will substantially impair and diminish the enjoyment and value of neighboring properties. The reason he is reminding the Board of that is because, as noted in his legal memorandum, statements or testimony by property owners about the value of their property is qualified evidence, according to a 1969 Supreme Court case, which is sited in the brief. Attorney Cincotta stated that can be considered opinion by CMC that their operation will not negatively affect the enjoyment and value of neighboring property. He would argue that is not qualified

evidence. On that point, requirement number two (2), his review of the record is the only evidence the Board has of the effect on the values and enjoyment of neighboring properties is from the neighboring property owners. The only qualified evidence and it makes clear that the establishment and use of this Conditional Use Permit and the operation they are under will substantially impair and diminish those values and enjoyment. As they cannot meet that requirement under the current record and facts the conditional use permit should have been denied and this body should acknowledge the same and reverse the grant of it and / or remand it or send it back to the Planning Committee.

Attorney Cincotta stated there have been assertions by the applicant of certain noise levels and truck traffic. He would argue that the assertions by the representative of the Company is not substantial evidence. He is sure they have tons of evidence that they could provide about their actual detail of operations. Conclusory opinions about those types of things are not sufficient. The assertion that the truck traffic will be the same, which the appellant disputes, would not be sufficient to overcome the qualified testimony of the property owners as to the enjoyment and value of their properties. The second primary requirement that the appellant raises and seeks review on, although they seek review of all of them, is number three (3). In order to have a Conditional Use Permit granted, the conditional use must be compatible with the use of adjacent land and any adopted local plans for the area. The appellant believes that plan, operation, on this parcel fails on both counts. It is not, in any sense of the word, compatible with the uses of adjacent land except their own property to the south. They cannot "boot strap" this by saying it is compatible with the existing operation. Moreover, it is not consistent with the Comprehensive Plan for the Town that was in effect when the applicant filed for its rezoning. State Law requires that the regulations in effect at the time of an application for a project cannot be altered during the review of that project. Attorney Cincotta has included the narrative of the Comprehensive Plan, it is totally contrary to the idea of establishing a gravel mine on this forested property. Attorney Cincotta stated he does not believe there is any rational basis for the Planning Committee or this body to find that development of a gravel pit on this property would be compatible with adjacent properties or the Town Comprehensive Plan. Therefore, at a minimum, the Board of Adjustment should remand this matter, send it back to the Planning Committee. Potentially the Planning Committee could open the record and see if there is a way to demonstrate that the property owner, my owner, could satisfy requirement number two (2), he doesn't believe there is.

Attorney Cincotta made another note, more of a legal argument, because often what he sees is conditions are put forward. If they follow the conditions then they are going to mitigate all the concerns in the ordinance. Act 67, which is codified in Chapter 59.69 (5) (e), the one that applies to this County, requires that the applicant satisfy the requirements and conditions of any local ordinances or body. This is not insignificant. The legislature inclusion of the word requirements, those are different than conditions. Here is how to think of that, from Attorney Cincotta and the appellant's perspective.

You have a detailed ordinance that has nine (9) requirements. Those must be met as a threshold matter, by the proposed use. It should not be that, 'well we do not meet those now, but if we do these conditions we will meet them.' The reason being is then there is no ordinance. Then it is basically 'what conditions can we impose and then it will satisfy whatever conditions are in the plain language of the ordinance. Attorney Cincotta does not believe Act 67 was designed to undermine the plain language of local ordinances that are hard requirements to get conditional use permits. He feels they should be enforced strictly.

Attorney Cincotta stated that he came prepared to argue from the existing record. Had he known that the applicant was going to be present and elicit testimony he would have objected, sought an adjournment and asked for Discovery. He is not prepared to and does not want to question witnesses. His position is that only the lawyers should speak. He believes the public should be allowed to speak, as it is a public meeting. They should be limited to existing evidence.

Attorney Stadler introduced himself. He represents the Planning and Development Committee. He is here to give the Board the Planning and Zoning Committee's perspective in regards to the issues in this case. Attorney Stadler stated that he had the opportunity to attend all the public hearings. He attended the January 22, 2019 public hearing and the hearing on April 3, 2019. He sat with the committee and advised them as to how to meet the requirements of the law.

He is here today to give the Board that perspective in regards to what the law provides. Attorney Stadler stated that the case Attorney Cincotta referenced, All Energy, is not the law anymore. If the Planning and Development Committee would have used that law, they would have made the wrong decision. Attorney Cincotta know that because he represented Trempealeau County on that case from 2014 until 2017, when the Wisconsin Supreme Court affirmed everything they did in that case. In that case neighboring property owners came in and said "we don't want this mine next to our property, it is going to lower our property values, it is going to be dirty, it is going to be ugly, and it is going to be noisy". At oral argument the Supreme Court, half the Justices looked at Mr. Stadler and said "how is a body supposed to weigh evidence like that? How are you supposed to say what is dirty, what is noisy, what isn't?" And the other half said "we leave that up to our local Boards". In the end run, the Supreme Court said they would leave it up to their local Boards. The Legislature did not like that. Act 67 was introduced six months later. Act 67 does focus on substantial evidence and it has to be objective evidence, not subjective evidence. You've got to be able to reach out, hold it, weigh it and realize what is in front of us.

Attorney Stadler stated that Attorney Cincotta was trying to say that under Act 67 if somebody agrees to meet conditions that does not mean that they can agree to meet requirements. Attorney Stadler said that is an incorrect reading of the Statute. The Statute says: "if an applicant for a Conditional Use Permit meets or agrees to meet all of

the requirements and conditions specified in the ordinance." There is no distinction between requirements and conditions when it comes to the issue of either "meets" or "will meet". Do not be misled by incorrect readings of the law.

Attorney Stadler said that Attorney Cincotta kind of confuses "burden of proof" and the "scope of a hearing". His argument in his memorandum is that if CMC didn't present the evidence it cannot be considered to be substantial evidence. The burden of proof is on CMC to show that it either can or will meet the requirements of the ordinance or any conditions. They have to be able to show that. And, they have to be able to show that be substantial evidence. Substantial evidence is the weight of all the evidence that comes in. CMC does not have to be the proponent of the evidence in order for it to be substantial evidence. It just has to be in the record, regardless of who put it into the record. You'll see in a little bit that there is some evidence that was put on at the public hearing not by CMC but by other members of the community that came and testified and offered factual information. The Planning and Development Committee was bound by law, and it did as it was bound by law, require to weigh all of the evidence. And that is the same thing that all of you (Board) will be doing, is weighing all of the evidence regardless of where it came from.

Attorney Cincotta said that one of the major issues here was the no substantial evidence on uses, value and enjoyment of neighboring property. We had people, from the community, who live nearby, who came in and offered testimony that a gravel pit might be dusty, it might be noisy, and it might affect property values. They are free to offer that testimony, but the committee has to have objective facts to weigh; not those subjective facts to weigh. When you listen to what was testified to at the public hearing and in the evidence that was given to the committee, you have to focus on the objective not on the subjective. CMC did offer testimony at the public hearing, and they offered a lot of it. They are going to reduce the number of trucks going into the south property because they are going to be getting gravel from one piece of the property to the other instead of hauling trucks in every day to bring material to the property. So, the objective fact was a reduction in the number of trucks on Highway 51. There were objective facts about noise. There were objective facts in regard to the decibel readings from their operations. There were decibel ratings that found that the noise from their operations wouldn't exceed the traffic noise on Highway 51; it is not going to add to it. There was objective evidence in regards to meeting OSHA's dust and silica standards. The point that the Property Owners Association likes to focus on is they say it is the property value thing. They want to be able to say that this is going to reduce their property value. A number of people from the community stood up and said "this is going to reduce my property value". Again though, that is a subjective fact, not an objective fact. Attorney Cincotta explained to you in his memorandum that there is Supreme Court Case Law that says you don't have to be an expert witness, a property owner can offer testimony as to the value of his or her property. Attorney Stadler agrees with him. A property owner can offer testimony about the value of their property. Otherwise in our law we require experts to be able to do things like that.

The significant point about all of that here is there was not anyone from the property owners group that came in and said (1) here is the value of my home. While they could have done that, nobody did. Two (2) if somebody from the property owners association or a neighbor came in and said "my house is worth $225,000.00", they can offer that testimony. They are not qualified, though, to give you objective testimony that their house, in the future, is going to be any particular value because of something that might happen or because of operations of another property. They are not allowed, as a matter of law, to give testimony as to the future value of their homes. There was nothing here in regard to property values being lowered by the operation of the mine. There was no objective evidence for the committee to take and say "yes, that tips in favor of not granting this conditional use permit". What there was at the public hearing on January 22, 2019 though, was testimony from a gentleman who lives next to the Blue Lake pit who said 'you know, I've heard all these property value things, but my property is right on the edge of the property, right next to the Blue Lake pit and my property values have increased year after year, after year regardless of the fact that I am next to a pit." That was an objective fact that somebody could offer to the committee and did offer to the committee and the committee was able to weigh that.

The last point that Attorney Cincotta raised is the whole thing about incompatibility with the Land Use Plan. What he is trying to get you to do is to look at two different plans. He takes the plan that this is consistent with and says "don't look at that one, look at the old one". The plan that is in existence is the plan that you look at. There is nothing inconsistent here. When you look at the plan, it says they do not want to have increase Highway usage on Highway 51. The committee heard that evidence and said "this is taking trucks off of Hwy 51." It was a factor that they found to support the issuance of the conditional use permit. The other part of it is, we do not have definite set rules on Land Use Planning. We talk about the concept of compatibility. This gravel pit is compatible with the area, completely compatible with the area, completely compatible with the area to the south. We have to remember that while the Town doesn't want to encourage industrial development along Highway 51, this isn't industrial development. It is going to be used as a gravel pit for seven (7) years and when it is done being a gravel pit there isn't going to be an empty big box store there, there is not going to be an industrial facility there, there is not going to be a trucking terminal that is going to be there. You are going to have a grassy field that has seedlings planted in it that is going to grow up into green space again. It is compatible and the committee was certainly within its jurisdiction and certainly within its right to find that there is compatibility there. That is not a factor that should have weighed against this.

Attorney Stadler stated he is not going to touch on all the other criteria, as these were the ones Attorney Cincotta focused on. But, he does want the Board to understand the rationale from the Planning and Development Committee and how it got to where it got to. The Board is faced with the same thing. You have to be able to weigh the facts in the record and those facts are the objective facts that the committee can consider and that goes back to the Board.

Attorney Shane Vander Waal, representing CMC, began his testimony by pointing out there is reference to a brief or memorandum that Mr. Cincotta filed. He had not received a copy of that until right before the hearing. He has not an opportunity to review it. A copy of that was not provided to the applicant or the applicant's counsel. He is not going to repeat what Attorney Stadler did in giving an overview of not only the law but the relevant facts that are at dispute. He did want to point out that the application for this Conditional Use Permit was filed and submitted on October 22, 2018. He thought Attorney Cincotta made a comment that he was looking at, and urged the Board, to look at the 2014 Comprehensive Plan of the Town when the Town, in fact, amended the Plan in 2017. There was a public hearing, by the Town, on March 14, 2019, and the Town Board, after listening to the evidence submitted, came to the conclusion that the Planning and Development Committee came to and that is that there was sufficient evidence presented by County Materials and recommended approval to the County Planning and Development Committee. Again on April 3, 2019, there was another public hearing by the Planning and Development Committee, again which went through one by one each of the requirements and the facts to make sure County Materials did in fact present substantial evidence to meet its burden of proof.
But, as Attorney Stadler pointed out, it is not just simply the evidence that we submitted at the time of the public hearings but the weight of all the evidence that was received. As part of granting that, he wants to point out to the Board that there are some pretty significant limitations that have been placed on the mine. Specifically, the hours of operation are limited from 7:00 a.m. to 6:00 p.m. Monday through Friday with no weekend operations. There is no mine activities such as excavation, stripping and screening not to be conducted during the months of June, July, and August. No crushing. There will be no wash pond with the Conditional Use Permit. He wanted to remind the Board that CMC does own adjacent land immediately to the south but that land is a legal non-conforming use. He thinks sometimes what the Lakeowner's Association is mixing up is the activity by CMC on their property to the south to the activities that are going to be conducted on this parcel. In any event, they would ask that you affirm the decision of the Planning and Development Committee as they believe there is substantial evidence in the record.

Mr. Albert confirmed the date of the Comprehensive Plan being referred to.

The Board took a ten (10) minute recess.

The Board took public comment at this time.

Jennifer Bolger Brecella spoke.
Scott Ferrier spoke.
Maggie Coil spoke.

Ken Aldridge spoke.
Mark Lotus spoke.

Attorney Cincotta began his rebuttal by stating that both Counsel's hit on all the issues. He stated that he miss-explained what he said about the case of the Town of Rein. What the case says is: "a conditional use permit is not a right." Act 67 did not change that, in fact it confirmed it. When he cited All Energy it was for that purpose. That case did not say, nor does Act 67 determine, that established common law about folks testifying about their property values is not substantial evidence; it still is. Attorney Cincotta stated that Attorney Stadler acknowledged that you can testify property value but you cannot talk about future value. He feels you can. If nobody can talk about future values then the Board cannot make a decision. The measure of property values is if it is left alone versus a new mine for seven (7) years and then a big green hole. Is the trend going to be lower on your property values? Yes, it is going to be lower, it isn't even close.

Attorney Cincotta stated that he disagrees with the objective/subjective distinction. The testimony of people who own property that is objective evidence. That is evidence that can be considered in a Court and here. There is a study that was in the record, Mr. Small actually responded to it, talking about the impact of gravel pits. As an offer of proof, he does have a more recent preliminary opinion by a Real Estate professional that this is going to happen. He stated what they didn't get into was whether the gravel pit will substantially diminish the enjoyment of those properties. That is tougher. As decision makers, you might consider your own experience with enjoyment. It would be hard to defeat and respond to the fact that the expansion of what was a fairly quiet operation, until about six (6) years ago, into a broader, bigger operation with a new big building going in is not going to affect the enjoyment of those properties. It is. That is the appellant's position and the County Planning Commission should have understood that.

Attorney Cincotta stated Act 67, two (2) points, if you meet or agree to meet requirements and conditions. Attorney Cincotta's point is that they are different. Requirements are different than conditions. Requirements are what is in the ordinance. Mr. Small said they would meet them. Attorney Cincotta does not think that is right. The Committee has to determine if they can. He stated Attorney Stadler said Attorney Cincotta confused burden of proof with the scope of review and that the Planning Commission and Mr. Jennrich and others can sort of take the basic, bare bones information and they can help advise the Planning Committee and this body and you guys can kind of take the bits and pieces and say 'yes, things are met. These requirements are met.' Attorney Cincotta stated that the language of the Statute says: "the applicant must demonstrate that the application and all requirements established by the County, relating to the Conditional Use are or shall be satisfied, both of which must be supported by substantial evidence." So, Mr. Stadler might get up and say 'well demonstrate, submit the papers and the staff can say they meet it'. I don't think so.

They have to do it and they haven't. The reason they haven't is the same reason, potentially, that Mr. Stadler critiques our evidence. Their evidence is subjective, too. It is not backed with data beyond some decibel readings. That misses the point because the operation will be much more noise and on that point. Reference to the conditions is a little misleading because they only apply to the currently forested ten (10) acre parcel. In fact CMC has, in the record, made a point to explain how they are going to bring this aggregate down to their existing operation. If this had been a contested case, Attorney Cincotta would have had other industry folks come in and testify that there is no economic rational, reasonable way to take aggregate offsite and go crush it elsewhere. It is going to get crushed on the existing property, almost for sure. Now, that's argument. But the point is that operation is going to expand. It is right across from Mr. Thiesen's driveway. As well as excavation, hauling, conveyor belts and everything else on the ten (10) acres. So to say the conditions are not going to allow a wash plant on the ten (10) acres or crushing etc., or limit the time…none of that is limited on the existing property, which is right next door and which they actually said 'look, we're not even going to have a curb cut on Highway 51 we're just going to go through the existing property." So, if you look at this practically, it is an expansion of the existing operation. That is how it should be viewed.

Attorney Cincotta talked about the Comprehensive Plan compatibility. He stated that the amendment to the Comprehensive Plan is dated January 18, 2018. He does not know of another amendment in 2017. He also noted that the change in the Town Plan does not talk about the little blue smudge that was put on the map. He stated it is an appendix to that Plan. It is not in the language of the Plan. The language reads: "The Town does not want US 51 to be chocked with commercial development like Minocqua is, but existing and some future commercial development within the highway corridor is desired. Additional commercial development will be encouraged to locate away from US 51. Signs on US 51 are allowed to direct traffic to potential future commercial development. There are also existing, underutilized and blighted commercial parcels the Town would like to see developed before additional land is used ". That did not change. That is the standard in the Town Plan. Attorney Cincotta does not believe that changed. He believes the only thing that changed were the two maps. In looking at the language in the Comprehensive Plan he feels the map is in error. He stated that the Comprehensive Plan, as it stands today, is incompatible with this use. Notwithstanding the little blue smudge that is on the map and, in fact, the one that was in effect at the time the application for the rezoning was the older Comprehensive Plan with the older map.

Attorney Cincotta stated that he appreciates that some of the folks were able to speak. They are the owners of the community. He hopes the Board does what he has asked, which is very seriously consider their role. That is not to check the box on the nine (9) requirements and go home. It is to look seriously at what is required. His advice that if the Board looks hard, realize they (CMC) cannot satisfy the requirements. If they are not sure, they should send it back to the committee so they can have a proper hearing,

where they can have more testimony and they can get into the details. He stated that they are getting into a situation where the appellant is supposed to come with some kind of expert evaluation that it will not diminish their values. They (CMC) has to come with that that is the burden. The applicant must demonstrate, they must be showing with objective evidence that it will not impact, no presumption that it will not impact. In fact, the opposite. The ordinance suggests it will impact negatively the values and enjoyment. The applicant must overcome that and has not done so.

Attorney Stadler began his rebuttal by stating that he does not want the Board to lose sight of one thing, and that is an issue that was dealt with the previous committee and that is it doesn't matter how much people dislike the operation to the South, that is there. It is a legal use, whatever is happening there is legal. The consideration of this Conditional Use Permit applies only to that ten (10) acre parcel on the North side. You cannot link the two together. It is impermissible to do that. It is a Conditional Use Permit relating to that ten (10) acres.

Attorney Vander Waal stated that he wants to place an objection into the record. He is getting almost to the limit of having comments that County Materials is somehow going to violate this Conditional Use Permit. The conditions are clear. There is no crushing. They have represented to the Town Board, to the Planning and Development Committee and he is representing to the Board of Adjustment, and Mr. Small will represent if you want, there will be no crushing. If there is crushing, this Conditional Use Permit can be revoked. There is going to be no access. Again, the Conditional Use Permit does not permit access. The added comment that there was a smudge or some type of nefarious act, whether that was by County Material or somebody else. Again, I object to the insinuation that County Materials is always trying to push something or another. We have agreed, wholeheartedly, to accept nineteen conditions, significant conditions, placed by the County Zoning Committee. We have submitted voluminous amounts of evidence addressing every single point in the ordinance. Therefore, again, I would like the objection placed into the record and I would ask that you affirm those decisions. Thank you.

Attorney Cincotta stated he does not know where the authority comes from for Mr. Stadler to say that you cannot consider the property to the South. It may "legal", it is a legal non-conforming use. While the Comprehensive Plan talks about industrial use it is zoned Business. It is non-conforming. You cannot use a non-conforming use to expand it. So, I do think it is relevant. It is more relevant and more relevant because CMC has essentially merged the two properties. They have talked about how they are going to use the existing property to make it somehow better on the northern parcel. So I would disagree that you cannot consider that, that it is impermissible. This matter, he believes should be looked upon by the Board very seriously given the intensity of a position, given the good faith will assume efforts on the part of the applicant. Given the Act 67 implication it would behoove, I think, the Board to take advantage of their hired Attorney and look into this stuff and determine what the proper way to make this

decision is, maybe issue a written decision. He thinks it is going to be more thorough and better if the Board does and sites the evidence that they are relying on. That is a way of asking that the Board take this matter under advisement. The actual decision the Board should make, Attorney Cincotta believes, would be to determine that the Conditional Use Permit requirements cannot be met under the circumstances that present themselves in the record and based on the circumstances on the ground. He asks that the matter be sent back to the County Committee so that there can be, perhaps, a more robust fully compliant due process type hearing and make the record better for the Planning Committee to make a better decision and one that is not really a summary decision, based on the minutes. It's really not thorough enough.

Vice-Chair Hansen asked if the Board had any clarification questions at this time.

Vice-Chair Hansen asked a clarification regarding the operation of the gravel pit on parcel HA 114-4. He asked if that would continue as it has in the past. Attorney Vander Waal stated that it would.

Mr. Pazdernik clarified the buffer area around the property of 80 to 90 feet. It was clarified that the buffer is a condition and it is 90 feet along Highway 51 and 80 feet along the northern property. Along the Bearskin Trail the buffer is 30 feet beyond the right-of-way.

2:40 p.m. Vice-Chair Hansen closed the public portion of the public hearing.

Mr. Ross asked Attorney Houlihan if the Board had the option of sending this back to the Planning and Development Committee. Attorney Houlihan stated that the Board has to make a determination whether they agree or disagree with the decision of the Planning and Development Committee.

The Board went through the General Standards for Approval of a CUP

1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
   Mr. Hammer: Met, with conditions.
   Mr. Hansen: Met, with conditions.
   Mr. Bloom: Met with conditions.
   Mr. Ross: Met, with conditions.
   Mr. Albert: Met, with conditions.

2. The uses, values and enjoyment of neighboring property shall not be substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.

Mr. Bloom: Met with conditions.
Mr. Hammer: Met, with conditions.
Mr. Ross: Met, with conditions.
Mr. Albert: Met, with conditions.
Mr. Hansen: Met, with conditions.

3. The proposed conditional use is compatible with the use of adjacent land and any adopted local plans for the area.
   Mr. Ross: Met, with conditions.
   Mr. Hansen: Met, with conditions.
   Mr. Bloom: Met.
   Mr. Hammer: Met.
   Mr. Albert: Met, with conditions.

4. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
   Mr. Bloom: Met, with conditions.
   Mr. Hammer: Met.
   Mr. Ross: Met.
   Mr. Albert: Met.
   Mr. Hansen: Met.

5. Adequate utilities, access roads, drainage and other necessary site improvements have been or will be provided for the conditional use.
   Mr. Bloom: Met.
   Mr. Hammer: Met, with conditions.
   Mr. Ross: Met, with conditions.
   Mr. Albert: Met, with conditions.
   Mr. Hansen: Met, with conditions.

6. Adequate measures have been or will be taken to provide ingress and egress so as to minimize traffic congestion in the public streets.
   Mr. Bloom: Met, with conditions.
   Mr. Hammer: Met, with conditions.
   Mr. Ross: Met, with conditions.
   Mr. Albert: Met, with conditions.
   Mr. Hansen: Met, with conditions.

7. The conditional use shall conform to all applicable regulations of the district in which it is located.
   Mr. Bloom: Met.
   Mr. Hammer: Met.
   Mr. Ross: Met, with conditions.

Mr. Albert: Met, with conditions.
Mr. Hansen: Met, with conditions.

8. The conditional use does not violate shoreland or floodplain regulations governing the site.
   Mr. Bloom: Met, with conditions.
   Mr. Hammer: Met, with conditions.
   Mr. Ross: Met, with conditions.
   Mr. Albert: Met, with conditions.
   Mr. Hansen: Met, with conditions.

9. Adequate measures have been or will be taken to prevent and control water pollution, including sedimentation, erosion and runoff.
   Mr. Bloom: Met, with conditions.
   Mr. Hammer: Met, with conditions.
   Mr. Ross: Met, with conditions.
   Mr. Albert: Met, with conditions.
   Mr. Hansen: Met, with conditions.

Motion by Ed Hammer, second by John Bloom to approve the Conditional Use Permit issued by the Oneida County Planning and Development Committee, #1900129, including the nineteen conditions stated in the May 1, 2019 approval letter of Nationwide Limited Partnership.

On roll call vote:
Mr. Bloom: Aye.
Mr. Hammer: Aye.
Mr. Ross: Aye.
Mr. Albert: Aye.
Mr. Hansen: Aye.

Motion by Norris Ross, second by Ed Hammer to have the decision completed by August 15, 2019. "Aye", unanimous. Carried.

3:00 pm – there being no further matters to legally come before the Board, Vice-Chair Hansen adjourned the meeting.

Guy Hansen, Vice- Chair Phil Albert, Secretary