

In The Matter Of:
Town of Highland
Zoning Board of Appeals

Stickett Inn LLC
8-20-20
August 20, 2020

Jeric Corporation
Court Reporting Services
P.O. Box 385
Narrowsburg, NY 12764
(845) 252-3515

STATE OF NEW YORK : COUNTY OF SULLIVAN
TOWN OF HIGHLAND : ZONING BOARD OF APPEALS
----- X
In the Matter of:

STICKETT INN, LLC
Appeal of Notice of Violation
Tax Map Section 28; Block 8; Lot 1
----- X

Town of Highland Town Hall
4 Procter Road
Eldred, New York
August 20, 2020
6:34 P.M.

ZONING BOARD MEMBERS :

- LAURENCE FISHMAN, Chairman
- CHRIS DAMPMAN, Board Member
- JAMES DONNELLY, Board Member
- JOHN KAMP, Board Member
- JOHN MARCIANO, Board Member
- JOSEPH MIEDREICH, Board Member
- MONICA MCGILL, Secretary
- MICHAEL DAVIDOFF, ESQ., Attorney

Also Present: STEVEN MOGEL, ESQ.,
on Behalf of Applicant

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Reported By: Rosemary A. Meyer

- RE: STICKETT INN, LLC -
going be anything at all that would be of any
assistance to the Board to make a legal determination.
Let's get the meeting open.

MR. MOGEL: Wait a second.

MR. DAVIDOFF: No, we're not waiting.

MR. MOGEL: We're not waiting? So the
public notice that went out --

MR. DAVIDOFF: It's a public meeting.

MR. MOGEL: -- that indicated that all
interested parties --

MR. DAVIDOFF: We're going to open the
meeting --

MR. MOGEL: -- will have an opportunity
to --

MR. DAVIDOFF: We're going to open the
meeting.

MR. MOGEL: Go ahead.

MR. DAVIDOFF: You can make any statement
you want. Let's just open the meeting and get done
with it. You can make any statement you want.

MR. MOGEL: Thank you.

CHAIRMAN FISHMAN: Okay. make a motion to
open the public hearing --

BOARD MEMBER KAMP: I'll make that motion.

- RE: STICKETT INN, LLC -

MR. MOGEL: There has been a request to have
the meeting outside. Is that something that the Board
would be able to consider? There's a lot of members
of the community, obviously, that have a great
interest in these proceedings.

CHAIRMAN FISHMAN: They have access through
FaceTime. And to move all of this stuff outside right
now, it is not going to be feasible.

UNIDENTIFIED SPEAKER: May I ask, will the
public be --

CHAIRMAN FISHMAN: Facebook.

UNIDENTIFIED SPEAKER: Will the public be
allowed to comment or speak at this meeting?

CHAIRMAN FISHMAN: No.

UNIDENTIFIED SPEAKER: Okay. So it's just
for observation.

CHAIRMAN FISHMAN: This is just for
observation, yes.

MR. MOGEL: How are we having a public
hearing if the members of the public aren't allowed to
participate?

MR. DAVIDOFF: Well, you know what the
purpose of this meeting is. Okay? It's for the Board
to make a determination, and public comment is not

1 - RE: STICKETT INN, LLC -
2 **CHAIRMAN FISHMAN:** -- Application No. 7-2020
3 for John Pizzolato and Roswell Hamrick.
4 John made the motion.
5 Second?
6 **BOARD MEMBER MIEDREICH:** Second.
7 **CHAIRMAN FISHMAN:** All in favor?
8 **BOARD MEMBER DAMPMAN:** Aye.
9 **BOARD MEMBER DONNELLY:** Aye.
10 **BOARD MEMBER KAMP:** Aye.
11 **BOARD MEMBER MARCIANO:** Aye.
12 **BOARD MEMBER MIEDREICH:** Aye.
13 **CHAIRMAN FISHMAN:** Aye.
14 (The motion was agreed and carried.)
15 **CHAIRMAN FISHMAN:** The public hearing, an
16 application of 7-2020, is open as of 6:35.
17 **MR. MOGEL:** Okay.
18 **CHAIRMAN FISHMAN:** Okay.
19 **MR. MOGEL:** Good evening. My name is
20 Steve --
21 **CHAIRMAN FISHMAN:** Oh, yes, yes. Before we
22 start, before we start, I just want to make a
23 statement.
24 We have received over 75 letters in support
25 of both John Pizzolato and Roswell Hamrick and their

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1 **- RE: STICKETT INN, LLC -**
2 business, the Stickett Inn. The overwhelming opinion
3 is that they are a boon and an asset to the Town of
4 Highland. We agree. The letters will be available to
5 the public in the Town Hall through the Town Clerk.
6 In addition, although this meeting is open
7 to the public, there will no input from the public.
8 The scope of the matter before us is very narrow. We
9 are only addressing the validity of the violation
10 issued to the Stickett Inn on April 24th of this year.
11 The specific violation cited is operating a
12 hotel/motel and drinking establishment at the premises
13 without a site plan approval or a special use permit
14 approved by the Town of Highland Planning Board. We
15 will only be hearing evidence from both sides that is
16 specifically relevant to this violation.
17 **MR. MOGEL:** As is set forth in the public
18 notice that was -- excuse me. I'm sorry.
19 My name is Steve Mogel. I'm representing
20 the Appellants here.
21 **CHAIRMAN FISHMAN:** Should he take his mask
22 off while he's talking?
23 **MR. DAVIDOFF:** No, however he's
24 comfortable.
25 **CHAIRMAN FISHMAN:** Are you comfortable

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1 **- RE: STICKETT INN, LLC -**
2 taking your mask off?
3 **MR. MOGEL:** I'm comfortable. Do you need my
4 mask off in order to hear me?
5 **MR. DAVIDOFF:** No, no. Whatever you're
6 comfortable with.
7 **MR. MOGEL:** I enunciate, so if anybody can't
8 hear me, please let me know. I'll speak even louder.
9 I represent the Appellants here.
10 First off, I'm going to raise an objection.
11 The reason I'm raising this objection is even
12 according to the public notice that was published by
13 this board, all interested parties can be heard.
14 Interested parties include any individual, business
15 owners, residents, anyone who is within 500 feet of
16 this business. At a minimum, at a minimum, those
17 individuals who are directly impacted by whatever goes
18 on at this property need to be heard, need to be
19 heard. You can raise that objection. I want that
20 objection noted for the record.
21 Also, I believe that if you're going to
22 limit and not permit public participation, I do
23 believe that is also a violation of the open meetings
24 law. I haven't researched it so I'm not going to
25 raise. I want it noted for the record that I believe

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1 **- RE: STICKETT INN, LLC -**
2 that's a violation. But at a minimum, I think that
3 almost any court in going to indicate that interested
4 parties have a right to be heard for this application.
5 Now, that being said, I would like to
6 distribute a handout.
7 **MR. DAVIDOFF:** Steve, yes, go ahead.
8 Everything that you want is going to be received in
9 evidence.
10 **MR. MOGEL:** Okay.
11 **MR. DAVIDOFF:** So we can move it along.
12 Whatever you want to put in, we're not going
13 necessarily do it formally. If you want to mark them,
14 fine, or just describe them for the record so that
15 everything is going to be entered in evidence.
16 **MR. MOGEL:** Okay. All right.
17 **MR. DAVIDOFF:** Everything is going to be
18 entered into evidence. Whatever Steve wants to submit
19 to the Board will be entered as evidence.
20 (Mr. Mogel distributed documents to all
21 board members.)
22 **CHAIRMAN FISHMAN:** Mr. Mogel, please start
23 your presentation.
24 **MR. MOGEL:** I'm sorry. Just give me one
25 moment.

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1 **- RE: STICKETT INN, LLC -**
2 Also, there's been a request. My clients
3 have requested that if the letters which you indicate
4 will be on file with the Town --
5 **CHAIRMAN FISHMAN:** Yes.
6 **MR. MOGEL:** -- my clients have asked that
7 those letters be read into the record. If there's an
8 objection to that, given the volume, I would ask that
9 at a minimum, that the Board indicate the names and
10 whether they are supportive of the Applicant, just for
11 the record.
12 **MR. DAVIDOFF:** All of those e-mails, the
13 letters, will be part of the record. They're all part
14 of the record.
15 **MR. MOGEL:** Okay. Well, again, the request
16 is that the names be stated.
17 **MR. DAVIDOFF:** The what?
18 **MR. MOGEL:** The names of the individuals who
19 submitted those letters be stated.
20 **MR. DAVIDOFF:** They're part of the record.
21 If anybody wants to go through, anybody, the public,
22 anybody can go through and read them all.
23 **CHAIRMAN FISHMAN:** I've got to say that I've
24 read through those letters and they reflect what the
25 feeling of the town is. But it's only relevant to

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1 - RE: STICKETT INN, LLC -
2 this -- there wasn't one to letter that had anything
3 specifically related to whether or not this violation
4 was valid.
5 **MS. CAMPBELL:** My letter.
6 **CHAIRMAN FISHMAN:** And who was that?
7 **MS. CAMPBELL:** My name is Paula Campbell and
8 I was at the meeting on July 16 and I based my notes
9 that I took on my letter. And I sent my letter last
10 evening.
11 **CHAIRMAN FISHMAN:** Okay. Listen, if you
12 have something that was directly related to whether or
13 not these violations are valid, then please put it in
14 writing --
15 **MS. CAMPBELL:** I did.
16 **CHAIRMAN FISHMAN:** -- and send it to the
17 Board.
18 **MS. CAMPBELL:** I did.
19 **CHAIRMAN FISHMAN:** Don't send --
20 **MS. CAMPBELL:** I did.
21 **CHAIRMAN FISHMAN:** What is your name?
22 **MS. CAMPBELL:** My name is Paula Campbell. I
23 sent my letter in yesterday. And that's why I think
24 it's important that these letters, the names of the
25 people who sent the letters, get entered in so things

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1 - PRESENTATION / MOGEL -
2 don't get lost.
3 **CHAIRMAN FISHMAN:** Okay. Continue.
4 **MR. MOGEL:** I'd like to say I'm happy to be
5 here tonight, but I'm not. My clients are being
6 violated for a project that they presented to this
7 town beginning approximately ten years ago and for
8 which they received a building permit and certificate
9 of occupancy eight years ago. Since that time,
10 they've operated without complaint, without issue, and
11 as has already been acknowledged by the Chair, with
12 great support from the community. It should be
13 evident by the people who are waiting outside to have
14 their voices heard, as well, on this issue. They did
15 everything right. They did everything right. They
16 spoke with the Town Board members. They invited the
17 Planning Board members and the supervisor and board
18 members over for tacos. They discussed their issue
19 before they ever made application to the Town Board.
20 They engaged the services of an attorney. They
21 engaged the services of an architect. They paid their
22 fees. They submitted their documents. They
23 communicated with the Town, with its officials and
24 anybody of any level who was interested in this
25 project, they communicated with them. Anything that

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1 - PRESENTATION / MOGEL -
2 was asked they provided.
3 They said from Day One exactly what they
4 wanted to do with this property. There was no secret.
5 This is not an applicant who built without a permit
6 and is now having to say, You got me, you caught me,
7 I'll accept the consequences. They presented
8 themselves openly and honestly from Day One. Their
9 initial application says rooms to let. What is rooms
10 to let? They said taco stand. What's a taco stand?
11 A restaurant. A drinking establishment.
12 **CHAIRMAN FISHMAN:** Question. Sorry. The
13 initial application, that's the one from October 5th
14 of ...
15 **MR. MOGEL:** The initial application is
16 attached as Exhibit 3 to my handout. It is dated
17 October 5th of 2011 --
18 **CHAIRMAN FISHMAN:** Okay. Thank you.
19 **MR. MOGEL:** -- which was provided by the
20 Town itself as a copy.
21 **CHAIRMAN FISHMAN:** I'm sorry I interrupted
22 you. Go ahead.
23 **MR. DAVIDOFF:** By the way, it was designated
24 as No. 8 for that year, the upper corner. What they
25 do is that's number.

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1 - PRESENTATION / MOGEL -
2 **CHAIRMAN FISHMAN:** The applications are
3 numbered.
4 **MR. MOGEL:** Okay.
5 **MR. DAVIDOFF:** It was given a number of
6 eight.
7 **MR. MOGEL:** Yes. I mean my assumption was
8 that that was not referring to November 8th because
9 that wouldn't make any sense.
10 **MR. DAVIDOFF:** No, it was the eighth
11 application for the year 2011.
12 **MR. MOGEL:** So there's no issue that they
13 presented themselves to the Town and said from the
14 get-go, This is what we'd like to do. Nothing was
15 hidden. There was no secret. Everything was out in
16 the open. They did everything that was asked. And
17 frankly, they're being singled out and I do not
18 understand why. Maybe they're being singled out
19 because they came from the city, or maybe they're
20 being singled out because John is too tall, or maybe
21 they're being singled out because they happen to be
22 gay, or maybe they're being singled out for some other
23 reason that is not apparent to me or them. But the
24 bottom line is they're being singled out. This is the
25 discriminatory.

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1 - PRESENTATION / MOGEL -
2 One of the letters that came through that
3 was forwarded to me I think is particularly relevant.
4 It's an individual who said, Please show me all the
5 other businesses that are having their business
6 applications and matters before the Planning Board and
7 Zoning Board reviewed, and how far back does it go.
8 So the question is how did this business, without
9 complaints, after eight years of having their doors
10 open, suddenly be open to scrutiny for things that
11 happened eight to ten years ago. It's ludicrous. It
12 is illegal. And by illegal, I'm not referring to
13 criminal necessarily, but by that I mean not legal.
14 It's shameless.
15 Tonight what we're doing is we're giving an
16 opportunity for the Town to do the right thing. My
17 clients are already injured. They've wasted their
18 time, their energy and their money, money that they
19 ordinarily invested into this community, to fight this
20 violation.
21 I'm going to refer you to my handout. The
22 first issue, these are the reasons why this board,
23 tonight, needs to overturn that violation. Not in 52
24 days, tonight. The first issue I raised on July 16th,
25 that was --

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1 - PRESENTATION / MOGEL -
2 **CHAIRMAN FISHMAN:** Say again. The first
3 issue?
4 **MR. MOGEL:** The first issue I raised on July
5 16th, when I was here on July 16. The first one is it
6 simply wasn't served in the manner that it needs to be
7 served according to your own law. Town code says it
8 needs to be by certified mail. It was sent by first
9 class mail. That's inadequate service, and maybe this
10 board should avail itself of the opportunity to
11 dismiss it on that basis.
12 So the next bases are more problematic.
13 Look at the second page. The Notice of Violation
14 incorrectly cites appellants for operating a drinking
15 establishment without site plan approval or a special
16 use permit, and therefore, it should be overturned.
17 To give you a very brief description, the
18 drinking establishment for permitted uses in 2012,
19 there was no special use permit requirement, and the
20 Notice of Violation is invalid on that basis alone.
21 And then if we're talking about a site plan
22 approval, they applied for a site plan approval, as I
23 indicated here, Exhibit 3, October 5th of 2011. And
24 the Town's code, 190-39(H), provides that the Planning
25 Board shall act to approve, approve with conditions,

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1 - PRESENTATION / MOGEL -
2 disapprove or schedule a site plan hearing within 62
3 days of submission of a completed application.
4 Failure to act within 62 days after the meeting at
5 which approval is requested shall be deemed as an
6 approval.
7 The agenda for October 5th, 2011 states:
8 Site plan approval application No. 11-08 for Roswell
9 Hamrick. Mr. Hamrick is requesting approval for a
10 block building, small retail store, two-frame
11 building, one-bedroom apartment and three rooms to
12 let. He requested approval on October 5th, 2011 and
13 63 days thereafter, there was no denial. That
14 application was approved by your own code, by your own
15 code. That language is repeated in the minutes, that
16 he requested approval.
17 For the same reason, the Notice of Violation
18 citing the Appellants for operating a hotel/motel
19 without a site plan approval, that, too, needs to be
20 overturned and dismissed for the exact same reason.
21 They asked for approval on October 5th, 2011, and on
22 the 63rd day, by your own code, it became approved.
23 **CHAIRMAN FISHMAN:** Did the multiple family
24 dwelling require a special use permit?
25 **MR. MOGEL:** A multiple family dwelling, they

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1 - PRESENTATION / MOGEL -
2 never asked for approval as a multiple family
3 dwelling. That's not on the application. They told
4 this town, on the first day, when they came forward,
5 exactly what they wanted.
6 **CHAIRMAN FISHMAN:** Which was what?
7 **MR. MOGEL:** Well, if you look on the
8 application, it said three rooms to let and a
9 one-bedroom apartment. That was supposed to be a
10 residential component which was late taken out, I
11 believe in consultation with the Town.
12 **CHAIRMAN FISHMAN:** But that's what they were
13 requesting in that application.
14 **MR. MOGEL:** That's what they were requesting
15 in that application.
16 **CHAIRMAN FISHMAN:** Okay.
17 **MR. MOGEL:** They also --
18 **CHAIRMAN FISHMAN:** But they were violated
19 for operating a hotel/motel and drinking
20 establishment.
21 **MR. MOGEL:** Correct.
22 **CHAIRMAN FISHMAN:** But that's not what they
23 were asking for in the application.
24 **MR. MOGEL:** In that application, that's what
25 was indicated. If you look at the minutes, they were

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1 - PRESENTATION / MOGEL -
2 very clear that it's going to be drinking, et cetera.
3 Just because that language might not have been precise
4 in the language what was put on that document exactly,
5 that doesn't invalidate the meetings that they
6 appeared at starting February 3rd, 2010, April 7th,
7 2010, October 5th, 2011 and April 4th, 2012. At all
8 of those meetings they indicated it's going to be a
9 tasting room, drinking establishment. I mean the
10 verbiage is not precise.
11 (Mr. Mogel conferring with Applicants.)
12 **MR. MOGEL:** My clients indicated that the
13 verbiage that they put in there was with the guidance
14 of the town code enforcement officer and the town --
15 **MR. PIZZOLATO:** And the town supervisor and
16 the grant administrator.
17 **CHAIRMAN FISHMAN:** A drinking establishment
18 was not --
19 **MR. MOGEL:** A drinking establishment at that
20 time was a permitted use then.
21 **CHAIRMAN FISHMAN:** Yeah, but they didn't
22 have a license then.
23 **MR. MOGEL:** But that's immaterial. They
24 asked. They asked to establish a drinking
25 establishment at one time.

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1 - PRESENTATION / MOGEL -
2 **CHAIRMAN FISHMAN:** But they would need a
3 site plan to do that, not a special use permit. They
4 would need site plan approval for that.
5 **MR. MOGEL:** They would need a site plan
6 approval for it, which is what they asked for. It's
7 exactly what they asked for.
8 **CHAIRMAN FISHMAN:** From what I saw in the
9 minutes, that they were told that a public hearing
10 would have to be held because there was some issues.
11 With the site approval, there were some things that
12 had to be --
13 **MR. MOGEL:** You know what's interesting is
14 there's a lot of things in the minutes. If you look
15 in the minutes, there are -- I'll give you an example.
16 They were told, at one point, that they needed a lot
17 improvement. They were told, at one point, that they
18 needed a lot line improvement. They were told that
19 they needed site plan approval. They were told that
20 both the supervisor and the code enforcement officer
21 were of the opinion that no site approval was
22 necessary. The code enforcement officer later shifted
23 in that and then shifted back again by granting the
24 building permit.
25 Let me just go back.

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1 - PRESENTATION / MOGEL -
2 (Mr. Mogel examining documents.)
3 **MR. MOGEL:** So the special use permit. The
4 only use which could potentially require a special use
5 permit is as a hotel/motel. When they appeared --
6 **CHAIRMAN FISHMAN:** But it was required for
7 hotel/motel back in 2011.
8 **MR. MOGEL:** Okay?
9 **CHAIRMAN FISHMAN:** Continue. Sorry.
10 **MR. MOGEL:** On May 12th, 2010 Mr. Hafkin
11 stated that just to keep everybody informed, regarding
12 the taco stand, they have to say no in this matter
13 since no paper was filed. This was prior to the 2011
14 application, site plan. He stated he personally does
15 believe that it would still require site approval. He
16 stated the Applicant would have to go to the code
17 enforcement officer with the proposal and it would be
18 up to the CEO to say yes or no.
19 He stated that Andy Boyer, the town
20 supervisor, feels that it doesn't need site approval,
21 but he disagrees since all the parking has to be
22 changed. He stated that they can't do anything as a
23 board right now until the CEO looks at it.
24 **CHAIRMAN FISHMAN:** And so --
25 **MR. MOGEL:** The CEO looks at it, the code

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1 - PRESENTATION / MOGEL -
2 enforcement officer looks at it.
3 **MR. DAVIDOFF:** Can I just ask one question?
4 Was there ever a taco stand established there?
5 **MR. PIZZOLATO:** Drive around.
6 **MR. DAVIDOFF:** I'm asking the question to
7 you.
8 **MR. MOGEL:** It is. It is an existing taco
9 stand, yes.
10 **MR. PIZZOLATO:** Yes, correct.
11 **MR. DAVIDOFF:** There's a taco stand.
12 **MR. PIZZOLATO:** And tasting room. We're
13 required to have food.
14 **CHAIRMAN FISHMAN:** Go ahead. Sorry.
15 **MR. MOGEL:** So on October 5th, 2011,
16 Mr. Hafkin said, he thinks it would be a site plan
17 approval.
18 On March 29th, 2012 the architect, my
19 client's architect, met with Dave Kuebler, the CEO at
20 the time. He gave him two sets of signed and sealed
21 plans and specifications. The CEO said he'd check
22 with the Planning Board chairman and if there was no
23 further issues, the Planning Board would issue the
24 building permit.
25 That same day, the Appellant, Mr. Hamrick,

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1 - PRESENTATION / MOGEL -
 2 spoke with the CEO who said he should, once again,
 3 appear before the Planning Board. Mr. Hamrick
 4 requested. He was put on the agenda for April 4,
 5 2012. I provided e-mail correspondence. It's annexed
 6 as Exhibit 6 that documents all of these exchanges.
 7 On the fourth of April, 2012, Mr. Hamrick,
 8 his attorney and his architect appeared before the
 9 Planning Board. The attorney said she did not believe
 10 that the work that they were doing required site plan
 11 approval, but only a building permit. There's a
 12 separate letter. I don't have the letter here. It
 13 was submitted, a separate letter from Ms. Noyes that
 14 affirms that.
 15 The Planning Board chairman said that the
 16 CEO was concerned because they were making a
 17 significant change to the building and that they might
 18 need site plan approval.
 19 On the 27, 2012 --
 20 **CHAIRMAN FISHMAN:** Twenty-seventh of what?
 21 **MR. MOGEL:** 2012.
 22 **CHAIRMAN FISHMAN:** Of what month? What
 23 month?
 24 **MR. MOGEL:** April.
 25 **CHAIRMAN FISHMAN:** Oh.

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1 - PRESENTATION / MOGEL -
 2 **MR. MOGEL:** April, April 27th. It's the
 3 same month, three weeks later.
 4 **CHAIRMAN FISHMAN:** Okay.
 5 **MR. MOGEL:** The code enforcement officer
 6 issued a building permit. Okay?
 7 According to the town code 190.30(B)(4), in
 8 2012, no building permit shall be issued by the code
 9 enforcement officer for any building or structure, new
 10 or existing, where the site plan of such building,
 11 structure or addition is subject to approval of the
 12 Planning Board, except in full conformity with the
 13 approved plans and written conditions set forth by the
 14 Board, if any.
 15 Obviously, he felt that it was legitimate
 16 for him to provide a building permit at that point.
 17 Again, it had only been presented as the CEO is the
 18 one who gets to decide. The CEO decided and issued
 19 the building permit in 2012.
 20 July 13, 2012, he issued a certificate of
 21 occupancy. The certificate of occupancy says: This
 22 certifies that the building located at 3380 State
 23 Route 97, Section, Block, Lot 28-8-1, Tax Map of the
 24 County of Sullivan, conforms substantially to the
 25 approved plans and specifications heretofore filed in

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1 - PRESENTATION / MOGEL -
 2 this office with application for building permit dated
 3 April 27, 2012, pursuant to which Building Permit No.
 4 050-12, dated April 27, 2012, was issued and conforms
 5 to all the requirements of the applicable provisions
 6 of the law. That's what the law specifies.
 7 The Appellants had been seeking funding
 8 throughout this process going back into 2010. I've
 9 given you a breakdown that is annexed as Exhibit 10 of
 10 the process that they went through to obtain funding
 11 and grant for this project. As part of that, the code
 12 enforcement officer wrote a letter to the Sullivan
 13 County Department of Planning and Environmental
 14 Management, October 9, 2012. He wrote: To Whom It
 15 May Concern: Certificate of Occupancy No. -010-12,
 16 issued on July 13, 2012 for the above-referenced
 17 address does include both dwellings. All code
 18 requirement have been met. That's Exhibit 11.
 19 The highest court in the State of New York
 20 is the Court of Appeals. The Court of Appeals has
 21 stated: We believe that where a government
 22 subdivision acts or comports itself wrongfully or
 23 negligently, including reliance by a party who is
 24 entitled to rely, and who changes his position to his
 25 detriment or prejudice, that subdivision should be

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1 - PRESENTATION / MOGEL -
 2 estopped from asserting a right or defense which it
 3 otherwise could have raised. Estoppel.
 4 **MR. DAVIDOFF:** Do you have a cite for this?
 5 **MR. MOGEL:** Yes. It's in the papers.
 6 **MR. DAVIDOFF:** Oh, it's in your papers?
 7 Okay.
 8 **MR. MOGEL:** It's in the papers. That --
 9 **CHAIRMAN FISHMAN:** Which exhibit this?
 10 **MR. MOGEL:** It's in the argument. It would
 11 be on page 6 of my submission.
 12 **CHAIRMAN FISHMAN:** Okay.
 13 **MR. DAVIDOFF:** Page 6?
 14 **MR. MOGEL:** Yes. Bender versus New York
 15 City Health and Hospitals Corporation.
 16 **MR. DAVIDOFF:** Okay, I see what you're
 17 saying.
 18 **MR. MOGEL:** It's a 1976 decision by the
 19 Court of Appeals.
 20 The Third Department, the Appellate Division
 21 in this department, has said that a municipality can
 22 be estopped from enforcing its zoning laws in a manner
 23 inconsistent with its prior representations if
 24 exceptional facts exist which would result in manifest
 25 injustice.

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1 - PRESENTATION / MOGEL -
2 What does all that mean? Estoppel. My
3 client, as I said, did everything right. They gave
4 everything they were asked to give. It would be
5 manifestly unjust to make my clients go back to the
6 literal Planning Board ten years after they presented
7 their project to this town and eight years after this
8 town repeatedly stated that they had met all the
9 relevant codes, that they had done everything that was
10 required and they could now invest their funds, their
11 time and their lives into this business.
12 If this board doesn't overturn this Notice
13 of Violation they are telling the outside world, the
14 world outside the borders of this community, that
15 you're never fit if you want to invest in the Town of
16 Highland. One year later we can come back, send you
17 back to the Planning Board and we'll look at you from
18 Square One to see if this business really fits in our
19 community. Two years, three years, five years, eight
20 years, eight years. If they can go back to the
21 Planning Board and be told that their business doesn't
22 fit in the town, then anybody here who has a business
23 can be told the exact same thing and you could be told
24 it in eight years, ten years or fifty years. It's
25 ridiculous. It's offensive. And if this board

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1 - PRESENTATION / MOGEL -
2 doesn't overturn it, someone else will.
3 **CHAIRMAN FISHMAN:** Are you done?
4 **MR. MOGEL:** Yes.
5 **CHAIRMAN FISHMAN:** Question. This thing
6 about the estoppel.
7 **MR. MOGEL:** Yes.
8 **CHAIRMAN FISHMAN:** What is considered
9 manifest injustice? If they were shut down, that
10 would be manifest injustice.
11 **MR. MOGEL:** No. It's not the question of
12 whether they're shut down or not. The question is
13 would it be manifestly unjust to make them go back to
14 the Planning Board and start from scratch? Yes, it
15 would be manifestly unjust. Why? Because the Board
16 would be entitled, despite what anyone here might
17 think. Maybe all the folks in this room feel, Well,
18 they're all a bunch of great guys and gals and they're
19 just going to pass them right through and give them
20 their special use permit. But that's not the case.
21 If they subject themselves to the jurisdiction of the
22 Planning Board, if they say, Okay, you want to play
23 nice, we're going to go back to the Planning Board,
24 there's nothing legal that would prevent the Planning
25 Board from saying, You know, this business doesn't

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1 - PRESENTATION / MOGEL -
2 really fit.
3 **CHAIRMAN FISHMAN:** There is. That would be
4 manifest injustice.
5 **MR. MOGEL:** Well, let me also ask this. Let
6 me also ask this.
7 **CHAIRMAN FISHMAN:** I'm sorry?
8 **MR. MOGEL:** Let me also ask this.
9 **CHAIRMAN FISHMAN:** Say it again.
10 **MR. MOGEL:** Is it just that after all this
11 time with no issues they should be brought back here,
12 have to engage a counsel, that they should have to
13 review all these things, that they have to spend their
14 time, money, effort and lost sleep at night coming
15 forward and asking this board to try to correct an
16 injustice that this town --
17 **CHAIRMAN FISHMAN:** Okay, okay.
18 **MR. MOGEL:** -- created?
19 **CHAIRMAN FISHMAN:** Question. The thing that
20 bothers me most about this is that back in 2010, 2011
21 and 2012, multiple family dwellings, hotels and motels
22 and mixed commercial residential dwellings were
23 special permitted uses and required special use
24 permits. I don't understand. They never got that.
25 **MR. MOGEL:** Yes. Let me --

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1 - PRESENTATION / MOGEL -
2 **CHAIRMAN FISHMAN:** They never applied for
3 that.
4 **MR. MOGEL:** Well, no, no, no, no, no.
5 **CHAIRMAN FISHMAN:** And they must have
6 been --
7 **MR. MOGEL:** They --
8 **MR. DAVIDOFF:** Steve.
9 **MR. MOGEL:** You're right, you're right,
10 you're right.
11 **MR. DAVIDOFF:** Let him finish.
12 **MR. MOGEL:** I know, I know, I know.
13 **MR. DAVIDOFF:** For our steno, it's a
14 nightmare.
15 **MR. MOGEL:** I know. I apologize.
16 **CHAIRMAN FISHMAN:** They never applied for
17 that. From what I can see, they never applied for
18 that and they weren't advised by their attorney that
19 that was required. And it's in the code. It was
20 absolutely in the code. That's the thing that bothers
21 me the most with this, is that they did not even try
22 to go for that special use permit.
23 **MR. MOGEL:** Let me -- sorry.
24 **CHAIRMAN FISHMAN:** That's fine. Go ahead.
25 **MR. MOGEL:** When you go into Peck's and you

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1 - PRESENTATION / MOGEL -
 2 buy a six pack of soda, do you say: Is this subject
 3 to sales tax? Did you guys charge me sales tax?
 4 Because I know. Did you --
 5 **CHAIRMAN FISHMAN:** But they were
 6 represented.
 7 **MR. MOGEL:** Wait. Allow me to finish.
 8 **CHAIRMAN FISHMAN:** You're right, you're
 9 right.
 10 **MR. MOGEL:** Right, yes.
 11 Do you say: I don't think you calculated
 12 that five cent deposit properly. You know, it's six
 13 in Maine. No, you don't because you're asking for
 14 something of the people that are selling it.
 15 They made an application to this town for
 16 this town to give permission under its own code. This
 17 town had a code enforcement officer to refer to, they
 18 had counsel to refer to, they had a Planning Board to
 19 refer to. It took them two years, right? After two
 20 years they finally said, Here's your building permit,
 21 you got a building. Here's your CO. You know, they
 22 went ahead and did that. It's incumbent upon my
 23 clients who are making application to tell the Town
 24 with all of its ability, all of its resources with
 25 regard to its very own code, that the Town itself is

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1 - PRESENTATION / MOGEL -
 2 not acting properly?
 3 **CHAIRMAN FISHMAN:** No. I was just curious
 4 as to how that situation affects the courts in the
 5 Third Department, this Wolfram versus Abby, that's
 6 all.
 7 **MR. MOGEL:** Okay.
 8 **MR. DAVIDOFF:** Steve, are you done with your
 9 presentation?
 10 **MR. MOGEL:** I do want to just read one thing
 11 into the record because I don't have the physical
 12 document.
 13 **MR. DAVIDOFF:** Go ahead.
 14 **MR. MOGEL:** This is from Ms. Noyes, the
 15 attorney who represented my clients back then.
 16 She said: Since 2012 I've represented
 17 Roswell Hamrick and John Pizzolato, owners of the
 18 Stickett Inn. I'm not going to reiterate all the
 19 positive participation of my clients in the community
 20 and the significant economic benefits their customers
 21 bring to the Town of Highland. I'll let the 80 plus
 22 letters of support do that. Instead, I'd like to
 23 address the Board's decision to challenge the
 24 operation of the Stickett Inn eight years after it's
 25 opened.

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1 - PRESENTATION / MOGEL -
 2 On April 24, 2020, my client received a
 3 Notice of Violation-Order to Remedy from Dave Preston,
 4 the Town of Highland's current code enforcement
 5 officer, alleging that my clients are operating their
 6 establishment "without a site plan approval or special
 7 use permit approved by the Town of Highland Planning
 8 Board." This letter came as quite a surprise given
 9 that my clients have been operating their
 10 establishment without incident since 2012, at which
 11 time they were granted all required approvals
 12 following a lengthy site planning process with input
 13 from Andy Boyer, Town Supervisor, Dave Kuebler, Code
 14 Enforcement Officer, the Planning Board, as well as
 15 state and county officials. My clients made the Town
 16 aware of their plans for the site as far back as 2010
 17 when they began discussing a taco stand and tasting
 18 room with members of the Board and Andy Boyer, the
 19 Supervisor.
 20 For two years they worked diligently to
 21 develop the site plan in full cooperation and
 22 coordination with the code enforcement officer and the
 23 Board. We looked to the Board for guidance throughout
 24 this process. My clients appeared before the Board on
 25 several occasions and at no time were any special use

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1 - PRESENTATION / MOGEL -
 2 permits ever mentioned.
 3 That's in the record, in the minutes.
 4 According to 190-39, the Planning Board, at
 5 a public meeting, shall, pursuant to Town Law Section
 6 274-a(1)(A), review and approve or approve with
 7 conditions site plans before a building permit is
 8 issued. No certificate of occupancy shall be issued
 9 for any building or structure or use of land covered
 10 by this section unless the building or structure is
 11 completed or the land is developed or used in
 12 accordance with an approved site development plan or
 13 approved amendment of any such plan.
 14 The building permit was issued on April 24,
 15 2012 after the April 2012 board meeting. The
 16 certificate of occupancy was issued on July 13, 2012.
 17 How could these documents be have been issued if the
 18 site land was not approved? If any other permits or
 19 condition were required in order to obtain site
 20 approval, the Board should have, and I suspect would
 21 have required my client to apply for such prior to
 22 issuing building permits and a certificate of
 23 occupancy. If the Board had any concerns about the
 24 site, why were they not addressed in 2012? Why now?
 25 The purpose of the zoning law and the Board

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1 - PRESENTATION / MOGEL -
2 itself is to protect the health, safety and welfare of
3 town inhabitants. I'd like to remind the Board of
4 this as they're threatening to shut down a small
5 business owned by two extraordinarily kind and
6 hard-working individuals in the middle of a pandemic.
7 John and Roswell have been forced to spend many hours
8 of their time and hard earned money to relitigate
9 things that were already resolved eight years ago.
10 Their time is much better spent serving the community,
11 and I encourage the Board rescind this violation and
12 let this business operate in peace.
13 **CHAIRMAN FISHMAN:** What was that you just
14 read?
15 **MR. MOGEL:** That was a letter from Ms. Noyes
16 who was the --
17 **CHAIRMAN FISHMAN:** What was that letter
18 dated?
19 **MR. MOGEL:** That letter, it's dated today.
20 I just don't -- it's dated today.
21 **CHAIRMAN FISHMAN:** This letter was just
22 dated today.
23 **MR. MOGEL:** Yes.
24 **CHAIRMAN FISHMAN:** Could you please put that
25 in?

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1 - PRESENTATION / MOGEL -
2 **MR. DAVIDOFF:** If you can. It's not
3 submitted --
4 **CHAIRMAN FISHMAN:** I would like to put
5 that --
6 **MR. PIZZOLATO:** It was sent to Monica. I
7 can resend it to Monica.
8 **MS. MCGILL:** No, we have it.
9 **CHAIRMAN FISHMAN:** You have that letter?
10 **MS. MCGILL:** I probably got it after three.
11 **CHAIRMAN FISHMAN:** Do me a favor. Send it
12 again.
13 **MR. DAVIDOFF:** Send it again, okay, so we
14 can submit it to all the board members so they can
15 have it for their review. All right?
16 Mr. Mogel.
17 **MR. MOGEL:** Yes.
18 **MR. DAVIDOFF:** Do you know what I think? I
19 think you ought mark what you submitted to the board
20 members as Applicants' A.
21 **MR. MOGEL:** Okay.
22 **MR. DAVIDOFF:** This way we have a record of
23 it. All right?
24 **MR. MOGEL:** Okay.
25 **MR. DAVIDOFF:** What Mr. Mogel was referring

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1 - PRESENTATION / MOGEL -
2 to, what was submitted, everyone, for the
3 stenographer's purpose, will designated as Applicants'
4 Exhibit A.
5 (Applicants' Exhibit A was accepted into the
6 record.)
7 **MR. DAVIDOFF:** If you can submit that letter
8 to the Chairman.
9 **MR. MOGEL:** I will do so.
10 The submission I made on July 15, 2020 will
11 be Applicants' B. I simply want to remind that that
12 was distributed. This is in lieu of that. This
13 submission supersedes that document, that submission,
14 for the simple reason that we had a great deal more
15 documentation subsequent and clear idea of what
16 occurred.
17 **MR. DAVIDOFF:** Do you want that previous
18 submission as part of the record, also?
19 **MR. MOGEL:** Yes.
20 **MR. DAVIDOFF:** You might as well.
21 **MR. MOGEL:** That's going to be B.
22 **MR. DAVIDOFF:** July 15th.
23 **MR. MOGEL:** Correct.
24 (Applicants' Exhibit B was accepted into the
25 record.)

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1 - PRESENTATION / MOGEL -
2 **MR. DAVIDOFF:** I just want to point out
3 something else in that regard. As part of this
4 Exhibit A, I want the Board to make sure that they
5 have the opportunity to read the last exhibit at the
6 appropriate time. This is an affidavit of Bernard
7 Kozykowski. He was at the previous meeting. When we
8 scheduled this meeting he was unable to attend because
9 of a personal matter. So therefore, in lieu of his
10 attending, he submitted an affidavit of what he would
11 have testified to if he was here. That's No. 12.
12 Do you have anything you want to ...
13 **MR. MOGEL:** I do not.
14 **MR. DAVIDOFF:** Okay. All right. Thank
15 you.
16 **CHAIRMAN FISHMAN:** That's Exhibit 12; right?
17 **MR. DAVIDOFF:** So just a couple of things so
18 we could move this along. That is that we're going to
19 submit Exhibit 1 to the Planning Board which is an
20 affidavit of Monica McGill. The affidavit says that
21 she is the secretary of the Town of Highland Planning
22 Board and has been since November 1st, 2017. Annexed
23 thereto is Exhibit A, a copy of the file of the Town
24 of Highland Planning Board, which the file is located
25 in the office of the secretary to the Town of Highland

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1 - PRESENTATION / DAVIDOFF -
 2 Planning Board of the Town of Highland, Monica McGill,
 3 and sworn to before a notary. So that will be the
 4 first exhibit, is a copy of the Planning Board file.
 5 **CHAIRMAN FISHMAN:** I'm going to give it to
 6 Monica.
 7 **MR. DAVIDOFF:** You hold on to it.
 8 (Town's Exhibit 1 was entered into the
 9 record.)
 10 **MR. DAVIDOFF:** I have these numbered but it
 11 doesn't really matter. That was one.
 12 So then the next one is an affidavit of the
 13 Town Clerk. When resolutions are adopted by either
 14 the Planning Board or the ZBA, they're required to be
 15 filed with the Town Clerk within five days. She keeps
 16 the files of the resolutions that are approved by the
 17 ZBA and the Planning Board.
 18 Her affidavit states: State of New York,
 19 County of Sullivan, Doreen Hanson, being duly sworn,
 20 deposes and says: That I am the Town Clerk of the
 21 Town of Highland, Sullivan County, New York. I have
 22 been the Town clerk since 2003.
 23 Two: That my duties include maintaining the
 24 official documents of the Town of Highland Planning
 25 Board and Zoning Board of Appeals that are provided to

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1 - PRESENTATION / DAVIDOFF -
 2 me by the secretary of those boards.
 3 Three: That I have searched the records of
 4 the resolutions that I maintain for the Town of
 5 Highland Planning Board and have found no resolution
 6 of the Town of Highland Planning Board for the
 7 premises at 3380 State Route 97, Town of Highland,
 8 Section, Block and Lot 28-8-1 or for such premises
 9 owned by John Pizzolato and Roswell Hamrick on behalf
 10 of the Stickett Inn, LLC.
 11 This is the original that Ms. Hanson swore
 12 to before a notary. So that's the original signed by
 13 Ms. Hanson.
 14 (Town's Exhibit 2 was entered into the
 15 record.)
 16 **MR. DAVIDOFF:** Mr. Mogel, do you have a copy
 17 of that?
 18 **MR. MOGEL:** This is what you provided to me?
 19 **MR. DAVIDOFF:** The one now for Doreen
 20 Hanson.
 21 **MR. MOGEL:** Yes. I believe you provided a
 22 packet of all those documents. Ms. McGill --
 23 **MR. DAVIDOFF:** No, no, no. No, no. There's
 24 a separate. What you have in the Planning Board file,
 25 that's in that.

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1 - PRESENTATION / DAVIDOFF -
 2 **MR. MOGEL:** No, but you also provided me
 3 Doreen Hanson's affidavit.
 4 **MR. DAVIDOFF:** Okay, that's fine.
 5 I'm going to call Berry Hafkin, the Planning
 6 Board Chairman. Just a couple questions.
 7 Do you want to swear him in?
 8 **STENOGRAPHER:** Do you swear that the
 9 testimony you're about to give is the truth, the whole
 10 truth and nothing but the truth, so help you God?
 11 **MR. HAFKIN:** I do.
 12 B E R R Y H A F K I N
 13 called as a Witness by the Town herein, after having been
 14 first duly sworn, was examined and testified as follows:
 15 **STENOGRAPHER:** Could you state your name and
 16 position?
 17 **MR. HAFKIN:** Berry Hafkin, Chairman of the
 18 Planning Board.
 19 **DIRECT EXAMINATION**
 20 **MR. DAVIDOFF:**
 21 Q. Mr. Hafkin, just to cut to the chase, you're the
 22 chairman of the Planning Board?
 23 **A. Correct.**
 24 Q. And for how long have you been chairman?
 25 **A. Too long.**

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1 - **BERRY HAFKIN / DIRECT / DAVIDOFF -**
 2 Q. I need a number.
 3 **A. I was definitely chairman at the time. I don't**
 4 **know how much before then.**
 5 Q. Have you has the opportunity to go through the
 6 file of the Planning Board, a copy of which as been
 7 submitted?
 8 **A. Yes.**
 9 Q. All right. I ask you to take a look.
 10 No. 1, is there any resolution of approval of a
 11 special use permit or site plan approval for this
 12 **A. None that I can remember.**
 13 Q. Now, I ask you to take a look at the minutes that
 14 are in the file, and specifically the Planning Board
 15 minutes for October 5th, 2011, and under No. 4, site plan,
 16 approval application No. 11-08 for Roswell Hamrick, SBL
 17 28-8-1, 3380 State Route 97, H-C Zone.
 18 What's H-C Zone?
 19 **A. Hamlet Commercial.**
 20 Q. Okay. I ask you just to read from the second
 21 page of those minutes, starting there.
 22 **A. Michael Davidoff, Esquire, stated a 239 form**
 23 **would need to be done. Mr. Hafkin stated that since this**
 24 **is a site plan improvement, they would need things for the**
 25 **public hearing. He stated that Mr. Hamrick would need to**

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1 **- BERRY HAFKIN / DIRECT / DAVIDOFF -**
2 find out how much parking is required for the business,
3 landscaping, drawings of what the building would look like.
4 Mr. Hamrick stated he has all that. Mr. Hafkin asked what
5 kind of business he would have there. Mr. Hamrick stated
6 he would have an antique store or something like that.
7 Mr. Worzel stated it would require water, septic and
8 electric. Michael Davidoff, Esquire, stated that
9 everything needs to be shown on the plans.
10 Mr. Worzel stated that the County would tell
11 Mr. Hamrick what he needs to do and to show everything,
12 including landscaping, drainage, lighting, signage, septic
13 system, parking, water and landscaping. Mr. Davidoff,
14 Esquire stated that Mr. Hamrick would need to come back to
15 the next meeting and show detailed plans.
16 Michael Davidoff, Esquire stated that, from the town
17 code, an acceptable as site plan would be rendered by a
18 professional architect, licensed engineer or licensed
19 surveyor along with everything else necessary is listed in
20 the code. Mr. Hamrick stated he has all of the elevation
21 information. Michael Davidoff stated Mr. Hamrick should
22 talk to the code enforcement officer and highway supervisor
23 to see exactly what is required. Mr. Hamrick stated that
24 the Town or Planning Board Code Enforcement Officer was
25 there last week.

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1 **- BERRY HAFKIN / DIRECT / DAVIDOFF -**
2 Q. Okay. Also, now I ask you to read from the
3 minutes of the Town Planning Board of April 4, 2012. It
4 was Item No. 2 on page 2, Roswell Hamrick, Renovation at
5 3380 State Route 97, SBL 28-8-1, H-C Zone.
6 A. Roswell Hamrick, his attorney Natalie Noyes and
7 his architect Bernie Kozykowski were present. Ms. Noyes
8 stated that she read the statute. It basically said that
9 the application for the renovation would require a building
10 permit and approval, if necessary, by the Planning Board.
11 She questioned why she had come before the Planning Board
12 and not just go to code enforcement officer.
13 Mr. Hafkin stated Dave Kuebler, the Town of Highland's
14 code enforcement officer, felt that Mr. Hamrick was making
15 significant changes to the building and needed to apply for
16 a site plan application. Ms. Noyes stated there was no
17 change, just renovations. Mr. Hamrick stated that is
18 currently zoned multi-family and he wasn't changing that.
19 Ms. Noyes stated they were not requesting a variance and
20 were not making any change to the zoning.
21 Mr. Hafkin stated that the property was zoned
22 commercial. He stated that if the change they were making
23 was one of the accepted uses that it would be permitted.
24 Mr. Hamrick stated there was a site plan and all the
25 accesses have been approved by the County. He stated that

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1 **- BERRY HAFKIN / DIRECT / DAVIDOFF -**
2 the permit hadn't changed since the Town had signed off on
3 it.
4 **MR. DAVIDOFF:** Okay. Thank you. I have
5 nothing further.
6 I call --
7 **CHAIRMAN FISHMAN:** Can I ask a question?
8 **MR. DAVIDOFF:** Sure.
9 **MR. MOGEL:** Cross-examination?
10 **MR. DAVIDOFF:** It's up to the --
11 **CHAIRMAN FISHMAN:** Well, let me just ask a
12 question first and then you can ask him questions.
13 **MR. MOGEL:** Sure.
14 **CHAIRMAN FISHMAN:** You stated Mr. Hamrick
15 stated that there was a site plan and all the accesses
16 had been approved by the County. He stated that the
17 permit hadn't changed since the Town signed off on it.
18 Any idea what the Town signed off on?
19 **THE WITNESS:** No, other than what's in the
20 minutes, I didn't.
21 **BY MR. DAVIDOFF:**
22 Q. Does the Planning Board file contain any
23 resolutions of site plan approval and/or special use permit
24 approval?
25 A. Not that we could find.

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1 **- BERRY HAFKIN / CROSS / MOGEL -**
2 **CROSS-EXAMINATION**
3 **MR. MOGEL:**
4 Q. With the exception of what you just read, did you
5 have any recollection of anything that went on with this
6 matter?
7 A. The only recollection I had, honestly, is there
8 was a question -- in my mind, the only question was about
9 the parking on the main road, that we didn't feel the
10 County would approve that.
11 Q. So --
12 A. I did call the County recently and asked if we
13 ever applied for a 239-m and I was verbally told it was
14 never applied for.
15 Q. Okay.
16 A. We never got that far.
17 My recollection is after that April meeting the
18 Planning Board didn't pursue it and they didn't pursue it.
19 They felt they didn't need it and we're not going to chase
20 them.
21 **CHAIRMAN FISHMAN:** Was the application open
22 on that date?
23 **THE WITNESS:** The application came in --
24 **CHAIRMAN FISHMAN:** Was the application open,
25 was it closed, was it ever acted upon?

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1 - BERRY HAFKIN / CROSS / MOGEL -
 2 **THE WITNESS:** It was not acted upon.
 3 **CHAIRMAN FISHMAN:** There was no public
 4 hearing?
 5 **THE WITNESS:** No public hearing. Nothing
 6 was done with the application.
 7 **MR. PIZZOLATO:** Is a public hearing always
 8 required?
 9 **THE WITNESS:** What?
 10 **MR. PIZZOLATO:** Is a public hearing always
 11 required?
 12 **THE WITNESS:** No, a public hearing -- it's
 13 up to the Planning Board to decide if a public hearing
 14 is necessary and there are special conditions under
 15 which we would not allow it. No, we would not request
 16 it.
 17 **BY MR. MOGEL:**
 18 Q. If someone were getting a building permit for
 19 renovations would they need to have a 239 review?
 20 **A. No, they need it only if they were doing a site**
 21 **plan land approval or a special use permit.**
 22 Q. So let me also. I just have one more question.
 23 **A. That would have been up to us to do.**
 24 Q. Okay. I just have one other question.
 25 Were you recently contacted by my clients with regard

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1 - BERRY HAFKIN / CROSS / MOGEL -
 2 to this matter?
 3 **A. It was, yes**
 4 Q. Okay. Do you recall what told them?
 5 **A. I can't hear you.**
 6 Q. Do you recall what you told them?
 7 **A. Yes, I do.**
 8 Q. Okay. What was that?
 9 **A. I told them to shut up.**
 10 **MR. PIZZOLATO:** You said: Shut the fuck up.
 11 **MR. MOGEL:** Okay. Wait, wait.
 12 **MR. DAVIDOFF:** Wait, wait. Wait. We have
 13 steno here who is trying to take an accurate
 14 transcript. Okay? She can only take on person at a
 15 time.
 16 Q. Is that correct? You told them to shut the fuck
 17 up?
 18 **A. I returned his phone call. He got on his phone.**
 19 **CHAIRMAN FISHMAN:** Why is this relevant?
 20 **MR. MOGEL:** It's absolutely relevant.
 21 **CHAIRMAN FISHMAN:** I don't see where it's
 22 relevant.
 23 **MR. DAVIDOFF:** I object.
 24 **MR. MOGEL:** You can object. If you look at
 25 the rules, the objection will stay. He still needs to

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1 - BERRY HAFKIN / CROSS / MOGEL -
 2 answer.
 3 **MR. DAVIDOFF:** It's up to the chairman to
 4 decide whether he should answer or not, not you or me.
 5 **CHAIRMAN FISHMAN:** Tell me why it's
 6 relevant.
 7 **MR. MOGEL:** Withdrawn. I'm done.
 8 **MR. DAVIDOFF:** The question is withdrawn.
 9 Okay. The next exhibit is, in fact, an
 10 e-mail that was sent to me by the County. I sent a
 11 FOIL, Freedom of Information Request, to the County
 12 for all copies of all 239-m replies and I received
 13 back from the County to my office: In response to
 14 your FOIL request below, I have been in contact, with
 15 Sullivan County Planning Department, at your request,
 16 to make a diligent search of any records and respond
 17 to your request. They inform me that no such records
 18 in response to your request in their file.
 19 **CHAIRMAN FISHMAN:** What was the request for?
 20 **MR. DAVIDOFF:** 230-m reply.
 21 I don't have that many of these so I'll have
 22 to make copies and submit it at a later time.
 23 (A copy of the document was presented to
 24 Mr. Mogel.)
 25 **MR. MOGEL:** Thank you.

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1 - DAVE PRESTON / DIRECT / DAVIDOFF -
 2 **MR. DAVIDOFF:** I think I have that marked
 3 as Exhibit 5.
 4 (Town's Exhibit 5 was received into the
 5 record.)
 6 **MR. DAVIDOFF:** Okay. The next witness --
 7 **CHAIRMAN FISHMAN:** Michael.
 8 **MR. DAVIDOFF:** Yes, sir.
 9 **CHAIRMAN FISHMAN:** What was this FOIL
 10 request for?
 11 **MR. DAVIDOFF:** 239-m. It says right on it,
 12 the last page, 239-m. A copy of all 239-m in regards
 13 to this particular premises.
 14 **CHAIRMAN FISHMAN:** Thank you.
 15 **MR. DAVIDOFF:** Okay?
 16 **CHAIRMAN FISHMAN:** Yes.
 17 **MR. DAVIDOFF:** All right. Dave Preston.
 18 **STENOGRAPHER:** Raise your right hand,
 19 please.
 20 (Mr. Preston complied.)
 21 **STENOGRAPHER:** Do you swear that what you're
 22 about to testify is the truth, the whole truth and
 23 nothing but the truth, so help you God?
 24 **MR. PRESTON:** Yes.
 25 DAVE PRESTON

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1 - DAVE PRESTON / DIRECT / DAVIDOFF -
2 called as a Witness by the Town herein, after having been
3 first duly sworn, was examined and testified as follows:
4 **STENOGRAPHER:** State your name and your
5 position, please.
6 **MR. PRESTON:** Dave Preston, CEO and building
7 inspector, Town of Highland.
8 **DIRECT EXAMINATION**
9 **BY MR. DAVIDOFF:**
10 Q. Okay. Mr. Preston, did you issue a Notice of
11 Violation-Order to Remedy in this matter?
12 **A. Yes.**
13 Q. Dated April 24, 2020?
14 **A. Yes.**
15 **MR. DAVIDOFF:** I've got it marked as Exhibit
16 2.
17 (Town Exhibit 2 was entered into the
18 record.)
19 Q. All right. Now, did you also prepare a
20 chronology of events leading up to the issuance of that
21 violation?
22 **A. Yes.**
23 Q. I show you what's marked Exhibit 3. Is that the
24 chronology?
25 **A. Yes.**

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1 - DAVE PRESTON / DIRECT / DAVIDOFF -
2 **MR. DAVIDOFF:** I offer that.
3 (Town Exhibit 3 was entered into the
4 record.)
5 Q. All right. You want to briefly, then, go through
6 the chronology leading up to your issuing of this
7 violation.
8 **A. All right. All right. We received an e-mail --**
9 **an e-mail was received by the sole assessor complaining**
10 **that the taxes are not being levied properly on the**
11 **property. She investigated it and changed the levy on the**
12 **property, forwarded it to me, and said that they were**
13 **operating a full bar and restaurant and a hotel/motel on**
14 **the property.**
15 **I examined the Building Department records and I asked**
16 **Monica, we do not have any resolution granting permission**
17 **to have these operations going on the property that require**
18 **special use permits and site plan approval. I investigated**
19 **the Planning Board minutes a little bit. I looked at them.**
20 **The fact that we do not possess them kind of put the end to**
21 **there.**
22 **I did do a fire inspection and at the fire inspection**
23 **I was able to determine that the one building is being used**
24 **as a hotel/motel and that the area of the cidery is being**
25 **used as a drinking establishment.**

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1 - DAVE PRESTON / DIRECT / DAVIDOFF -
2 Q. So why did you issue the violation?
3 **A. Because it's being -- they were operating these**
4 **businesses without special use permits or site plan**
5 **approval, that I could find.**
6 **MR. DAVIDOFF:** Nothing further.
7 **CROSS-EXAMINATION**
8 **BY MR. MOGEL:**
9 Q. Good evening, Mr. Preston.
10 **MR. DAVIDOFF:** Wait, I'm sorry. Just one
11 question.
12 **DIRECT EXAMINATION**
13 **BY MR. DAVIDOFF:** (cont.)
14 Q. You said you that inspection, that fire
15 inspection. What was the date of that?
16 (Witness examining documents.)
17 **A. February 11.**
18 Q. Of?
19 **A. 2020.**
20 **MR. DAVIDOFF:** Okay.
21 **MR. MOGEL:** I'm sorry. Just give me a
22 moment.
23 **CHAIRMAN FISHMAN:** Take your time.
24 **MR. MOGEL:** I haven't seen it, so ...
25 (Mr. Mogel examining documents.)

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1 - DAVE PRESTON / CROSS / MOGEL -
2 **CROSS-EXAMINATION**
3 **BY MR. MOGEL:**
4 Q. So you said on February 11, 2020, that's when you
5 performed an inspection on the property?
6 **A. Yeah.**
7 Q. Okay. And that's when you determined that it was
8 in violation.
9 **A. Yes.**
10 Q. Okay. When did you prepare the Notice of
11 Violation-Order to Remedy
12 **A. Shortly after that. I was really reluctant to**
13 **issue it because I knew it was going to cause a lot of**
14 **trouble.**
15 Q. Did --
16 **A. But eventually, I was counseled that we had to go**
17 **forward with it, so I did.**
18 Q. Did you have any discussions with either of the
19 appellants at the time that you provided them with a copy
20 of the Notice of Violation?
21 **A. I had a discussion with Mr. Hamrick on February**
22 **11th. Shortly thereafter, they came in the office and told**
23 **us that they didn't need permits or anything, they were all**
24 **set. I shelved the matter for a while. Then I did issue**
25 **the violation. I did go down and have a discussion with**

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1 **- DAVE PRESTON / CROSS / MOGEL -**
2 **them after that and gave them -- I brought along an**
3 **application for the Planning Board to submit and I was**
4 **willing to help them fill it out, but they said they didn't**
5 **need it and kind of sent me back at that point.**
6 Q. At any point did you tell them that this wasn't
7 coming from you?
8 **A. Why would I say that?**
9 Q. It's a yes or no question. Did you say that or
10 you didn't say it?
11 **A. I don't recall.**
12 Q. You don't recall. Okay.
13 Are there Airbnbs in the town?
14 **A. I imagine there are, yes. They're legal.**
15 Q. They are?
16 **A. They're legal if someone's renting a private**
17 **property.**
18 Q. Okay. So it's legal to have an Airbnb; correct?
19 **A. Yes.**
20 Q. Okay. So if someone has an Airbnb with four
21 units ...
22 **A. That's not legal.**
23 Q. Okay. If --
24 **A. An Airbnb applies renting the type of dwelling to**
25 **a family or group.**

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1 **- DAVE PRESTON / CROSS / MOGEL -**
2 **We also have bed and breakfast, but it requires to be**
3 **owner occupied.**
4 **MR. MOGEL:** Okay.
5 (Mr. Mogel conferring with Appellants.)
6 **MR. MOGEL:** There are no further questions.
7 **MR. DAVIDOFF:** Okay, that's it.
8 Okay, just two more things. Mr. Mogel
9 raised, initially an issue about service, saying that
10 service was improper. I'd suggest that that's not for
11 this board to determine. Should the violation
12 continue to go forward and have to go to the Court,
13 then that would be determined. It is something that
14 the Court would determine, not this board. The Board
15 has to determine the issue of whether the violation
16 was, pursuant to the code, properly served.
17 No. 2, Mr. Mogel also raised the question of
18 estoppel. Now, I don't want to get into this. I
19 assume we'll be submitting closing statements,
20 whatever, but estoppel is generally not available
21 against a governmental agency in the exercise of its
22 governmental function. There are some limited
23 exceptions. I don't think that this falls within one
24 of them, and I'll just leave it at that.
25 I don't have anything further.

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1 **- RE: STICKETT INN, LLC -**
2 Mr. Mogel, do you want to either submit
3 closing statements in writing, a short period of time,
4 or how do you want to do it?
5 **MR. MOGEL:** I don't think it's really
6 necessary to submit written closing statements.
7 What I would ask is within the 62 days, if
8 there is any additional information that's been
9 secured by FOIL, if we're allowed to simply add that
10 to the record.
11 **CHAIRMAN FISHMAN:** Absolutely. Absolutely;
12 right?
13 **MR. DAVIDOFF:** Yes.
14 **CHAIRMAN FISHMAN:** Absolutely.
15 **MR. DAVIDOFF:** Okay. Do you have anything
16 further?
17 **MR. MOGEL:** Sorry.
18 (Mr. Mogel conferring with Appellants.)
19 **MR. DAVIDOFF:** Anything else at this point?
20 **MR. MOGEL:** Nothing.
21 (Mr. Mogel conferring with Appellants.)
22 **MR. MOGEL:** No, nothing further.
23 **MR. DAVIDOFF:** You may want to address the
24 estoppel issue.
25 **MR. MOGEL:** I'll address it right now.

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1 **- RE: STICKETT INN, LLC -**
2 **MR. DAVIDOFF:** Okay. I'm just saying that
3 you raised this. You have the absolute right to raise
4 it. I'm not saying no, but I think that it might be
5 helpful to the Board to have the legal argument about
6 estoppel in writing one way or the other.
7 **MR. MOGEL:** It is in writing. If you take a
8 look at it, it's not in the context of a brief, but I
9 am highlighting the relevant law. I don't disagree
10 that estoppel is not ordinarily applicable to a
11 municipality in exercising its zoning enforcement
12 function, but that is subject to the significant
13 exception of whether there is manifest injustice.
14 **MR. DAVIDOFF:** I may want to submit a
15 short --
16 **MR. MOGEL:** If you do submit, then I'll do
17 some sort of reply.
18 **MR. DAVIDOFF:** I may want to just submit the
19 other side with regard to that.
20 **MR. MOGEL:** If you do that, then I'll submit
21 a reply.
22 **MR. DAVIDOFF:** I'll try to do it in the next
23 couple days.
24 **CHAIRMAN FISHMAN:** Anything from the Board?
25 Any comments from the Board?

1 - RE: STICKETT INN, LLC -
 2 (No verbal response.)
 3 CHAIRMAN FISHMAN: Someone make a motion to
 4 close the public hearing?
 5 BOARD MEMBER DAMPMAN: I'll make that
 6 motion.
 7 CHAIRMAN FISHMAN: Second?
 8 BOARD MEMBER KAMP: I'll second that.
 9 CHAIRMAN FISHMAN: All in favor?
 10 BOARD MEMBER DAMPMAN: Aye.
 11 BOARD MEMBER DONNELLY: Aye.
 12 BOARD MEMBER KAMP: Aye.
 13 BOARD MEMBER MARCIANO: Aye.
 14 BOARD MEMBER MIEDREICH: Aye.
 15 CHAIRMAN FISHMAN: Aye.
 16 (The motion was agreed and carried.)
 17 CHAIRMAN FISHMAN: Okay. The public hearing
 18 is closed as of 7:40.
 19 MR. MOGEL: Did the Board want to make a
 20 determination this evening?
 21 CHAIRMAN FISHMAN: Not tonight.
 22 Considering the amount of additional
 23 information that has been submitted to us tonight,
 24 we're going to take a month to consider everything
 25 that's been presented. Any additional information

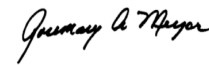
1 - RE: STICKETT INN, LLC -
 2 that you have, if you get more information from FOIL
 3 or whatever, anything else that you have, please
 4 submit it to us. We will make a decision on this at
 5 our next meeting which is September 17th.
 6 MR. MOGEL: Okay. I would appreciate it if
 7 the Board is prepared to make a decision at that
 8 point. My clients are suffering financial detriment.
 9 CHAIRMAN FISHMAN: Why?
 10 MR. MOGEL: Because they're seeking to
 11 refinance and the Notice of Violation --
 12 CHAIRMAN FISHMAN: I'm sorry. They're what?
 13 MR. MOGEL: They're seeking to refinance the
 14 property and the Notice of Violation against the
 15 property prevents them from doing that.
 16 CHAIRMAN FISHMAN: Okay. I understand that.
 17 I understand. We'll will make the decision next
 18 month.
 19 (Time noted: 7:41 p.m.)
 20 *****
 21
 22
 23
 24
 25

REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and
 Notary Public in and for the State of New York, do
 hereby certify:

That the witnesses were duly sworn; that the
 foregoing transcript is an accurate record of the
 proceedings herein, to the best of my knowledge and
 belief, having been stenographically recorded by me
 and transcribed under my supervision.

I further certify that I am in no way related to
 any of the parties to this action and that I have no
 personal interest whatsoever in the outcome thereof.



ROSEMARY A. MEYER

Date Transcribed: September 14, 2020

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